

✓ PILOT RESTITUTION PROJECTS WITHIN THE  
NEW YORK STATE CRIMINAL JUSTICE SYSTEM

NEW YORK STATE COMMISSION  
ON MANAGEMENT AND PRODUCTIVITY  
IN THE PUBLIC SECTOR

THOMAS J. CULHANE  
*Chairman*

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*Vice-Chairman*

MEYER S. FRUCHER  
*Executive Director*

JUNE, 1978  
NEW YORK STATE ASSEMBLY  
STANLEY STEINGUT, SPEAKER

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PILOT RESTITUTION PROJECTS WITHIN THE ACQUISITIONS  
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*Kathleen Lacey and Roy W. Burdick held primary research responsibility for this study and report. Steven Kafka provided editorial assistance.*

## INTRODUCTION

The Commission on Management and Productivity in the Public Sector has sought to identify methods which would maintain quality prisoner surveillance while decreasing incarceration costs. Our initial investigation resulted in a June, 1977 report entitled, The Restitution Center Concept as Part of the Criminal Justice System. This report covered the innovative concept of establishing a formal contract between an offender and the victim of non-violent crimes against property, in which perpetrators consent to remunerate their victims for offensive acts.

The Commission's purpose in studying the restitution center concept was to ascertain the cost and social benefits associated with them. The restitution center appears to offer New York State a viable alternative to reduce their corrections costs while maintaining quality prisoner surveillance.

This recognition prompted the Commission to pursue the development of a pilot restitution center project which would be structured to maximize service delivery while minimizing costs.

These efforts were facilitated by further onsite investigations of established programs and discussions with experts familiar with the restitution concept. The Commission initiated a dialogue with the Department of Correctional Services and the Division of Probation to foster their interest in restitution and in proposals for a pilot program.

This current report focuses on identifying and describing key findings of these investigations and presents descriptions of the policy proposals promulgated by the Division of Probation, the Department of Correctional Services and a private group. Our analysis indicates New York State can appropriately assume an eclectic approach in establishing a restitution program, since variations in needs, desires, and management capabilities exist.

## INVESTIGATION OF THE GEORGIA RESTITUTION PROGRAM

During the Summer of 1977, the Commission undertook a more detailed study of Georgia's operational restitution program. During the past several years, the Georgia Department of Offender Rehabilitation (DOR) has been receiving Law Enforcement Assistance Administration (LEAA) grant funds to aid in formalizing, refining, and expanding the use of offender restitution in Georgia.

Presently, the Georgia DOR operates two types of restitution programs. These being a non-residential program which focuses on offenders assigned to make restitution as a condition of their probation; and a residential restitution program which centers on offenders diverted from incarceration who must make restitution while residing at a community facility.

This dual capability enables Georgia's criminal justice authorities to promote the use of restitution in combination with probation for specific types of offenders. This adaptive feature of the Georgia system offers alternatives to more traditional forms of incarceration and probation.

The major program features of the Georgia restitution program are presented in the next section.

### Screening Process

Initial screening is usually performed by the probation staff as part of the pre-sentence investigation process. Many offenders

do not meet the program criteria and are eliminated from consideration at this point due to the nature of their offense, (i.e. violent crimes) or because of delimiting factors such as an extensive prior criminal record. The district attorney offers insight about the remaining probable and marginal restitution cases and may reject those individuals who seem inappropriate for this concept.

The remaining cases are presented to the courts with a restitution recommendation and plan. The judge functions as another screening device, by either accepting, modifying, or rejecting the restitution recommendation. Finally, when an offender has been approved for the program, he is closely supervised by the restitution staff, who may request at any time that the judge revoke the offender's probation.

Georgia's four-stage screening process effectively fulfills the public's expectation that community restitution plans will reject any dangerous offenders from the program.

#### Availability of Other Sanctions

The theoretical basis of restitution in Georgia rests on the notion that penalties merely requiring full restitution by the offender are insufficient and, therefore, offenders should be penalized. They justify this reasoning with the contention that since not all offenders are caught the first time they commit a crime, merely requiring simply restitution for the act, would likely tempt many offenders to calculate the probabilities of

being captured and prompt additional crimes. The additional penalty usually assessed to the offenders requires them to pay a fine and/or court costs, while further stipulating that they remain on probation or within the community facility for a prescribed period of time.

#### Counseling and Rehabilitation Emphasis

Georgia criminal justice authorities emphasize the rehabilitative aspects of their restitution program, despite its main features of payment of restitution to victims and cost benefits over the prison system. Rehabilitation is facilitated by elaborate counseling programs in all of the centers. It is mandatory that residents at the facilities participate in these counseling programs. The counseling programs help inmates cope with numerous dilemmas and situations which arise both while in the program and when they are released. The staff offers help with problems such as developing job skills and behavior at employment interviews.

#### Residence of Restitution Offenders

An essential component of the Georgia project is that an offender is placed in a center in the county where he had resided prior to the offense. This precludes the admittance of residents from other locales and provides a basis for needed community support for the restitution program.

### Rule Enforcement Policies

Officials at the community facilities strictly enforce the established policies when attempts are made to break a rule. The offender is initially warned that if he violates any of the center's rules (i.e. drug or alcohol consumption) he will be summarily admitted to prison where his remaining time will be served. Georgia prison officials contend that maintaining strict behavioral standards are necessary in order to protect the community from possible criminal behavior by the offenders.

### Community Service Restitution

The Georgia restitution agreement recognizes the necessity of victim's rights and usually establishes a remuneration plan. This program also possesses an adaptive feature in that offenders are often required to make restitution to the community at large by performing unpaid community service tasks in lieu of reimbursement. Community services are performed when a crime is committed against the society rather than it being an individual affront, and with cases in which remuneration is inappropriate due to the offender's economic status.

The next section discusses the Second Annual Restitution Symposium and its effect on the formative effort in New York State.

## THE SECOND ANNUAL RESTITUTION SYMPOSIUM

In November of 1977, the Second Annual Restitution Symposium was held in Minnesota. The Symposium analyzed existing restitution programs, outlined innovative formats for creating new programs, and examined the updated criteria needed to obtain Federal LEAA (Law Enforcement Assistance Administration) grant monies for adult offender restitution projects. Numerous speakers ranging from Minnesota's Governor to authoritative criminal justice scholars presented papers on the restitution concept and current methods of State implementation.

LEAA's revised guidelines for restitution programs were discussed. Their policy of dispersing discretionary grants ranging from \$50,000 to \$250,000 per site is to continue for an 18-month period.

Members of the New York State Department of Correctional Services, the State Division of Probation, and the Division of Criminal Justice Services attended the Symposium. During the two-day conference, officials of the Department of Correctional Services, the Division of Probation, and the Division of Criminal Justice Services met with Management and Productivity Commission staff and agreed upon developing two demonstration models for New York State.

The next sections describe various restitution conceptions that resulted from the agreement to develop demonstration projects in

New York State. It will also discuss criteria, processes, operational considerations, and projected budgetary necessities for these programs.

## INVESTIGATION OF THE MONROE COUNTY PROGRAM

In addition to New York State operated programs, representatives from the Monroe County Alternatives Project, the Public Defender, and the Volunteers in Partnership (VIP) have also explored the concept of restitution. These representatives were aware of available CETA funds in Monroe County for a project coupling restitution with job training, and recognized the present divergent patterns of restitution. They concurred that an innovative pilot restitution proposal should be developed and submitted to Monroe County officials.

Presently, this Monroe County program is the only private restitution project in New York State. A member of the Commission staff discussed the design and implementation of this project with the Monroe County officials to determine its characteristics.

### Program Criteria and Process

The County Division of Probation will supervise those youths eligible for the restitution/youth employment training program. Only early offenders convicted either of misdemeanors or non-violent felonies in the adult criminal court of Monroe County are suitable. The institution of probation and restitution would replace incarceration. Eligible clients will be referred to the central intake unit prior to their sentencing. These units will help place the offender in a job opportunity exclusively reserved for the restitution program. A probation officer or diversion counselor will con-

tact the site supervisor and relate information about the individual, to assist in the development of coordinated and effective offender assistance.

NEW YORK STATE DIVISION OF PROBATION  
RESTITUTION PROGRAM PROPOSAL

The Division of Probation proposes that restitution possesses the dual capability of being effectively imposed during several stages of criminal court proceedings. Its use during the pre-adjudicatory stage or during sentencing would offer alternatives to incarceration.

The Division views screening applicant eligibility as imperative. When an eligible offender, or the victim of the crime, chooses not to participate in the program, the formal process of the criminal justice system continues. In Family Court, the diversion program would usually be implemented during the pre-petition stage of preliminary procedures. This sanction may also be applied at fact finding or disposition hearings where judges may advise temporary adjournment.

Proposed eligibility requirements for adult offenders would include:

- individuals who have committed only property offenses;
- individuals with no previous history of adult or juvenile convictions;
- individuals who possess earning ability to make restitution and/or the ability to provide community service restitution; and
- the evaluation of the probability that an individual will fulfill the requisite stipulations of the restitution agreement.

Adult offenders would be diverted into a restitution program during the preliminary hearing stage. Theoretically cases in this period can be postponed pending an offender's successful completion of a restitution penalty.

The restitution model at the diversion level requires cooperative negotiation between the victim and the offender. This collaboration allows the offender to face the consequences of the act and enables him to actively participate in the rehabilitation process. This program necessitates that participants sign releases agreeing to cooperate and which also provide for the termination of the agreement when necessary. If circumstances justify abandonment of the agreement, the case would resume processing precisely where it was suspended.

When successful completion of the restitution sanction occurs, a recommendation would be made to the court and to the prosecution for dismissal of the case. The individual would then receive further probation services, including counseling, placement in job training programs, assistance in financial planning, and other beneficial services tailored to his specific needs.

The same general framework applies at the post-adjudicatory level. This design entails a plea, the determination of eligibility, and the utilization of an arbitration model by Probation to stipulate the specific restitution program. This sanction will be recommended to the court. When the offender fails to fulfill these requirements, the Division of Probation will recommend revocation

through the court.

The Division of Probation also proposes that fees or charges should be assessed to the program's participants. These revenues would contribute to the reduction in correction costs. This component could conceivably help finance such beneficial programs as developing job skills, providing counseling to enhance self images, and teaching them how to present themselves at job interviews.

#### Operational Considerations

The New York State Division of Probation proposes the initiation of an operational demonstration restitution program in Fulton, Warren, and Montgomery Counties, as well as in Onondaga County. The Division contends that it is impractical at this time to establish a demonstration program in the New York City area and proposes that programs be established in areas where the potential early payoffs would be significant enough to result in substantial identifiable savings.

The Division desires that the onsite program be implemented in close cooperation with local probation departments. They envision that a probation officer will have the responsibility for selecting participants for the program and serving as the primary liaison between the Division of Probation service unit and the local Department of Probation.

A Senior Probation Officer would oversee the implementation of the restitution program. The ultimate responsibility for the program remains with the Division Project Director.

An evaluation component would be included in addition to the operational activities. This will entail data collection and the assistance of the Division's Planning and Research Unit with analysis. The restitution program conceivably can service 350 people for an annual cost of \$997 per person.

The next two pages present the proposed preliminary budget advocated by the Division of Probation for their project.



<u>Total Direct Charges</u>	\$252,654
<u>Indirect Charges at 10%*</u>	\$ 22,309
<u>Total</u>	\$274,963
Cash Match**	25,265
Total Federal Funds	<u>\$249,698</u>

\*A provisional indirect cost rate of 67.54% was approved on April 7, 1977. In order to maximize available program funds, a rate of 10% of Personnel and Fringe Benefit costs is requested. No request will be made to recover the balance of allowable indirect costs for this project.

\*\*The required cash match of \$25,265 will be provided from a special State appropriation.

THE STATE DEPARTMENT OF CORRECTIONAL SERVICES  
INITIAL RESTITUTION PROGRAM PROPOSAL

The Department of Correctional Services has designed an operational restitution center for the Rochester area. Their program utilizes the restitution concept as a part of the prison-to-community re-entry process. The Department's proposal emphasizes the necessity of a careful screening process to eliminate offenders perceived as unqualified for the program. They envision a separate intake unit which will determine the classification and selection of inmates. This unit will also devise the contractual agreements between offenders and victims, which provide for the remuneration of damages.

Their selection criteria includes:

- Residence in the county or adjoining area where the center is located. (Those counties within a reasonable distance of the centers);
- No less than nine months to serve prior to release or not longer than a year before parole release date;
- Approval of the individual's restitution contract by the State Board of Parole;
- Preference to initial offenders and those committing property offenses; and
- Consideration of first offenders convicted of crimes against persons such as robbery and assault for selective approval for the program.

Recommended Program Outline

The Department stipulates that their classification personnel be responsible for selecting participants and forwarding a summary of that referral to the intake staff at the restitution center.

They suggest that program information should be offered to inmates in State prison facilities so that they may become acquainted with its advantages and request participation in the procedure.

The inmate will be contacted by intake staff for an interview, which develops background information for further scrutiny, and determines the offender's interest as well as eligibility for the program. This procedure helps ascertain the willingness of the victim to participate in the program and establishes the preliminary basis for contact with the Division of Parole.

The intake staff will also research background material on such factors as the inmate's family and possible job skills in the program. This knowledge facilitates the proper assessment of an individual's capacity for successful adaptation in the program.

#### Recommended Program Operation

The Department conceives of the program serving between 32 and 35 offenders who will be in the custody of the designated centers. During the hours of 12 midnight to 8 AM, the center will function as a custodial entity. Program oriented correctional office counselors will provide both counseling and custodial services. The residents will undertake an intensive two week orientation procedure upon acceptance into the program and will receive weekend furloughs shortly after their arrival.

CORRECTIONAL SERVICES RESTITUTION DEMONSTRATION PROJECT  
PRELIMINARY BUDGET

<u>Personnel</u>	<u>Federal Funds</u>	<u>Cash Matching Funds</u>
1. Project Director, SG-24, at N/T/E \$20,463/ year, 18 months, 100% of time	\$ 30,700	
2. Intake Supervisor, SG-19 at N/T/E \$15,843/ year, 17.5 months, 100% of time	23,100	
3. Parole Officer, SG-19, at N/T/E \$15,843/ year, 9 months, 40% of time	6,340	
4. Community Correction Center Assistant, SG-15, at N/T/E \$15,100/year, 11.5 months, 35% of time	5,100	
5. Assistant Director, 1, SG-21, at N/T/E, \$17,538/year, 14 months, 100% of time	20,461	
6. Intake Specialist, SG-14, at N/T/E \$12,064/ year, 16 months, 100% of time	16,086	
7. Intake Specialist, SG-14, at N/T/E \$12,064/ year, 16 months, 20% of time	2,400	
8. Research Assistant, SG-14, at N/T/E \$12,064/ year, 12 months, 100% of time	12,064	
9. Principal Account Clerk, SG-14 at N/T/E \$12,064/year, 18 months, 20% of time	2,400	
10. Location Pay on Above Positions \$200 x 9	<u>1,800</u>	
Sub Total - Personnel	\$120,451	\$89,913
<u>Fringe Benefits</u>	Sub Total - Fringe Benefits	\$ 35,740
		\$45,054

## CONCLUSIONS

Restitution is an age old concept in criminal justice. Provisions for restitution can be found in the code of Hammurabi, Mosaic Law, and the Roman Law. Sir Thomas Moore, composing a Utopian society, assigned restitution a prominent role in the promotion of social control.

Restitution programs enacted in other states serve two purposes. First, restitution has been proven to be cost-effective; secondly, restitution is a humane, common sense approach, sensitive to the frustration of victims and offenders. In short, as the Georgian Correctional official stated, "restitution saves dollars and makes sense."

The projects described in the preceding pages of this report, reflect the difficulty of implementing the concept of restitution in today's complex criminal justice system. The pilot projects initiated by the New York State Division of Probation and the Department of Correctional Services attempt to address the rights and responsibility of both the victim and the offender.

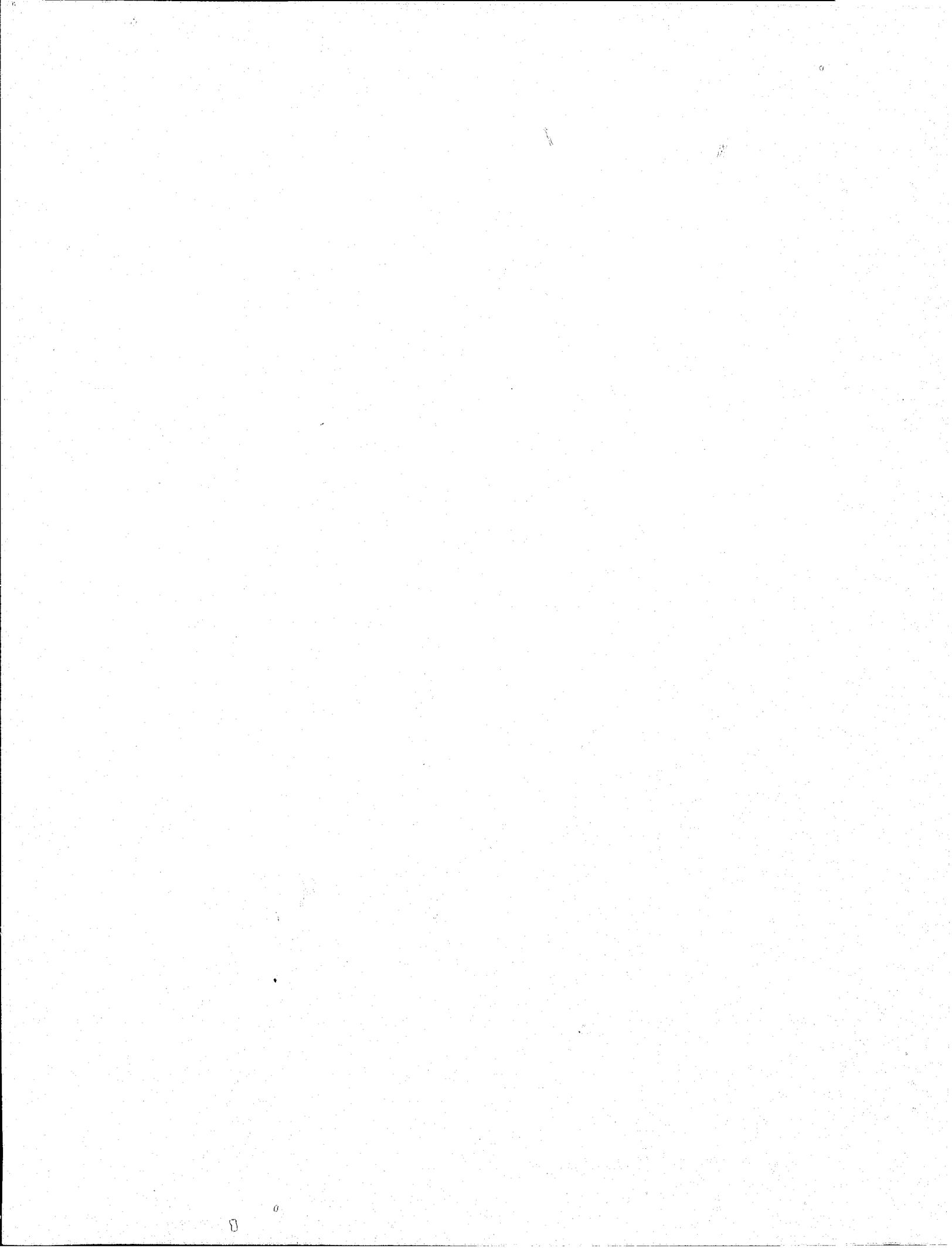
Problems which have not been fully dealt with include:

- to whom or where does an offender make payments if, in fact, the victim is uncooperative;
- how do victims recover their losses if their perpetrator failed to fulfill the criteria of the restitution program; and

- how does this program interface with the private insurance industry.

Further investigation should be undertaken to determine appropriate private insurance and Crime Victim Compensation Board relationships with the crime victim restitution concept.

Too often government programs are implemented on a large scale rather than on a small experimental one. Both agencies involved with this adult-restitution project would like the pilot projects to serve as the framework for future development of restitution throughout New York State. A careful monitoring of the pilot projects by each agency is a necessary component so that clear judgments may be made as to the effectiveness of restitution concept as it is applied. The Division of Criminal Justice Services should provide the focus for the State government to undertake appropriate comparative research and to evaluate the various approaches. The Legislature should provide continuing legislative oversight in order to determine if the concept merits expansion or whether it should be abandoned following the pilot efforts.



**END**