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ARIZONA ATTORNEY GENERAL

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

February 6, 1984

James G. Ricketts, Ph.D.
Director
Arizona Department of Corrections
321 West Indian School Road
Phoenix, Arizona 85013

John J. Sloss, Chairman
Arizona Board of Pardons and Paroles
321 W. Indian School Road
Phoenix, AZ 85013

Re: I84-021 (R83-084)

Gentlemen:

This letter is in response to your inquiry concerning the operation of certain recent amendments to A.R.S. §§ 13-603, 31-411, and 31-412 enacted by Laws 1983, Ch. 123, § 1 ("Chapter 123").

Those amendments which are pertinent to this opinion include the addition of paragraph C to A.R.S. § 13-603 which provides as follows:

C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the victim of the crime or to the immediate family of the victim if the victim has died, in such an amount and manner as the court may order after the consideration of the economic loss to the victim and economic circumstances of the convicted person.

A.R.S. § 31-412 was amended by this legislation to add this provision:

C. The Board shall as a condition of parole order a prisoner to make any court-ordered restitution.

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Your first question pertains to the effect of these amendments upon the authority of the Board of Pardons and Paroles ("the Board") or the Department of Corrections ("the Department") to set the amount of money to be paid each month by the parolee towards the restitution. As to those persons who were convicted after the effective date of Chapter 123, we believe that if the court orders the amount and manner or payment of restitution the power of the Board is limited to incorporation of the court's restitution order as a condition of parole and to imposition of the appropriate sanctions when there has been a violation of the conditions of parole. In these cases, the Department has no such authority.

We note, however, that when the Legislature enacted Chapter 123, it also amended A.R.S. § 13-411 to add paragraph D which gives the Board the power to "impose any conditions of parole it deems appropriate in order to ensure that the best interests of the prisoner and the citizens of this State are served." Although the Legislature also specifies what some of those conditions may be (i.e., performance of community service work), we do not believe that the statute limits the Board's power to impose other conditions, such as payment of restitution. We have recently said that these amendments to A.R.S. § 13-411 apply to persons who were granted parole prior to the effective date of the legislation because conditions of parole may be revised at any time. Ariz. Atty. Gen. Op. 183-141. We conclude that A.R.S. § 31-411.D. as amended gives the Board the power to amend parole orders and impose restitution as a condition of parole upon a parolee who was convicted prior to the effective date of Chapter 123 which transferred that power to the courts. Likewise, we believe that these amendments to A.R.S. § 31-411 allow the Board to impose, as a condition of parole, the manner of payment of restitution upon parolees convicted after the effective date of Chapter 123 if the court orders restitution but does not specify the particular method of payment.

You have also asked about the type of sanctions which the Board may impose upon a parolee for failure to pay the restitution as ordered. Court-ordered restitution is like any other condition of parole for the violation of which the Board may impose sanctions. Thus, the Board has the power to revoke a parolee's parole if the parolee does not comply with the restitution order during the term of his parole, once the Board has determined that a violation has occurred. See Thomas v. Arizona State Board of Pardons and Paroles, 115 Ariz. 128, 564 P.2d 79 (1977); A.C.R.R. R5-4-501 et seq.

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However, the Board has jurisdiction over a parolee only during the term of the parolee's sentence. If the parolee does not pay the court-ordered restitution after he has completed the term of his parole, the Board has no further authority to impose sanctions.

In the case of a releasee who is not on parole (i.e. an inmate on work furlough, work release or temporary or mandatory release), we refer you to A.R.S. § 31-233.D. which gives the Director of the Department the power to impose, as a condition of release on work furlough, the requirement that the inmate "make restitution to the victim of the offense for which he was incarcerated." We find no similar provision applicable to other types of releasees.

Sincerely,



BOB CORBIN
Attorney General

BC:pd