

April 16, 2024

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Bobby Ferguson
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Detroit, Michigan 48223

Detroit City Council
c/o Janice M. Winfrey
Detroit City Clerk
Coleman A. Young Municipal Center
2 Woodward Avenue/Suite 200
Detroit, MI. 48226

Re: **Debarment Appeal:**
OIG No. 24-0002-INV
Issued: 3/25/2024

Dear Members of Detroit City Council:

This instrument is respectfully submitted pursuant to Part IV City Code, Chapter 17, Article 5, Division 10 - Debarment, Sec. 361 - Appeal. **see Sec. 17-5-361.** For brevity, the appeal presents three essential questions for your consideration. First, does the factual basis set forth in the Debarment Report ("Report") of the Office of Inspector General ("OIG") fall outside of the OIG's jurisdictional purview to ***detect and prevent waste, abuse, fraud and corruption?*** Two, does OIG's impetus to debar Ferguson undermine the spirit and objectives of the **Second Chance Initiative for Returning Citizens**. Third, are the provisions of Debarment Ordinance **17-5-355 void-for-vagueness, as applied, in this case** or just misapplied by the OIG.? Appellant, Bobby W. Ferguson ("Ferguson") answers yes to these questions.

A. Jurisdictional Question:

Section 7-5-306 of the Detroit City Code provides that the OIG shall "investigate any Public Servant, city agency, program or official act, contractor and subcontractor providing goods and services to the City, business entity seeking contracts or certification of eligibility for City contracts and person seeking certification of eligibility for participation in any city program, either in response to a complaint or on the Inspector General's own initiative in order to ***detect and prevent waste, abuse, fraud, and corruption.*** (*emphasis supplied*).

(i). OIG Premise For Investigating Ferguson:

The OIG reports that “[o]n December 18, 2023, [it] opened a complaint involving Bobby W. Ferguson.” see Report @ p. 1. The only specifics about what the complaint alleged is that “Mr. Ferguson opened the Ferguson Group V LLC (Ferguson Group) ...,” and “that [he] approached a high ranking City of Detroit official about potentially getting a contract with their department.” Id @ 1.

Nothing in these two sentences constitutes *detecting* or otherwise discovering a misdeed or anything else nefarious. The conditions of Ferguson’s supervised release do not prohibit him from returning to his former profession as a contractor. Accordingly, there is nothing suspect about him opening the Ferguson Group. The OIG also mischaracterizes Ferguson’s discussion with “a high ranking City of Detroit official about ... getting a contract with their department.” Id. The OIG paints this meeting as corrupt by pointing to Ferguson’s prior criminal conviction to infer that he is the same today as he was then. This is disingenuous. Ferguson saw the City official, who he knew, while at a local restaurant. Ferguson did not “approach” this official with some form of proposition; rather, they had a serious discussion about the shortage of native contractors under the present administration.

The tenor OIG’s entire report simply refers to Ferguson’s prior criminal conviction to mischaracterize his meeting with the city official as something nefarious by inferring that his past criminal conviction is indicative of this current disposition. In other words, the OIG is alleging that Ferguson’s return as a citizen must be viewed as corruption. This was done to create a factual basis to invoke the OIG with jurisdiction to investigate and debar Ferguson, pursuant to 7-5-306. However, what the OIG does not report indicates that Ferguson’s debarment is unfounded and outside of the OIG’s jurisdiction.

(ii). Ferguson’s Compassionate Release From Prison:

For example, the OIG evades the fact that United States District Court Judge, Nancy G. Edmunds, reduced Ferguson’s 21 year federal sentence to time served. see **United States v. Ferguson**, 536 F. Supp. 3d 139, 145-46 (E.D. Mich. Apr. 29, 2021). In order to reduce Ferguson’s sentence, Judge Edmunds had to find “**extraordinary and compelling reasons**” – “that such a reduction [was] consistent with applicable policy statements issued by the Sentencing Commission,” and that the statutory sentencing factors of 18 U.S.C. Sec. 3553(a) supported Ferguson’s release from prison. **Ferguson, supra @ 141-42.**

Judge Edmunds’ findings militate against the OIG’s detrimental use of Ferguson’s past criminal convictions. She notes that “[t]he government ma[d]e a forceful and impassioned argument as to why the [Sec.] 3553(a) factors do not support compassionate release.” Id. @ 144. She further notes the government “[r]el[ie]d heavily on the Court’s comments at the ... sentencing hearing ... [and] spen[t] fully a third of its brief **attacking [Ferguson] for his criminal activities.**” Id.

Judge Edmunds then made relevant distinctions between Ferguson's pre-conviction conduct and post-conviction conduct:

While the Court does not disavow the remarks and analysis articulated at the original sentencing, consideration of the statutory factors leads to a different Conclusion today. The nature and circumstances of the underlying offenses remain serious, even devastating. Public corruption corrodes the foundation of our democracy, and the environment of intimidation and extortion in Detroit ... undermined the foundation and hope for the success of many businesses, including those which were minority owned. But despite the government's argument that [Ferguson] was and still is a man of violence (based primarily on incidents which occurred decades ago), his crimes here were financial, not physical and not fiduciary. And while the Court noted at the time of sentencing that [Ferguson] had only received 'raps on the knuckles' for his prior criminal conduct, [] he has now been incarcerated for a significant period of time – eight years. During this time period he has not displayed the hotheadedness he has in the past, and he has taken several positive steps toward his Rehabilitation. He has not received any disciplinary tickets, has been employed ... and has completed almost four hundred hours of classes and workshops to help him prepare for a productive life following release. [Ferguson] has also Served as a mentor to other inmates.

Thus, the Court finds that the time [Ferguson] has served to date is sufficient To promote respect for the law, provide just punishment for the offense, and promote deterrence to others considering the similar conduct. For those same reasons, [Ferguson's] continued incarceration is not necessary for protection of the public. And his release will also allow him to begin paying the restitution imposed in this case. **see Ferguson, supra. @ 144-45.**

Clearly, "[i]t is well established that 'a court speaks through its written orders and judgments, not through its oral pronouncements.'" **see In re Contempt of Henry, 282 Mich. App. 656, 678; 765 N.W. 2d 44 (2009).** Here, Judge Edmunds reduction of Ferguson's 21 year sentence to time served indicates that rehabilitation enables a person to become a productive **returning citizen**. Importantly, this finding by Judge Edmunds was not in isolation; it was predicated on Ferguson's prison programming under the mandate of the First Step Act of 2018, which required the United States Attorney General to develop a risk and need assessment system for the Federal Bureau of Prisons ("BOP") to assess the recidivism risk and criminogenic needs of all federal prisoners and to place prisoners in recidivism reduction programs and productive activities to address their needs and reduce this risk. **see bop.gov/inmates/fsa/index.jsp. see also Ex A, Attached..**

As noted. Ferguson has paid over **\$4,000,000** of his **\$6,284,000** amount of restitution. **Report @ pg. 1.** The OIG reports this payment as a **reduction "due to court approved amendments, payments, and credit for assets seized by the federal government."** This

statement implies that restitution was "**do to**" (verb) something the court did, instead of, something the court approved based on what Ferguson has and is doing, paying his restitution. The significance is clear. As reported by the U.S. Government Accountability Office ("GOA"), most of the outstanding restitution owed is never paid due to the offender's inability to pay. see www.goa/2-18-2018/GOA-18-203. see Ex. B. The fact that Ferguson has paid two-thirds of his restitution and is trying to return to his profession to pay the remainder should be commended, not condemned.

These facts indicate the OIG's reliance on "Section 17-3-355 of the Debarment Ordinance [that] states ... there is 'no statute of limitations on investigations, findings of violation of the debarment policy, or the initiation of debarment proceedings ...,'" is misplaced and disingenuous. Here the statute of limitations was misapplied to allow the OIG to use Ferguson's prior convictions to mischaracterize his actual conversation with "a high ranking City of Detroit official" about the shortage of native contractors under the present administration" – as an encounter from which she **detected something corrupt or fraudulent enough to warrant a debarment investigation**. see Report @ pg. 1.

Before the appeal hearing, the Council should require the OIG to clarify if the **complaint she opened on December 18, 2023 ...**," *Id.* @ pg. 1, means the OIG decided to investigate Ferguson based on a **filed complaint** or if Ferguson's investigation was on the OIG's own initiative. The OIG's report does not say that the "high ranking City of Detroit official **filed the complaint or that the OIG verified the allegations in a complaint regarding the encounter between that official and Ferguson**. What is clear is that the OIG relies solely on Ferguson's criminal conviction that occurred more than a decade ago, and provides no basis for finding Ferguson's discussion with the high ranking city official violated the City Debarment Ordinance. It also ignores the Honorable Judge Edmunds' judicial findings that Ferguson is a rehabilitated returning citizen who is "prepared for a productive life following his release." **Ferguson, supra.** @ 145.

Apparently, the OIG's entire case is based on what Ferguson was convicted of a decade ago. The OIG's account in the **Reasons for Debarment** also reveals the fallacy of the debarment disposition. The **preponderance of the evidence standard** requires the OIG to **prove to this Council** that its **proposition** that Ferguson violated the ordinances for debarment promulgated in **Section 17-5-355, at paragraphs 5, 8, and 9, is more true than not true**. In turn, as arbiter, the Council must consider and weigh the totality of all the **competent, material, and substantial** evidence at issue. The OIG has not met its burden.

Although the statute of limitations permitted the OIG to consider Ferguson's past conviction, the preponderance of the evidence standard does not permit the OIG to exclude the relevance of Ferguson's rehabilitation. This is exactly what the OIG's report does. It presents a case that requires this Council to **sanction** its decision to debar Ferguson based on his past conviction, while ignoring who he is today as a result of eight years of rehabilitation.

Such an analysis is flawed because it misapplies the preponderance of the evidence standard. It fails to weigh whether evidence of Ferguson's rehabilitation indicates *it is more true than not true* that he is a *different* man *today* than he was when convicted more than a decade ago, and that his debarment *today* is not warranted because *nothing* he has done *today violates* the City Debarment Ordinance. Conversely, the OIG propounds that only offenses related to Ferguson's past federal conviction are to be considered as a reason to debar him as a contractor *today*. This proposition is devoid of *competent, material, substantive evidence* because the OIG does address, much less resolve, *the dispute* of whether Ferguson's past conviction or his rehabilitation best describe the man he has become *today*.

Ferguson submits that the OIG lacked subject matter jurisdiction to conduct a debarment investigation and to impose debarment for a maximum of 20 years. The Report is devoid of any competent, material, and substantial *evidence* that Ferguson's debarment is needed to *prevent waste, abuse, fraud and/or corruption* in the City of Detroit. The absence of these requisite proofs demonstrate the OIG lacked subject matter jurisdiction to act in this matter.

B. The OIG's Debarment Decision Offends The Essence of The Second Chance Initiative:

The City of Detroit recognizes that every returning citizen deserves a second chance. On March 30, 2023, Detroit celebrated National Second Chance Month with Returning Citizens Hiring and Resource Fair. *see Ex. C.* Councilman Fred Durhal III, noted that "[f]inding a job is not just about earning a paycheck, it's about regaining a sense of purpose, dignity, and belonging. *Every person deserves a second chance*" *"We believe in creating opportunities, not judgments. It's a chance for employers to see beyond the obstacles residents have faced in their past and recognize the value and potential of our returning citizens."* *Id.* Councilman Durhal's statements echo the sentiment that returning citizens should not be defined and judged by their past; instead, they should be afforded the opportunity to regain the standing needed to experience what Detroit has for its citizens.

To this end, "Detroit focuses efforts on hiring the formerly incarcerated." *see Ex. D, Attached.* Deputy Mayor for Detroit, Todd Bettison said "incarceration is supposed to be rehabilitative and employment prohibitions for those who have felony records can be detrimental for their families and the city as a whole. By hiring the formerly incarcerated, he said, the city has been able to contribute to a lower unemployment rate and improve stability for residents." *see Ex. E.*

LaJuan Counts, Director of *Detroit's Construction and Demolition Department* said she didn't know what to expect ..., when she started hiring workers who had felony convictions." *see Ex. F.* She "had concerns about whether she might unknowingly hire a rival still carrying a beef, or whether her employees would show up to work every day." *Id.* Now she states that "employees who have been released from prison are the strongest workforce she's ever had. *Id.* She contends that "[a]ny *stigmas* ... just aren't fair." (*emphasis supplied*).

(j). Ferguson Deserves A Second Chance:

The OIG's 20 year debarment of Ferguson is solely based on his past criminal convictions. As noted above, the OIG's report is devoid of any credible evidence to prove the proposition that since his release from prison, Ferguson has done anything that warrants his debarment. If Detroit is open to hiring and training returning citizens, why should Ferguson be debarred from contracting with the city based solely on his past convictions. There is nothing in the Detroit City Code that prohibits an ex offender from contracting with Detroit. Ferguson has served his time and is fully rehabilitated. The reduction of his federal sentence to time served was based on competent, material, and substantial evidence of this fact. Ferguson has fully complied with the terms of his supervised release and has defrayed nearly \$4,000,000 or two-thirds of his \$6,284,000 in restitution, which, as mentioned above, is rarely done by federal offenders. As a returning citizen, Ferguson just wants to reestablish a foundation for his children, grandchildren and to serve the local community as a productive citizen. Clearly, Ferguson is entitled to a second chance to accomplish this goal.

C. The OIG's Misapplication of Section 17-5-354(b), renders Section 17-5-355 Void-For-Vagueness.

The OIG's misapplication of the Debarment Ordinance at Section 17-5-354(b), renders Section 17-5-355 @ paragraphs 5, 8, and 9 "void-for-vagueness" as applied in this matter. A statute or ordinance may qualify as void-for-vagueness if: "[1] It is overbroad and impinges on the First Amendment freedoms, [2] it does not provide fair notice of the conduct it regulates, or [3] it gives the trier of fact *unstructured and unlimited discretion* in determining whether the statute has been violated." *People v. Gasper*, 888 N.W.2d 116; 314 Mich. App. 528 (March 8, 2016) (citations omitted).

Specifically, it further imposes Section 17-5-354(b) to preclude Ferguson "from serving as a subcontractor or as a goods, services or materials supplier for any contract for the City of Detroit ...," and warns that any "company he owns, is an officer for or has a direct or indirect financial or beneficial interest in may do business with the City of Detroit as a contractor or subcontractor for the period of debarment." see Report @ pg. 8, Section 5. Here, the OIG's debarment extends beyond Ferguson by warning other contractors who have or desire to contract with the City that if they hire or otherwise do any business with Ferguson, they too will be debarred from contracting with Detroit. This includes and may even target, Ferguson's own family members. In effect, the OIG is telling Ferguson he is not welcome in Detroit and warns other contractors that are willing to give Ferguson a second chance that they will be debarred for doing so.

The OIG's application of Section 17-5-354(b) and 17-5-355 @ paragraphs 5, 8, and 9 is void-for-vagueness as it gives the OIG *unstructured and unlimited discretion* to debar

Ferguson for his past convictions and other city contractors, including family members, for merely hiring Ferguson as an employee to perform the skills he has in construction, without clearly stating how this action violates the Debarment Ordinance.

C. Conclusion:

The OIG debarment of Ferguson and threat to do the same to all others that are affiliated with or even related to him should be overturned. The OIG's reason for debarment is inapposite and undermines the spirit and objectives of the Detroit's Second Chance Initiative developed for returning citizens. It is unclear whether the OIG impetus is based on media reports or something more personal. What is clear is that Ferguson is rehabilitated and as his presiding Judge, Nancy Edmunds intimates – debarment is not needed to protect the public from Ferguson. Simply put, Ferguson deserves a second chance too, and contractors who want to provide him an opportunity to work with them, should not be subject to debarment because of it.

Accordingly, Ferguson respectfully requests the Council to hold as follows: (1) that the OIG lacked subject matter jurisdiction to investigate and impose a 20 year debarment disposition in this case because there is not credible evidence to **"prove"** Ferguson has or will cause **waste, abuse, fraud and corruption** under **Sec. 7.5-306(1)** or has otherwise violated **Sec. 17-5-354(b)**; (2) that it was disingenuous for the OIG's to rely solely on Ferguson's prior criminal convictions to debar him, where there is creditable, competent evidence from the federal court that Ferguson is rehabilitated, thus entitled to all the benefits of Detroit's Second Chance Initiative; and (3) that the warning to others with city contracts that the too will be debar for hiring or otherwise working with Ferguson is by application in this case void for vagueness.

Respectfully submitted



Bobby W. Ferguson

EXHIBIT A

An Overview of the First Step Act

Learn how the First Step Act affects BOP inmates and their families.

On December 21, 2018, President Trump signed into law the First Step Act (FSA) of 2018 (P.L. 115-391). The act was the culmination of a bi-partisan effort to improve criminal justice outcomes, as well as to reduce the size of the federal prison population while also creating mechanisms to maintain public safety.

This page provides a general overview of how the law affects BOP inmates and their families. For an expanded and detailed overview, please refer to the following document:
<https://crsreports.congress.gov/product/pdf/R/R45558>

Reduction in Recidivism

The First Step Act requires the Attorney General to develop a risk and needs assessment system to be used by BOP to assess the recidivism risk and criminogenic needs of all federal prisoners and to place prisoners in recidivism reducing programs and productive activities to address their needs and reduce this risk. Under the act, the system provides guidance on the type, amount, and intensity of recidivism reduction programming and productive activities to which each prisoner is assigned, including information on which programs prisoners should participate in based on their criminogenic needs. The system also provides guidance on how to group, to the extent practicable, prisoners with similar risk levels together in recidivism reduction programming and housing assignments.

The Act also amends 18 U.S.C. § 4042(a) to require BOP to assist inmates in applying for federal and state benefits and obtain identification, including a social security card, driver's license or other official photo identification, and birth certificate.

The First Step Act also expands the Second Chance Act. Per the FSA, BOP developed guidance for wardens of prisons and community-based facilities to enter into recidivism-reducing partnerships with nonprofit and other private organizations, including faith-based and community-based organizations to deliver recidivism reduction programming.

Incentives for Success

The Act amended 18 U.S.C. § 3624(b) so that federal inmates can earn up to 54 days of good time credit for every year of their imposed sentence rather than for every year of their sentenced served. For example, this change means that an offender sentenced to 10 years in prison and who earns the maximum good time credits each year will earn 540 days of credit.

Eligible inmates can earn time credits towards pre-release custody. Offenses that make inmates ineligible to earn time credits are generally categorized as violent, or involve terrorism, espionage, human trafficking, sex and sexual exploitation; additionally excluded offenses are a repeat felon in possession of firearm, or high-level drug offenses. For more details, refer to the complete list of disqualifying offenses. These ineligible inmates can earn other benefits, as prescribed by BOP, for successfully completing recidivism reduction programming.

Federal regulations regarding time credits are final and are published in the Federal Register.

Confinement

The Act amends 18 U.S.C. § 3621(b) to require BOP to house inmates in facilities as close to their primary residence as possible, and to the extent practicable, within 500 driving miles. BOP makes designation decisions based on a variety of factors, including bedspace availability, the inmate's security designation, the inmate's programmatic needs, the inmate's mental and medical health needs, any request made by the inmate related to faith-based needs, recommendations of the sentencing court, and other security concerns. BOP is also required, subject to these considerations and an inmate's preference for staying at his/her current facility or being transferred, to transfer an inmate to a facility closer to his/her primary residence even if the inmate is currently housed at a facility within 500 driving miles.

The FSA reauthorizes and modifies a pilot program that allows BOP to place certain elderly and terminally ill prisoners on home confinement to serve the remainder of their sentences.

Additionally, inmates who successfully complete recidivism reduction programming and productive activities can earn time credits that will qualify them for placement in prerelease custody (i.e., home confinement or a Residential Reentry Center).

Correctional Reforms

The First Step Act (FSA) includes a series of other criminal justice-related provisions. These provisions include a prohibition on the use of restraints on pregnant inmates in the custody of BOP and the U.S. Marshals Service. It also includes a requirement for the BOP to provide tampons and sanitary napkins that meet industry standards to prisoners for free and in a quantity that meets the healthcare needs of each prisoner. (Note that BOP policy previously addressed these requirements.)

The FSA requires BOP to provide training to correctional officers and other BOP employees (including those who contract with BOP to house inmates) on how to de-escalate encounters between an officer or employee of BOP and a civilian or an inmate, and how to identify and appropriately respond to incidents that involve people with mental illness or other cognitive deficits. BOP staff training now incorporates these requirements.

Also included is a prohibition against the use of solitary confinement for juvenile delinquents in federal custody. (BOP does not house juveniles in its facilities but its contracts comply with this aspect of the FSA.)

Sentencing Reforms

Changes to Mandatory Minimums for Certain Drug Offenders

The FSA makes changes to the penalties for some federal offenses. The FSA modifies mandatory minimum sentences for some drug traffickers with prior drug convictions by increasing the threshold for prior convictions that count toward triggering higher mandatory minimums for repeat offenders, reducing the 20-year mandatory minimum (applicable where the offender has one prior qualifying conviction) to a 15-year mandatory minimum, and reducing a life-in-prison mandatory minimum (applicable where the offender has two or more prior qualifying convictions) to a 25-year mandatory minimum.

Retroactivity of the Fair Sentencing Act

The FSA made the provisions of the Fair Sentencing Act of 2010 (P.L. 111-220) retroactive so that currently incarcerated offenders who received longer sentences for possession of crack cocaine than they would have received if sentenced for possession of the same amount of powder cocaine before the enactment of the Fair Sentencing Act can submit a petition in federal court to have their sentences reduced.

Expanding the Safety Valve

The FSA also expands the safety valve provision, which allows courts to sentence low-level, nonviolent drug offenders with minor criminal histories to less than the required mandatory minimum for an offense.

For sentencing reform examples please refer to the guide published by the U.S. Sentencing Commission's Office of Education and Sentencing Practice.

Oversight

The Act requires the submission of several reports to review the BOP's implementation of the law and assess the effects of the new risk and needs assessment system.

In carrying out the requirement of the FSA, the Attorney General consults with an Independent Review Committee (IRC). The Hudson Institute is the nonpartisan and nonprofit organization to host the IRC. Some of the duties the IRC performs, in assisting the Attorney General, include:

- Conducting a review of the existing prisoner risk and needs assessment systems in operation on the date of enactment of this Act;
- Developing recommendations regarding evidence-based recidivism reduction programs and productive activities;
- Conducting research and data analysis on: evidence-based recidivism reduction programs relating to the use of prisoner risk and needs assessment tools;

- Advising on the most effective and efficient uses of such programs; and which evidence-based recidivism reduction programs are the most effective at reducing recidivism, and the type, amount, and intensity of programming that most effectively reduces the risk of recidivism;
- and reviewing and validating the risk and needs assessment system.

Two years after the enactment of the First Step Act, and each year thereafter for the next five years, DOJ will submit reports to Congress on various aspects of the FSA including a report on effective medication assisted treatment of opioid and heroin abuse, and plans on how to implement those treatment methods.

Within two years of BOP implementing the system, and every two years thereafter, the Government Accountability Office will audit how the new risk and needs assessment system is being used at BOP facilities.

< First Step Act Main Page

About Us	Inmates	Locations	Careers	Business	Resources	Resources For ...
About Our Agency	Find an Inmate	List of our	Life at the BOP	Acquisitions	Policy & Forms	Victims &
About Our Facilities	First Step Act	Facilities	Explore	Solicitations &	News Stories	Witnesses
Historical Information	Communication	Map of our	Opportunities	Awards	Press Releases	Employees
		Locations	Current Openings		Publications	Volunteers

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EXHIBIT B



February 2018

FEDERAL CRIMINAL RESTITUTION

Most Debt Is Outstanding and Oversight of Collections Could Be Improved

Accessible Version

GAO Highlights

Highlights of GAO-18-203, a report to congressional committees

Why GAO Did This Study

One of the goals of federal criminal restitution is to restore victims of federal crimes to the position they occupied before the crime was committed by providing compensation. Various entities within the federal government are involved in the process of requesting, ordering, and collecting restitution for crime victims, including DOJ and the judiciary.

The Justice for All Reauthorization Act of 2016 includes a provision for GAO to review the federal criminal restitution process for fiscal years 2014 through 2016. This report addresses, among other things: (1) the extent to which information is available on restitution requested by DOJ and ordered by courts; (2) the amount of restitution debt DOJ collected and the amount that remains outstanding; and, (3) the extent to which DOJ has conducted oversight on the collection of restitution. GAO analyzed laws, policies and procedures as well as USSC data on restitution orders and DOJ data on restitution collected from fiscal years 2014 through 2016. GAO also selected a non-generalizable sample of six federal judicial districts based on restitution collections and spoke with USAO officials and federal probation officers.

What GAO Recommends

GAO is making three recommendations. GAO is making one to the judiciary to determine why data on restitution orders are incomplete. GAO is making two recommendations to DOJ, including one to implement performance measures and goals for the collection of restitution. The judiciary and DOJ concurred with the recommendations.

View GAO-18-203. For more information, contact Gretta L. Goodwin at (202) 512-8777 or goodwin@gao.gov.

February 2018

FEDERAL CRIMINAL RESTITUTION

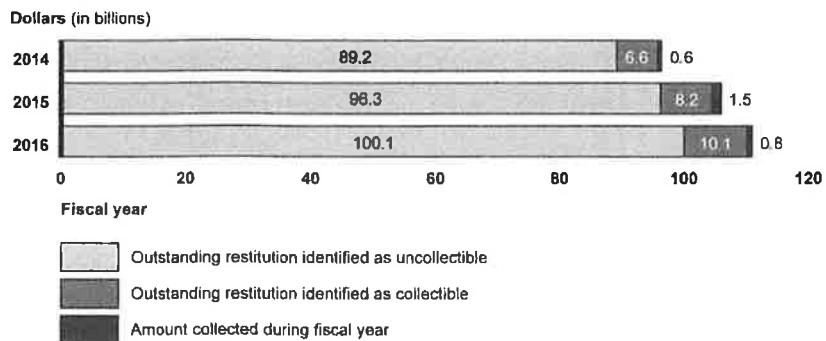
Most Debt Is Outstanding and Oversight of Collections Could Be Improved

What GAO Found

Officials from selected U.S. Attorney's Offices (USAO) stated that they document requests for restitution in case files and employ other internal controls, such as the use of templates and forms, throughout the prosecution process to ensure that prosecutors request restitution as appropriate. GAO's analysis of U.S. Sentencing Commission (USSC) data—an agency within the judiciary—showed that information on restitution orders was available for 95 percent of all offenders sentenced from fiscal years 2014 through 2016. Specifically, 214,578 federal offenders were sentenced during this time period and restitution was ordered for 33,158, or 15 percent, of those offenders. Collectively, courts ordered these offenders to pay \$33.9 billion in restitution. Most federal offenders sentenced during these years were sentenced for immigration or drug-related offenses. In interviews, USAO officials stated that these offenses do not typically have victims requiring restitution. GAO found that data on reasons why restitution was not ordered were incomplete for 5 percent of all offenders sentenced from fiscal years 2014 through 2016. Determining why data on restitution orders are incomplete may inform the judiciary of the cause of the incomplete data and any efforts needed to improve USSC data.

GAO's analysis of Department of Justice (DOJ) data showed that USAOs collected \$2.95 billion in restitution debt in fiscal years 2014 through 2016, see figure below. However, at the end of fiscal year 2016, \$110 billion in previously ordered restitution remained outstanding, and USAOs identified \$100 billion of that outstanding debt as uncollectible due to offenders' inability to pay.

Collected and Outstanding Criminal Restitution as of the End of Fiscal Years 2014 through 2016



Source: GAO analysis of Department of Justice data. | GAO-18-203

DOJ identified improving debt collection—including restitution—as a major management initiative in its 2014-2018 Strategic Plan. While DOJ is developing analytical tools to monitor the collection of restitution, it has not established performance measures or goals. Performance measures and goals would allow DOJ to gauge USAOs' success in collecting restitution and, by extension, the department's success in achieving a major management initiative.

Gathering information on the extent to which forfeited assets were used for victim compensation, including when not used and reasons why not, could position DOJ to take action to increase the use of these assets for victim compensation if warranted. These actions could include providing funds for increased asset forfeiture staff in USAOs, providing additional training or changing policies or procedures for using forfeited assets to compensate victims. Fully and systematically understanding the extent to which issues, such as a lack of coordination within USAOs, result in victims not being compensated using forfeited assets would give DOJ a basis upon which to develop improvements to the Asset Forfeiture Program. Such information would also provide DOJ and staff at all USAOs with information to evaluate its performance in achieving one of the goals of the Asset Forfeiture Program and taking action to meet the agency goal of protecting the rights of the American people—including the right to full and fair restitution for victims.

Conclusions

Restitution serves the criminal justice goal of holding offenders accountable and, to the extent possible, restoring victims of federal crimes to their prior position had the crime not occurred. Many victims are unlikely to receive any meaningful portion of court-ordered restitution owed to them because of offenders' inability to pay these debts. However, the fact that restitution is difficult to collect does not negate the important responsibilities of the judiciary and DOJ to properly manage and oversee all aspects of the restitution process.

By law, courts are to state why they did not order restitution and provide that information to USSC. While this information was collected and recorded in USSC data for most offenders, we found that this information was missing for thousands of offenders. It is important for the judiciary to ensure that this information is consistently collected and recorded to assist USSC in its continuous re-examination of its guidelines and policy statements and ensure that various sentencing practices are achieving their stated purposes. The judiciary could support USSC in this endeavor by determining why this information is missing. Results from this study could help inform the judiciary whether this issue rises to the level of an internal control deficiency and whether additional action can be taken to improve the transparency of sentencing decisions.

While DOJ has delegated collection activities for restitution to USAOs, it could provide better oversight to ensure it is making reasonable efforts to

collect restitution and meeting its responsibility to victims. USAOs have identified a significant portion of outstanding restitution debt as uncollectible, but they have also identified \$10 billion of outstanding restitution debt that could be collected. Developing and implementing performance measures and goals for each USAO would allow DOJ to gauge USAOs' success in collecting this restitution and, by extension, the department's success in achieving its major management initiative to increase the collection of debt. Further, DOJ could use performance information to improve the practices of offices in seeking and recovering restitution, consistent with a requirement in the Justice for All Reauthorization Act of 2016.

Finally, DOJ could gain greater visibility into the use of forfeited assets to compensate victims by gathering information on cases in which victims have been identified and restitution is anticipated but forfeited assets are not used, and any reasons why. Doing so would better position DOJ to take action to increase the use of forfeited assets to compensate eligible victims if warranted and to provide assurance that it is maximizing the use of asset forfeiture in satisfying restitution debts, one of the agency's most effective mechanisms for satisfying restitution.

Recommendations for Executive Action

We are making three recommendations, including one to the judiciary and two to DOJ. Specifically:

Judiciary officials, including AOUSC, USSC, and the Judicial Conference, should determine why USSC data on the reasons restitution was not ordered are incomplete. Additionally, if warranted based on this information, judiciary officials should take action to ensure USSC data records include all required information for orders of restitution. (Recommendation 1)

To improve oversight of the collection of restitution we recommend that the Attorney General:

- Develop and implement performance measures and goals for each USAO related to the collection of restitution, and measure progress towards meeting those goals. (Recommendation 2)
- In cases where forfeited assets were not used to compensate victims, gather information on reasons why forfeited assets were not used for

victims. If warranted based on this information, take action to increase the use of forfeited assets to compensate eligible victims.
(Recommendation 3)

Agency Comments

We provided a draft of this report for review and comment to DOJ, the Judicial Conference of the United States, AOUSC, USSC, and the Federal Judicial Center. DOJ concurred with our recommendations and provided technical comments, which we incorporated as appropriate. AOUSC provided written comments, which are reproduced in appendix III. In its written comments, AOUSC noted that it would work with the USSC to address our recommendation.

We are sending copies of this report to the appropriate congressional committees and the Attorney General, the Judicial Conference of the United States, the Directors of AOUSC, the Staff Director of USSC, the Federal Judicial Center and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you and your staff have any questions about this report, please contact me at (202) 512-8777 or goodwin@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions are listed in appendix IV.



Gretta L. Goodwin
Director, Homeland Security and Justice

EXHIBIT C



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City of Detroit celebrates National Second Chance Month with Returning Citizens Hiring and Resource Fair

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MAYOR'S OFFICE

- **The City of Detroit actively recruits Returning Citizens, some of our hardest working employees**
- **Returning Citizens will be hired on the spot, linked to essential resources**

The City of Detroit will celebrate the beginning of National Second Chance month with a hiring and resource fair to connect our Returning Citizens with opportunities for employment in good-paying jobs and other essential resources such as resume building, interview tips, housing support, ID help, adult education, wellness assistance and expungement through the city's Project Clean Slate program.

The event will be hosted by our partners at the Union Carpenters and Millwrights – at their beautiful new skilled training center located at **11687 American Street, Saturday, April 1 from 9 am-1 pm**, and will begin with remarks from Deputy Mayor Todd Bettison and City Council Member Fred Durhal, along with two Returning Citizens who have come back to Detroit and will tell their success stories to help encourage others.

"Detroit wants to ensure our Returning Citizens know they are important and valued, this event will help provide them with access to opportunities they need to thrive all in one place," said Deputy Mayor Todd Bettison. "The City actively recruits Returning Citizens, and when we hear from their supervisors, the report is almost always that they are some of the hardest workers and they're glad to have them as part of their team."

Councilman Fred Durhal III is the Chair of Detroit's Returning Citizens Task Force. "Finding a job is not just about earning a paycheck, it's about regaining a sense of purpose, dignity, and belonging. Every person deserves a second chance, and the Returning Citizens Hiring & Resource Fair is a testament to that belief. We believe in creating opportunities, not judgments. It's a chance for employers to see beyond the obstacles residents have faced in their past and recognize the value and potential of our returning citizens," said Durhal. "Together, we can break down the barriers that prevent the full participation of returning citizens in our workforce and build a more inclusive and just community for all."

The city has hired nearly 100 Returning Citizens in the past year alone across multiple city departments. In fact, there are several programs such as the Alley and Blight clean-up programs, and seasonal park maintenance, which would not be as successful if not but for our efforts of recruiting Returning Citizens.

Partners who will be at weekend's fair to provide employment opportunities and connect our Returning Citizens with access to training and other resources:

EXHIBIT D

Opinion: For those recently released from prison, a job is more than a second chance

Opinion: Employing parolees could help both businesses, society

“Obviously, it is a huge issue,” Durhal said. “We call it corrections, but if we’re not correcting conditions ... we’re doing ourselves a disservice. We need to create an environment that’s conducive for them to thrive.”

Detroit has a moral responsibility to help the formerly incarcerated find work, he said, to set an example for other employers to follow suit. The training programs are vital, Durhal said, to help people gain better opportunities.

“If it’s not our responsibility, then it is our problem,” he said.

Fleming said he found barriers to some trucking jobs he had applied for when potential employers learned about his record. He said it was meaningful not only that the city hired him, but that there were classes dealing with professional etiquette and resolving workplace issues designed to make him and others feel comfortable in the type of professional setting they may not have experienced before.

EXHIBIT E



Todd Bettison, deputy mayor for Detroit

Todd Bettison, Detroit's deputy mayor, said residents who have served time deserve a second chance and it's the city's duty to support them.

"Our responsibility and our job is to create opportunity for Detroiters," he said. "Where there are inequities, we want to create a level playing field."

Bettison said incarceration is supposed to be rehabilitative and employment prohibitions for those who have felony records can be detrimental for their families and the city as a whole. By hiring the formerly incarcerated, he said, the city has been able to contribute to a lower unemployment rate and improve stability for residents.

"I wanted to do something that feels fulfilling, that feels like it has a purpose," Fleming said. "I wanted to rewrite my story and do something positive."

A number of formerly incarcerated residents — "returning citizens," in the city's parlance — have gotten job training through Detroit at Work programs like Skills for Life, then gone on to work for the city or other outside organizations. Hiring and training residents who have served time has become an administration priority, and at a recent job fair for those with convictions, the city hired two of the five people who got jobs on the spot.

Two job fairs in the past year have had nearly 200 participants, with almost 40 people getting job offers both inside and outside city government and dozens more signing up for training programs, completing pre-employment applications or beginning the process to expunge their criminal records. Additionally, nearly 4,000 people have had their criminal records expunged through a city program dating back to 2016.

FORUM

EXHIBIT F



Lajuan Counts, director of Detroit's Construction and Demolition Department

When she started hiring workers who had felony convictions, Lajuan Counts, director of Detroit's Construction and Demolition Department, said she didn't know what to expect. She had some concerns about whether she might unknowingly hire rivals still carrying a beef, or whether her employees would show up to work every day. But she said employees who have been released from prison are the strongest workforce she's ever had.

It's not that there were no challenges. Some workers had trouble securing housing and there was a need to work around required report times for those on parole. Counts said the department was spending more on social services for its employees.

But she said those workers came ready to commit and ready to work. Any stigmas, she said, just aren't fair.

"The biggest challenge was finding workers who were ready to work."

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CRAIN'S DETROIT BUSINESS

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Opinion: For those recently released from prison, a job is more than a second chance

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