



Attorney General

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Robert R. Corbin

November 19, 1987

Mr. David K. Storie, Chief
Adult Probation Officer
Pinal County Superior Court
P.O. Box 767
Florence, Arizona 85232

Re: I87-148 (R87-021)

Dear Mr. Storie:

You have asked whether adult probation officers are authorized to ask the superior court to discharge probationers who have not completed an extended term of probation nor fully paid court ordered restitution and to enter judgments in favor of victims for the unpaid balance of any restitution ordered and in favor of the state for the unpaid balance of any fines, costs, fees, surcharges, or assessments imposed. You also ask if there are any guidelines for an adult probation officer to follow in determining whether to request the superior court to discharge probationers who have not satisfactorily completed their probation because they have failed to make full restitution.

There are several statutes and rules adopted by the Arizona Supreme Court applicable to your first question. A.R.S. § 13-902(B) provides:

When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to his offense and that condition has not been satisfied, the court at any time prior to the termination or expiration of probation may extend the period within the following limits:

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1. For a felony, not more than three years.
2. For a misdemeanor, not more than one year.

(Emphasis added.) Rule 27.2, Arizona Rules of Criminal Procedure, provides that a probation officer may request the Superior Court to modify or clarify any condition or regulation of probation, at any time prior to discharge from probation. Rule 27.3, Arizona Rules of Criminal Procedure, provides that a probation officer may file a motion asking the superior court to terminate a probationer's term of probation and discharge a probationer from probation at "any time during the term of probation." (Emphasis added.) Rule 27.5, Arizona Rules of Criminal Procedure, also permits the probation officer to petition the superior court to revoke probation if he has reasonable cause to believe a probationer has violated the terms of his probation. Upon expiration or early termination of a term of probation, the superior court "shall order the probationer to be discharged" Rule 27.4, Arizona Rules of Criminal Procedure.

The Rules of Criminal Procedure give probation officers broad discretion to make recommendations to the superior court during a term of probation. Therefore, if a probation officer believes that terminating the term of probation in a particular case will serve the interests of justice, taking into account the statutory rights of victims to restitution, the officer has the discretion to recommend that the court discharge a probationer even though the probationer has not paid all the court-ordered restitution.^{1/}

Whenever the court discharges a probationer, whether upon a request for early termination or due to expiration of the imposed term, the court must enter a judgment in favor of any person entitled to restitution for the unpaid balance of any court-ordered restitution. A.R.S. § 13-805(A)(2). The court also must enter judgment in favor of the state for the balance

^{1/}If, however, the maximum period of extended probation ordered pursuant to A.R.S. § 13-902(B) has been served or if a lesser term of probation has expired, the probationer must be discharged from probation.

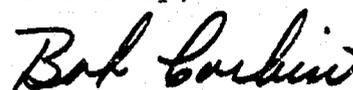
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of any unpaid fines, costs, fees, surcharges, or assessments. A.R.S. § 13-805(A)(1). It would, of course, be appropriate for a probation officer to recommend to the court that these mandatory judgments be entered.

You also request guidelines to follow in determining whether to recommend that the court terminate the period of probation and discharge probationers who have not yet made full restitution. The Arizona statutes and Rules of Criminal Procedure do not specifically delineate criteria for probation officers to follow in making such recommendations. However, the statutes set out in A.R.S. §§ 13-804 to -810 express the intent of the legislature and public policy of the state that obtaining payment of restitution to victims and fines and costs to the state is a high priority and obligation of the courts. See A.R.S. § 13-809.

In considering a recommendation regarding a probationer who has not fully paid restitution and fines, it would be appropriate for a probation officer to consider, as guidelines, certain statutory requirements the courts must follow. A.R.S. § 13-901(E) authorizes a court to terminate a period of probation and discharge the probationer earlier than the term originally imposed only if it is in the interests of justice and "if the conduct of the defendant on probation warrants it." A.R.S. § 13-810 establishes contempt sanctions for intentional refusal to make good faith efforts to pay restitution and also provides for modification of restitution orders if a defendant has been unable to pay restitution despite good faith efforts to do so. It would, therefore, also be appropriate for a probation officer to consider the extent of a probationer's ability to pay and whether the probationer made good faith payment efforts or intentionally refused to make efforts to pay in determining whether the defendant's conduct on probation warrants early termination and discharge from probation. The central purpose for all of these statutes is the protection of victims and a probation officer should always exercise his discretion with that purpose clearly in mind.

Sincerely,



BOB CORBIN
Attorney General