



Attorney General

STATE CAPITOL

Phoenix, Arizona 85007

Robert H. Corbin

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January 4, 1982
ARIZONA ATTORNEY GENERAL

INTERAGENCY

Mr. Harold Carden, Acting Director
Department of Corrections
321 West Indian School
Phoenix, Arizona 85013

Re: I83-001 (R82-133)

Dear Mr. MacDougall:

This letter is in response to your predecessor's July 27, 1982 request for our opinion whether the Department of Corrections has authority to require juveniles to pay restitution to the victims of their delinquent acts. We conclude that only the juvenile court has such authority.

A.R.S. § 8-202.A provides as follows:

The juvenile court has exclusive original jurisdiction over all proceedings brought under the authority of this chapter.

A.R.S. § 8-201.14 provides that:

"Juvenile court" means the juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility.

The juvenile court may exercise jurisdiction over a child in many different circumstances. However, the power of the juvenile court to make a particular disposition of a delinquent child is limited to the powers expressly granted to it by the legislature. Matter of appeal in Maricopa County, Juvenile Action No. J-85871, 120 Ariz. 154, 584 P.2d 618 (Ct.App. 1978). The juvenile court is expressly authorized to require a child that it has adjudicated delinquent pursuant to A.R.S. §§ 8-231 and 8-231.02 to pay restitution to the victim of his delinquent act:

The court may, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the child, order the following dispositions for a delinquent child, either as exclusive dispositions or in addition to the dispositions provided by subsection A, paragraph 2, subdivisions (a) through (c) and (f) of this section:

1. To make full or partial restitution to the victim of the offense for which the child was adjudicated delinquent. The court shall notify the victim of the dispositional hearing. The court may consider a verified statement from the victim concerning damages for lost wages, reasonable damages for injury to or loss of property and actual expenses of medical treatment for personal injury, excluding pain and suffering.

2. To pay a reasonable monetary assessment if the court determines that an assessment is in aid of rehabilitation.

D. If a youth is adjudicated incorrigible for any act constituting a violation of a curfew ordinance of a county or municipality which can only be committed by a minor or for a violation of §4-244, paragraph 9, the court may impose a monetary assessment on the youth of not to exceed fifty dollars.

A.R.S. § 8-241.C and D. There is no statutory authority authorizing the DOC or any other agency to require a juvenile to pay restitution to a victim. See Ariz. Atty. Gen. Op. 179-209. Even if the juvenile court awards a delinquent child to the custody of the Department of Corrections pursuant to A.R.S. § 8-241.A.2.e, the juvenile court still retains jurisdiction of the child for purposes of implementing orders made by that court. A.R.S. § 8-202.D.

Regarding your inquiry whether the Department of Corrections can petition the juvenile court to order restitution to be paid through DOC, there is no authority for the juvenile court to grant such a request. The method for paying

Mr. Ellis C. MacDougall
January 4, 1983
Page 3

restitution or a monetary assessment is also governed by a statute:

The court may allow the restitution or monetary assessment imposed under subsection C or D of this section to be satisfied in either of the following forms:

1. Monetary reimbursement by the youth in lump sum or installment payments through the clerk of the superior court for appropriate distribution.

2. A program of work, not in conflict with regular schooling, to repair damage to the victim's property, to provide community service or to provide the youth with a job for wages.

The court order for restitution or monetary assessment shall specify, according to the dispositional program, the amount of reimbursement and the portion of wages of either existing or provided work that is to be credited toward satisfaction of the restitution or assessment, or the nature of the work to be performed and the number of hours to be spent working.

A.R.S. § 8-241.6. It is clear from the preceding statute that any restitution payments must be made to the clerk of the superior court. The juvenile court thus has no authority to require a juvenile to pay restitution to the Department of Corrections, even if DOC makes such a request. Similarly, any sanctions for a failure of a juvenile to pay court-ordered restitution must be imposed by the juvenile court, not by DOC. See A.R.S. § 8-241.A.2.e.

You have also asked whether DOC can take funds from a DOC controlled youth account and make victim restitution payments. The answer to this question is also no. There would have to be statutory authority for such a procedure. There is statutory authority for the earnings of a prisoner on work furlough to be paid to the work furlough administrator, and for the administrator to, in turn, pay court-ordered restitution out of those funds. A.R.S. § 31-334. However, the preceding statute applies only to adult offenders who are under the

Mr. Ellis C. MacDougall
January 4, 1983
Page 4

jurisdiction of DOC, and has no applicability to juveniles. See Matter of Maricopa County, Juvenile Action No. J-81405-S. 122 Ariz. 252, 594 P.2d 506 (1979). Before DOC would have authority similar to that granted the work furlough administrator under A.R.S. § ~~13-334~~, it would be necessary for the legislature to enact a statute allowing the DOC to release funds from a controlled youth account to pay court-ordered restitution.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:BAJ:lm