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Issues and Practices

Crime Victim Restitution:

An Analysis of Approaches

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James K. Stewart

Director

Crime Victim Restitution: An Analysis of Approaches

by

Daniel McGillis

December 1986

Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Designed for the criminal justice professional, each *Issues and Practices* report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion in the subject. The intent is to provide criminal justice managers and administrators with the information to make informed choices in planning, implementing and improving programs and practice.

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Foreword

In recent years many steps have been taken to respond to the plight of America's victims of crime. These efforts seek to remedy the chronic neglect of victims that was common throughout our justice system in earlier years. Key forces stimulating this new focus on victims have included the path-breaking work of the President's Task Force on Victims of Crime, federal legislation affirming victims rights and supporting state and local programs for victim assistance, and the vigorous efforts of private organizations such as the National Organization for Victims Assistance. The National Institute of Justice has diligently supported these efforts, sponsoring a number of research studies and policy conferences including the 1984 National Conference of the Judiciary on the Rights of Victims of Crime and the 1986 National Conference of the Judiciary on Victims and the Courts. As a result of these efforts, major victim initiatives have spread across the nation including state supported victim compensation efforts designed to provide economic assistance to certain victims and local victim/witness assistance programs that offer victims a wide range of supportive services.

Restitution is a central feature of victims' rights efforts in America. The basic concept of restitution—that an offender should seek to make amends to the victim—carries with it the moral imperative of a society based on the principles of "justice." Numerous policymakers and governmental commissions have strongly endorsed the need for restitution from offenders to victims. This report describes the various ways that local jurisdictions are implementing restitution procedures. An intriguing variety of strategies are in use for determining the appropriate amount of restitution and for encouraging offenders to fulfill their restitution obligation. Techniques for develop-

ing effective restitution procedures and ensuring that they are fair to victims and offenders are reviewed in this report. The findings of this study should be helpful to jurisdictions planning to develop restitution mechanisms as well as for those jurisdictions seeking to improve already existing programs.

Improving our understanding of the problems of crime victims and determining promising solutions to these problems is one of the top priorities of the National Institute of Justice. This report on restitution efforts is one of a number of current initiatives of the National Institute to address the pressing needs of America's victims of crime.

James K. Stewart
Director
National Institute of Justice

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Overview

Few concepts in the justice system command the widespread support accorded restitution. The notion that offenders should make amends to the victims of their crime is an intuitively appealing principle that has been strongly endorsed by policymakers at all levels of government. In 1982, the President's Task Force on Victims of Crime urged judges to order restitution in "all cases in which the victim has suffered financial loss, unless they state compelling reasons for a contrary ruling on the record."¹ At the same time, many state legislatures have recommended, even mandated, that restitution be ordered in all appropriate cases. Across the nation, the concept figures prominently in discussions on needed reforms in sanctioning policy.

Despite its intuitive appeal, restitution has been a challenging concept to implement on any large scale. Historically, offenders were expected to make restitution to their victims. However, as the law evolved, the state was increasingly substituted for the victim in criminal proceedings and, in turn, became the recipient of payments made by the offender in the form of fines. While proponents of restitution have argued that this evolution in Western criminal law discarded a central aim of the law—to provide compensatory justice for the victim—early efforts to reintroduce restitution practice have faced significant problems. While the concept of restitution enjoys widespread support, the evaluation literature repeatedly points to the practical difficulties involved in developing, implementing, and maintaining actual restitution programs:

- A 1983 study of 10 restitution projects nationwide reported that: "A majority [of programs] encountered extreme difficulty getting started, and more than two-thirds of them completely

failed to gain a sufficient foothold in the system to survive without continued federal funding.”²

- A 1980 national review of the restitution field conducted by the University of Minnesota found problems with the collection of restitution obligations. The authors concluded that most property offenses result in relatively small losses, the amount of restitution that is obligated is also relatively small, (and) the amount actually paid is smaller yet.³
- A general review of the literature suggests that chronic problems experienced by many restitution mechanisms include staffing shortages, insufficient resources available to conduct detailed loss assessments or to involve victims, failure of judges to order restitution, and the inability or unwillingness of offenders to pay ordered restitution in full.

Report Purpose and Methodology

This report combines the results of prior research with a survey of current practice in an effort to provide practical guidance to jurisdictions involved in developing or improving the administration of restitution sanctions. Accordingly, the report will be of interest to justice system officials who play a critical role in the handling of victims, as well as program administrators. A primary aim of the study was to identify programs that appeared to represent the state-of-the-art in restitution practice—well-established programs that might offer valuable lessons to their developing counterparts. The search included:

- a review of the existing literature;
- discussions with professional organizations and knowledgeable individuals in the field;
- telephone contacts with 27 restitution programs identified through the literature and field contacts; and
- an on-site investigation of six programs that appeared to capture major variations in the structure and functions of restitution.

The study focused on restitution provided directly to individual (as opposed to organizational) victims from offenders. This can involve the payment of money to compensate the victim for economic losses or, in some rare cases, the return or repair of stolen or damaged property, or the provision of services to victims. Symbolic “restitution” through community service work by an offender, or payments to the victim from a state-funded “victim compensation” program, are excluded from the definition of restitu-

tion in this report. Although the study focused primarily on restitution mechanisms for adult offenders, we mention a number of relatively unique juvenile restitution programs whose features might be adopted by programs serving adults. Finally, since restitution is most typically ordered as a condition of probation by the courts, this use of restitution is the primary focus of the current report.

The 27 programs contacted in the course of our search for case-study sites are listed in the Appendix. Major features of these programs are discussed in Chapter Two.

Summary of Key Issues and Practices

While the concept of restitution is straightforward, translating the concept into practices that are both equitable and effective is a complex undertaking. Our review of the literature and field practice suggests that four elements of the program development and implementation process require particular attention:

- choosing an appropriate model of restitution practice;
- gaining the participation and commitment of key actors;
- developing procedures to ensure fairness to victims and offenders; and
- designing strategies to maximize the collection of restitution obligations.

Subsequent chapters discuss each of these elements in turn. Chapter Two begins with a description of the four models of restitution practice represented among the programs reviewed. They are:

- **Restitution as a component of Victim/Witness Assistance Programs**—a model that offers the advantage of integrating restitution within a broader framework of victim services;
- **Restitution practiced through Victim-Offender Reconciliation Programs** which attempt to use the restitution process itself as a vehicle for addressing the psychological as well as financial burden of victimization;
- **Restitution administered in conjunction with the offender supervision provided by probation or parole services**—a low-cost model that simply adds restitution services to the responsibilities of existing probation staff; and
- **Restitution administered through court-based employment programs** that focus on providing offenders with the means of paying their restitution obligations.

While all models typically apply restitution as a condition of probation or parole, in the first two cases the restitution agreement is prepared by *victim* service organizations; in the latter two cases, by the court or corrections agency responsible for *offender* supervision. The central advantages and disadvantages of each model are discussed further in Chapter Two.

Chapter Three discusses the basic tasks required of all restitution programs, including:

- obtaining cases from referral sources;
- screening cases and applying case criteria;
- determining the amount of loss arising from the offense;
- ordering restitution; and
- collecting restitution.

Variations in the strategies for performing these tasks by the four major types of restitution programs are reviewed. In addition, techniques for insuring that procedures are fair to both victims and offenders are discussed. A variety of complex issues arise in making restitution procedures and outcomes "fair."

Chapter Four reviews the major goals sought by restitution mechanisms for victims, offenders, and the justice system. Available data are presented regarding the current accomplishments of restitution programs in attaining these goals. Restitution efforts face serious challenges in obtaining full compliance with restitution orders. Recommendations are provided for ways to increase such compliance to improve restitution order outcomes for victims and offenders. Chapter Five presents a brief summary of the recommendations of the study.

Footnotes

1. President's Task Force on Victims of Crime, *Final Report* (Washington, D.C.: U.S. Government Printing Office, 1982).
2. M. Warren, A. Harland, E. Brown, M. Buckman, K. Heide, K. Maxwell, P. Van Voorhis, and J. Simon, *Restitution in Law and Practice: The Experience of Ten Programs (National Evaluation of Adult Restitution Programs Research Report #7)* (Albany, N.Y.: Criminal Justice Research Centers, 1983, unpublished manuscript).
3. J. Hudson, B. Galaway, and S. Novack, *National Assessment of Adult Restitution Programs: Final Report* (Duluth, MN: University of Minnesota School of Social Development, 1980).

TWO

Restitution Goals and Major Program Types

While the call for restitution has become an integral part of America's victims' rights movement, the objectives of restitution frequently reach beyond the simple goal of easing the economic burden faced by the victims of crimes. Depending upon the philosophy of the program founders, the sponsoring organization, and the types of services offered, restitution may be viewed as a tool for providing psychological as well as financial benefits to victims; for promoting behavioral change on the part of offenders; and for strengthening the credibility of the criminal justice process. This chapter discusses each of these goals and outlines four types of restitution practices that place different degrees of emphasis on the interests of the victim, the offender, and the justice system.

The Goals of Victim Assistance

By definition, restitution programs offer a means for crime victims to recover all or some of their monetary losses. In this sense, all restitution programs seek to provide some sort of financial assistance to victims. In addition, however, some restitution approaches take a broader view of victim needs, and attempt to structure their efforts so that the act of restitution mitigates the social and psychological harm that may accompany victimization.

Typically, restitution programs focus on assisting victims of property offenses. The financial needs arising from crimes such as theft are often relatively modest, though nonetheless distressing to most victims. National Crime Survey data indicate that gross losses due to theft of various sorts were less than \$249 in approximately 90 percent of the cases according to

a 1981 study.¹ And, while the average theft-related case does not result in large monetary losses, the absolute number of large cases is substantial. Of the approximately 28 million theft-related cases that occur each year, over two million involve losses in excess of \$249.

Complicating the victim's distress at whatever monetary loss was suffered is the potential psychological damage stemming from victimization. Research suggests that humans need to believe that we live in a just world.² Yet to the victim, crime often seems to strike at random. The absence of any apparent justification reduces the psychological comfort associated with the belief that life is just and people receive what they deserve. Accordingly, restitution can potentially go a long way toward restoring victims' sense of fairness and belief that their misfortune was properly addressed. Indeed, at least one program founder has suggested that the needs of crime victims go far beyond the need for monetary restitution:

Victims often rank answers to the questions that bother them above needs for repayment. Why me? Did they have something against me personally? How did they know I was gone? . . . Victims. . . need an opportunity to express their emotions . . . Victims need an experience of empowerment; they need to be involved in their own cases.³

Victim-focused Restitution Practices

While both economic and emotional needs might be addressed by a single program, in practice, restitution mechanisms which concentrate on victim needs tend to focus more on one than the other. Two models are described below. Victim-Offender Reconciliation Programs use the process of arriving at a restitution recommendation as an occasion for dealing with psychological as well as financial issues for both victims and offenders. Victim/Witness Assistance Programs, on the other hand, usually focus more narrowly on economic issues in the restitution process. While they typically have resources for addressing the victim's psychological needs through individual and group counseling services, they do not usually attempt to structure the restitution process itself as a therapeutic experience.

Victim/Witness Assistance Programs Providing Restitution

Victim/Witness Assistance Programs (VWAPs) offer a wide variety of services designed to ease the trauma of crime victimization, including restitution services.⁴ In some cases, restitution constitutes a separate "program" within the larger project. For example, the Multnomah County, Oregon Victim/Witness Assistance Program sponsors a separate restitution component. In other victim/witness assistance programs, restitution is a

“practice” carried out by all of the victim assistance staff members as part of their responsibility to aid victims.

As might be expected, restitution efforts operated by victim/witness assistance programs are likely to have a strong emphasis on meeting victim needs and seek to address the full panoply of victim problems in addition to economic losses. Victim/witness programs not only offer assistance with restitution but also provide victims with counseling, information on the court process, notification of hearings, aid in filing forms with the state victim compensation program, and linkages to relevant social service agencies.

Program Operation. The Multnomah County restitution component, entitled Project Repay, provides a useful example of how restitution is handled in a victim witness program context. The restitution component was established in 1976 and was initially funded with a Law Enforcement Assistance Administration grant. With a budget of approximately \$60,000 per year, two staff members are primarily involved in operating the restitution component. In 1983, they handled over 700 restitution cases with an average dollar value per case of \$1,324.

The procedures used by the restitution project staff members in developing restitution recommendations are straightforward. They mail a “property damage or loss form” to all relevant victims, and follow this with a restitution reminder form to those victims who fail to respond to the initial mailing. If additional information is needed to supplement the restitution form, project staff members telephone victims.

The restitution project has developed detailed guidelines regarding how to process and document different types of losses including, (1) money losses, (2) lost wages, (3) personal property losses, and (4) corporate property losses. By documenting victim losses with bills and receipts, and by specifying when documentation may not be needed to substantiate a claim, the VWAP hopes to simplify the restitution process for victims and maximize the amount of restitution paid by offenders.

Of the 27 restitution programs contacted in the course of preparing this document, six were victim/witness assistance programs providing restitution services. Many of the projects began operations in the mid- to late 1970s and successfully managed the transition from federal to local sources of support. Exhibit 2.1 summarizes the key features of all six programs. As indicated, four are operated by justice system agencies, including three by the prosecutor’s office and one by the court. One program is operated by a city government, and one by a non-profit agency outside the system. The caseload data available for two of the programs that enjoy a formal affiliation with the justice system suggest that system sponsorship may be key to a program’s ability to obtain ample referrals. Without a formal system sponsor, newer

Exhibit 2.1
Structural Features of Surveyed Victim/Witness Assistance Restitution Programs

Program Name	Date Established	Administering Agency	Annual Restitution Caseload	Number of Staff
Victim Assistance Program (Glendale, Arizona)	1975	City Government	100	10 (entire department)
Victim/Witness Assistance (Los Angeles, California)	1980	City Attorney's Office	Not available	21 (entire department)
Victim/Witness Assistance (Marietta, Georgia)	1978	County Solicitor's Office	Not available	4 (entire department)
Project Repay (Multnomah County, Oregon)	1976	District Attorney's Office	721	6
Victim Assistance (Rapid City, South Dakota)	1975	Court	621	1 (entire department)
Victim/Witness Assistance (Santa Clara, County, California)	1977	National Conference of Christians and Jews	300	12 (entire department)

programs may face difficulties in obtaining adequate access to victims and ensuring that restitution orders are applied as broadly and uniformly as possible.

Exhibit 2.1 also indicates the number of staff members in each of the victim/witness assistance programs. With the exception of the Multnomah, Oregon program, which has a separate restitution staff within the larger victim/witness assistance program, all of the staff figures presented are for the entire victim/witness program. All staff members are involved with restitution as part of their routine victim/witness assistance services.

The key strength of the VWAP restitution model lies in its integrated approach to the delivery of victim services. Under this model, the administration of restitution is incorporated within the mandate of agencies typically designed to serve the dual function of supporting victims and ensuring their cooperation with the court. To ensure that the restitution order is fulfilled, there remains, of course, the need to coordinate with agencies responsible for offender supervision. Though operation by a justice system agency may

enhance program access to offenders, programs lodged in the prosecutorial process may focus primarily on obtaining the initial restitution order. Following up on the collection of that order may receive less emphasis unless specific ties are also forged between the victim assistance unit and the offender's supervising agency. As organizations dedicated to the goals of victim service, VWAPs are typically not involved actively in monitoring or collecting restitution funds once they are ordered.

Victim-Offender Reconciliation Programs

Another model of victim-focused restitution was developed in the mid-1970s to address both the economic and psychological needs of victims. As their name implies, one of the most important services offered by victim-offender reconciliation programs is the opportunity for victims and offenders to meet face-to-face to discuss the crime and resolve each party's feelings about the incident. In the process, programs attempt to address the economic needs of victims by helping the victim and offender to negotiate a restitution settlement. These meetings are also thought to provide rehabilitative benefits to offenders.

The first victim-offender reconciliation project (VORP) was developed in Ontario, Canada, in 1975 by the local Mennonite Central Committee. The program was subsequently replicated in over two dozen jurisdictions in Canada and the United States. Many of these programs have been developed by church-related organizations, including Mennonite and Catholic social agencies, although others have been sponsored by governmental agencies (such as the sheriff's office in Batavia, New York.) While the concept was developed by a sectarian organization, the notion of "reconciliation" is one that is intrinsically appealing to a broad array of public and private agencies involved in victim assistance efforts.

Commenting on the victim-offender reconciliation process, the founder of the Kansas City, Missouri Victim-Offender Restitution Services Program has emphasized the dual benefits to the victim:

The victim is given the rare opportunity of confronting the person who violated him. This face-to-face meeting in the presence of a trained community facilitator allows the victim to express intense feelings of frustration, hurt, and anger. Beyond such important emotional benefits, the victim can work out acceptable restitution and repayment by the offender. In short, the traumatic experience of being a victim can be dealt with in a more whole sense and be brought to a close.⁵

Conducting meetings between offenders and victims is a challenging task. As would be expected, some victims and offenders are not willing to participate. Approximately 40 percent of cases that are handled by victim-

offender reconciliation programs do not result in hearings, either because the case is deemed inappropriate by screeners or because the victim or offender is unwilling to participate. The proportion of cases that proceed to hearings varies across different victim-offender reconciliation programs: the Bloomington, Indiana program reports that only 34 percent of cases have hearings, while the Wichita, Kansas project reports that 69 percent of cases have hearings.

Program Operation. Victim-offender reconciliation programs place considerably less emphasis upon arriving at a precise and accurate determination of the amount of financial loss associated with an offense than do the victim/witness assistance programs discussed earlier. The VORP programs advise mediators to attempt to avoid taking a position on the "reasonableness" of a victim's request for restitution and instead to let the victim and the offender work out a joint agreement.

Victim-offender reconciliation programs have been replicated in over 24 jurisdictions in the United States.⁶ Eight victim-offender reconciliation programs were included in our survey of restitution programs. As Exhibit 2.2 indicates, most of the programs in our sample were developed very recently (four in 1983, three in 1982, and one in 1978). As a result, many have very small caseloads and are only beginning to develop effective referral agency linkages. Established in 1978, the Elkhart County, Indiana program is the oldest project of this type in our sample and the only program that handles over 100 cases per year. The projects typically operate with budgets of \$20,000 or less and employ only one or two paid staff supplemented by numerous local volunteers.

The use of community volunteers is central to the concept of victim-offender reconciliation programs. The programs believe that volunteers demonstrate the direct commitment of the community to heal the damage caused by crime and also help to avoid the problems of bureaucratization (and associated unresponsiveness to client needs) common in many institutionalized programs. The volunteers conduct much of the work of the projects, including making initial personal contacts with victims and offenders, scheduling the joint meetings, and serving as neutral mediators at the sessions. Volunteers prepare case summaries of each meeting describing the issues discussed and the restitution agreement, if any. The PACT Institute of Justice has developed detailed VORP handbooks and training manuals that are used by many programs in training their volunteers. The number of community volunteers that programs have recruited varies, but is often substantial as is indicated in Exhibit 2.2. Clearly, the ability to mobilize an effective network of volunteers is essential, not only to maintain the philosophy of the program, but also to implement the concept at reasonable cost.

Data reported in Chapter Five indicate that both victims and offenders

Exhibit 2.2
Structural Features of Surveyed Victim-Offender Reconciliation Programs

Program Name	Date Established	Administering Agency	Annual Restitution Caseload	Number of Staff
V.O.R.P. (Atlanta, Georgia)	1983	Mennonite Central Committee	7 (less than one full year)	1 (+ 10 volunteers)
V.O.R.P. (Elkhart County, Indiana)	1978	Center for Community Justice	203	6 (+ 50 volunteers)
V.O.R.P. (Bloomington, Indiana)	1983	County Corrections and P.A.C.T.	50	2 (+ 8 volunteers)
Victim-Offender Restitution Services (Kansas City, Kansas)	1982	Catholic Social Services	51	1 (+ 20 volunteers)
V.O.R.P. (Traverse City, Michigan)	1983	Community Justice Alternatives	20	11 (entire department)
Community Service/Victim/Witness Program (Batavia, New York)	1982	Sheriff's Deptment	18	3 (+ 3 volunteers)
V.O.R.P. (Benton County, Oregon)	1983	V.O.R.P. (Non-profit with Board of Directors)	40	2 (+ 25 volunteers)
V.O.R.P. (Harrisburg, Virginia)	1982	Community Mediation Center	20	2 (+ 30 volunteers)

have a positive view of the reconciliation process incorporated in the VORP restitution model. This approach clearly has the significant advantage of creating a procedure that allows both victim and offender to view the crime in very human terms. By deemphasizing the need for a precise accounting of restitution owed and focusing instead on the development of a mutual understanding between the victim and offender, benefits accrue in more than economic terms. Indeed, to the extent that programs face difficulties in collecting restitution payments, these non-economic benefits may be extremely important.

As Exhibit 2.2 indicates, VORP efforts typically operate outside of the justice system through non-profit agencies. This factor (in addition to their recent development) may explain the relatively small caseloads of the programs reviewed. Combined with the difficulties many programs have ex-

perienced in persuading victims and offenders to attend face-to-face meetings, it is not yet clear whether the VORP concept of restitution through reconciliation can be implemented on any significant scale. The reconciliation concept is, however, intriguing and might prove to be an extremely useful adjunct to other models of restitution practice. The incorporation of the victim-offender reconciliation model within a larger program would increase the options of the sponsoring agency without placing the sole emphasis of the restitution effort on the reconciliation process. At present, many victim assistance programs and probation departments handle a small portion of their caseloads through meetings between victims and offenders. These meetings are typically held if there are substantial differences of opinion between the offender and victim regarding appropriate restitution, or the staff members feel that the victim and offender might benefit from the encounter. Meetings tend to be held on an ad hoc basis; staff personnel serve as the hearing officers, rather than trained community volunteers; and the procedures pioneered by the victim-offender reconciliation programs to draw out the perceptions and feelings of both parties are not used. More systematic efforts to incorporate the technology and training materials of the VORP model might prove to be a useful way of capitalizing on the strengths of this approach to restitution.

One of the programs selected for on-site study is, in fact, a hybrid model that combines the features of different programs to provide comprehensive services to victims and offenders. The Genessee County (New York) Community Service Restitution Program offers victim-offender reconciliation services akin to the VORP programs, has victim/witness assistance capabilities, and also prepares restitution plans, community service sentencing plans, and monitors offender performance. The program was developed in 1982 by the Genessee County Sheriff's Department and has close working relationships with the local Probation Department. While funds were initially provided by the Edna McConnell Clark Foundation, the program is now supported with state funds from the Department of Criminal Justice Services.

The program has a relatively small staff. The director serves full-time, and two assistants work 25 hours per week. Since the county served encompasses a predominantly rural area in upstate New York, the program's caseload has been modest. During its first two and one-half years of operation, intensive victim/witness assistance services were provided to 90 victims; 40 restitution agreements were developed, and 14 victim-offender reconciliation meetings were held. Reflecting its primary emphasis on symbolic restitution, over 300 offenders were ordered to perform community service under the supervision of the program.

An alternative to developing a victim-offender reconciliation component within a broader restitution program would be to refer cases that might benefit from meetings between victims and offenders to a local mediation

program (sometimes called neighborhood justice centers or community mediation centers). Arrangements could be made with these programs to handle the special issues that may arise in victim-offender restitution meetings. The Glendale, Arizona Victim Assistance Services program has taken such an approach. This program sponsors both victim/witness assistance services and a neighborhood mediation program. When victims' cases would appear to benefit from a victim-offender meeting, they are referred to the mediation program. Since both programs share the same sponsor, creating a link between the two was fairly easily achieved. Nevertheless, similar efforts to forge such an alliance are well worth consideration in other jurisdictions that may wish to incorporate elements of the VORP approach in their restitution programming.

Offender Related Goals

While restitution programs are inevitably concerned with victim needs, the offender is also thought to benefit in a number of ways. First, many observers have suggested that the very act of making restitution can be rehabilitative as well as punitive since the offender is forced to confront and make reparations for the harm caused by his actions.⁴ Some proponents of restitution also argue that if restitution sanctions are used in lieu of more restrictive sentences, they may provide added benefits by enabling offenders to maintain their employment and community ties. Even if restitution is used as a supplemental sanction, the work experience required to pay off the restitution obligation is considered an avenue for encouraging the offender to seek or maintain legitimate employment.

Offender-focused Restitution Practices

Two types of restitution programs are administered by corrections rather than victim organizations. The restitution/employment programs discussed below are a prime example of efforts to focus on restitution as part of the offender's correctional experience. While the ultimate goal is to provide recompense to victims, activities focused on the offender—specifically job development and placements—provide the means for achieving that goal. The second model of offender-focused restitution simply incorporates restitution into normal probation programs with no provision for special supervision or support.

Restitution/Employment Programs

One of the major stumbling blocks for restitution programs is the poor economic situation of most offenders. Many are unemployed, and lack even the basic skills necessary to obtain employment. Without a job, even the most modest restitution obligation may be unaffordable for the offender.

Some restitution programs address this problem directly, by arranging for restitution by the offender and helping the offender obtain employment. Perhaps the most widely publicized example is the Earn-It Program of the Quincy, Massachusetts District Court—a program that provides offenders with temporary minimum-wage jobs that enable them to pay restitution. Over 40 businesses in the court's area of jurisdiction have agreed to hire offenders for up to 100 hours. Two-thirds of their earnings go to the victim, and offenders are allowed to keep the remaining one-third. In addition to restitution for the victim's out-of-pocket losses, both the Earn-It program and its Vermont counterpart, the Return-It program arrange for "reparations for inconvenience." These payments, similar in many respects to the "pain and suffering" awards in civil tort cases, can be assessed in addition to the victim's direct monetary losses from the crime.

Though other programs administered by probation and parole departments may also provide offenders with employment assistance, typically, this service is not undertaken with the sole intent of improving opportunities for restitution. In contrast, restitution/employment programs are distinguished by their greater emphasis on the employment goal and by their arrangements with local businesses to ensure that offenders can obtain temporary work to pay their restitution obligation. In addition to increasing the probability that ordered restitution will be paid, this offender-based model clearly reduces the problem of restitution favoring only those with the ability to pay.

Four restitution/employment programs were included among the programs contacted for this report. As Exhibit 2.3 suggests, all are well-

Exhibit 2.3
Structural Features of Surveyed Restitution/Employment Programs

Program Name	Date Established	Administering Agency	Annual Restitution Caseload	Number of Staff
Earn-It (Quincy, Massachusetts)	1975	Quincy District Court Probation Department	1,631	9
Victim Restitution Unit (Warwick, Rhode Island)	1977	Warwick Police Department	431	1
Return-It (Waterbury, Vermont)	1981	Vermont Division of Probation and	Not Available	6
Restitution Services (Wilmington, Delaware)	1981	Delaware Probation Department	854	5

established programs handling fairly large caseloads. The Massachusetts program alone handles over 1,600 cases per year. All are administered by justice system agencies—three by probation departments and one by a police department. These arrangements have undoubtedly contributed both to their stability and their ability to obtain referrals.

If there is a drawback to this model, it lies only in the substantial effort needed to develop and maintain an adequate supply of temporary jobs. Gaining the cooperation of local employers is likely to require at least three elements: adequate staff resources; the leadership of a respected “official” authority; and favorable conditions in the local job market. The experience of the two restitution/employment programs selected for on-site study is instructive. The Earn-It Program in Massachusetts was conceived and implemented in 1975 by Judge Albert Kramer who was dissatisfied with traditional ways of handling victims and offenders and played an active role in developing the temporary employment positions that would support his restitution sanctioning policies. Working with the Chamber of Commerce, a meeting to launch the program was held with 180 local businesses. Forty businesses agreed to participate in the program immediately, each committing to provide 100 hours of unskilled work for offenders at the minimum wage. Participating businesses include large department stores, corner grocery stores, beauty salons and gas stations. The aggressive commitment of Judge Kramer, a large pool of employers within the court’s jurisdiction, and a relatively healthy local economy were key factors that supported the successful development of suitable employment opportunities for offenders. Maintaining those slots required an initial effort to screen offenders meticulously so that employers’ first encounters with Earn-It would be entirely positive. In addition, businesses were given the option to refuse any placement.

While the size of the program’s staff has varied over time depending upon the availability of funds, Earn-It now has eight staff members: a Director, Job Developer, Community Services Coordinator, Work Crew Supervisor, Bookkeeper, and three Victim Service Workers/Case Managers. The work of the full-time staff members is supplemented by the efforts of over twenty probation officers assigned to the court who handle restitution matters as a part of their caseload. Since the Earn-It program processes both monetary restitution and community service cases, its staffing needs are necessarily more elaborate than those that would be required by a program focusing only on monetary restitution.

From the inception of the program in 1975, to 1985, the Earn-It Program has provided a total of \$1,700,000 in restitution from 5,800 offenders to 7,800 victims. An additional 6,800 offenders have performed 330,000 hours of community service work. According to the program, the rate of offenders fulfilling their restitution obligation has increased from 40 percent in 1975

to 80 percent in 1985. The average amount of restitution ordered is \$330, and the amount collected in 1985 was over one quarter of a million dollars.

The Earn-It model has been replicated in a variety of jurisdictions nationwide. The National Institute for Sentencing Alternatives at Brandeis University (funded by the Edna McConnell Clark Foundation) and the Restitution, Education, Specialized Training, and Technical Assistance Program (funded by the Office of Juvenile Justice and Delinquency Prevention) have both held seminars encouraging the replication of Earn-It.

An interesting variant of the restitution/employment model is the Warwick, Rhode Island Victim Restitution unit established in 1977. Designed to replicate Earn-It, the program is operated by the Warwick Police Department and is staffed by one full-time police officer. Cases handled are similar to those in the Earn-It Program. Restitution typically becomes a condition of probation for adult offenders, but is also arranged prior to adjudication for juvenile offenders as a form of diversion. The placement of the program in the Police Department makes it especially well suited for the diversion of juvenile cases prior to court processing. In 1984, the program's caseload was almost evenly split between adult and juvenile offenders with a caseload of 282 adults and 266 juveniles.

The program reports that the average amount of restitution per case is \$180 and that over 90 percent of offenders fulfill their restitution obligation. Interestingly, the program has very high compliance rates even though the job placement component of the program has periodically faced serious problems in locating jobs due to declines in the local economy. The average amount of ordered restitution is somewhat smaller than that of many other programs — slightly more than half the amount ordered in the Earn-It Program, for instance. This variation may explain some of the program's ability to maintain high compliance rates even when the job market is tight.

By operating with a staff of one, the program has also defied the suggestion that restitution/employment efforts are likely to require large investments in staff resources. Notably, however, the officer assigned to the restitution unit is an extremely hardworking, persuasive manager who is highly committed to the task of developing placements for the program's clientele.

Restitution as a Function of Routine Probation Supervision

The second offender-focused model of restitution practice included in our sample of programs adds the responsibility for developing restitution agreements and monitoring compliance to the workload of probation officers. In addition to their role in supervision and enforcement, many probation and parole agencies provide a variety of offender services such as counseling, educational assistance, vocational training, and job placement. Arranging

Exhibit 2.4
Structural Features of Surveyed Offender Social Service and Restitution Programs

Program Name	Date Established	Administering Agency	Annual Restitution Caseload	Number of Staff
Restitution Fund (Denver, Colorado)	1983	Department of Corrections	80	35 (entire department)
Adult Probation (Hartford, Connecticut)	1956	Office of Adult Probation	3,400*	N.A.
Probation and Parole (Ft. Lauderdale, Florida)	—	Department of Corrections	1,200	130 (entire department)
Probation and Parole (West Palm Beach, Florida)	1970	Department of Corrections	2,000	87 (entire department)
Restitution Unit (Minneapolis, Minn.)	1981	Municipal Probation Department	780	3 (+9 volunteers)
Restitution Unit (Las Vegas, Nevada)	1982	State Probation Department	480	5 (+4 volunteers)
Justice Services (Raleigh, North Carolina)	1976	Division of Victim and Justice Services		152 (entire department)
Adult Probation (El Paso, Texas)	1971	Adult Probation Department	1,000	101 (entire department)
Adult Probation (Harris County, Texas).	1984	Adult Probation Department	Not Available	30 (entire program)

*Data represent four probation districts within the state.

for restitution payments is a natural extension of both these roles: from an enforcement perspective, probation agencies are in a good position to monitor offender compliance with the judge's restitution order; and restitution may complement other offender services such as employment and counseling. Exhibit 2.4 summarizes the major features of surveyed programs operated by probation and parole organizations. While program caseloads range widely, four programs reported handling over 1,000 cases per year.

Program Operation. Using probation and parole agencies to administer restitution is hardly a new idea: the Corrections Report of the 1967 President's Commission on Law Enforcement and the Administration of Justice

indicated that, as early as the 1960s, major urban probation departments were supervising very large sums of restitution payments. These restitution payments have typically been arranged by probation officers through individual meetings with the offender and the victim, rather than through the joint meetings advocated by victim-offender reconciliation programs. The degree of victim input in setting the amount of restitution differs greatly among the various probation departments studied.

In many probation departments, restitution efforts constitute a "practice" rather than a "program." No specific staff members are assigned to coordinate restitution casework, nor are efforts to provide employment assistance geared to ensure that restitution obligations are met. Instead, restitution is simply one aspect of the activities of probation personnel. Our telephone survey confirmed this pattern: the nine probation departments contacted as part of our survey found it very difficult or impossible to specify the proportions of their budgets or the percentage of their staff members' time devoted to work on restitution. They indicated that virtually all of their staff members become involved in restitution work from time to time, but that records are not kept which enable these efforts to be disaggregated from other activities within the department.

Since existing personnel are used to provide restitution services, this model may be the least costly approach to the implementation of a restitution practice. By the same token, however, the priority accorded the task may be necessarily minimal. Probation and parole personnel typically have large caseloads, diverse responsibilities, and little time for auxiliary tasks. As a result, maintaining contact with victims—both to monitor offenders' compliance and to provide victims with support—may receive little emphasis. Even efforts to encourage offenders to fulfill restitution orders may not rank high among the supervisory priorities of probation officers. In short, the creation of a workable, probation-affiliated restitution practice is likely to require strong leadership, policies that recognize restitution as a departmental priority, and support staff specifically devoted to the restitution function.

Restitution Goals Related to the Justice System

No single type of restitution practice is designed primarily to address the goal of improving the administration of justice. Rather, an implicit goal of all restitution models is to assist the justice system by enhancing public perceptions of the criminal justice process and strengthening the options available to deal with convicted offenders.

Public perceptions of crime, criminals, and sanctioning policy are a legitimate concern for criminal justice professionals. Without public support and participation, law enforcement efforts are hindered. Witnesses' participation and satisfaction with the judicial process can be critical for criminal pro-

secutions. Citizens' concerns about particular criminals or types of crime can enter into judges' sentencing calculus, while correctional and paroling authorities must also deal with the public's wishes in issues such as facility siting, the development of community programs, and release decisions.

Within such a context, restitution can play an important role for the justice system. The availability of such an intuitively "just" punishment as restitution may bolster public confidence in the justice system and send an important message about the interests of justice to citizens, victims, and offenders. Indeed, whether or not the full collection of restitution orders can be achieved, the symbolic value of the restitution sanction may fully justify its application to growing numbers of offenders.

If administered properly, restitution may bring more concrete benefits to the justice system. Since restitution is most frequently used in conjunction with other penalties—particularly probation—its use can allay public concerns that probation amounts to little more than a slap on the wrist. By making the probation sanction more onerous, public confidence in non-incarcerative sentences may be enhanced.

Some may justifiably argue that the use of restitution in conjunction with probation amounts to a "widening of the net of social control" that cannot promise to reduce prison populations. In the near term, this is likely to be true. Experience with other mechanisms for enhancing the probation sanction, (such as intensive supervision) suggests that these penalties are frequently applied to those who would have received regular probation rather than those who might have been given jail or prison terms. Yet, even if restitution currently functions far more to enhance the probation sanction than to reduce the use of imprisonment, it may represent a useful first step toward the development of a range of sentencing alternatives.

Summary

The four models of restitution practice discussed in this chapter make clear the trade-offs involved in designing procedures that will successfully accomplish the various goals of restitution. In addition to their primary orientation, program types vary in their ability to reach significant numbers of offenders and victims at the lowest possible cost.

Beginning with the administration of restitution as a function of routine probation supervision, the potential for broad diffusion of the restitution concept is clearly high. At the same time, costs (at least in terms of visible cash outlays) are likely to be low, since restitution is typically added to the functions of existing probation staff. It is probably safe to say, however, that without strong leadership and policies that recognize restitution as a priority in the administration of probation supervision, the ability of this

model to deliver meaningful results to victims or offenders may disappoint restitution advocates.

The restitution/employment model provides a useful example of the payoffs of making a larger investment in the administration of restitution policies. While this model is also typically administered by probation agencies (yielding the same potential for a high degree of penetration), restitution is not treated as a supplementary function of existing staff. Rather, staff are specifically assigned to the restitution function, and their roles extend far beyond the task of developing agreements and monitoring compliance. Recognizing the practical constraints on the ability of many offenders to pay their restitution obligations, this model focuses on removing the employment barriers that may prohibit compliance. The restitution process thereby becomes a vehicle for offender and victim support. In addition to staff resources, strong leadership and reasonably favorable labor market conditions are key elements of an employment focused restitution practice.

Incorporating restitution as a component of victim/witness assistance programs moves the administration of restitution to an earlier point in the criminal process and shifts the locus of concern toward the victim. Since restitution is, however, only one of a range of victim services offered by VWAPs, and since the focus is on expediting the initial restitution order, little emphasis may be placed on the correctional aspects of restitution programming.

The victim-offender reconciliation concept is essentially a hybrid model designed to address the emotional and financial needs of victims by actively involving the offender in the restitution process. Typically operated by non-profit organizations and staffed largely by community volunteers, both the costs and potential reach of this restitution forum are likely to be modest. Although this model may not support the objective of developing a large-scale restitution practice, it may have broad application as a component of other restitution programs.

While the choice of an appropriate model of restitution practice will depend on the needs and resources in a given jurisdiction, two elements appear to be particularly important.

- **Procedures that recognize the importance of dealing with both parties to the restitution agreement.** While a program may choose to emphasize victim service or offender treatment, an exclusive focus on one or the other may not serve the best interests of the victim. Offender-based activities (including monitoring the fulfillment of restitution orders and developing plans that will enable the offender to discharge the restitu-

tion obligation) may be as important to victim satisfaction as the provision of direct victim services.

- **Formal affiliation with or close links to court and correctional agencies.** Obtaining sufficient referrals to ensure the broadest possible application of the restitution sanction can only be achieved if a program enjoys close working relations with referral agencies — either through actual sponsorship or procedures that formalize the referral arrangement.

Footnotes

1. A. Harland, *Restitution to Victims of Personal and Household Crimes, Bureau of Justice Statistics Analytic Report VAD-9* (Washington, D.C.: U.S. Government Printing Office, 1981).
2. M. Lerner, "The Desire for Justice and Reactions to Victims," in *Altruism and Helping Behavior*, J. Macauley and L. Berkowitz, eds. (New York: Academic Press, 1970).
3. Howard Zehr, Testimony before the Subcommittee on Criminal Justice, Committee on the Judiciary, U.S. House of Representatives, Concerning H.R. 4554 and H.R. 4827, April 12, 1984, at 6-7.
4. P. Finn and B. Lee, *Serving Crime Victims and Witnesses* (Washington, D.C.: U.S. Government Printing Office, scheduled for printing in 1986).
5. H. Zehr, "VORP Evaluated," *Center for Community Justice Newsletter, 6th Issue* (September, 1985).
6. P.A.C.T. Institute of Justice brochure.

THREE

Developing Restitution Procedures and Ensuring Their Fairness

Restitution mechanisms seek to do justice—to right a wrong by having the offender compensate a victim for damages caused by a crime. To deliver such justice, restitution mechanisms must have “fair” procedures that result in just outcomes for victims and offenders. The basic tasks required of restitution mechanisms are similar for all types of programs. Prior to trial, restitution programs need to obtain referrals from relevant justice system agencies, screen the cases for appropriateness, and then determine the amount of loss sustained by victims. At trial, judges need to be apprised of relevant losses, order the restitution amount, and specify conditions for payment. Following trial, restitution payments need to be collected and the performance of offenders monitored to ensure compliance with the restitution order. Each of these tasks is reviewed in this chapter, and variations in procedures used by the four major types of restitution mechanisms are examined. Techniques for insuring that restitution procedures are fair to both victims and offenders are discussed in the latter part of this chapter.

The Basic Tasks of Restitution Efforts

As was noted, the tasks required of restitution efforts span much of the breadth of the justice system. As a result, different tasks relevant to restitution tend to be performed by different types of personnel depending upon the stage of case processing. The various types of restitution programs differ in the degree to which the handling of a given case is passed along from person to person and agency to agency. Exhibit 3.1 presents a summary of the personnel typically involved at various stages of case processing for the four major types of restitution programs. While variations in approach may

Exhibit 3.1
Personnel Involved in the Various Stages of Restitution Case Processing

Stage of Case Processing	Victim/Witness	V.O.R.P.	Restitution/ Employment	Probation
Initial Case Referral	Court	Court	Court	Court
Case Screening	V/W Personnel	Program Personnel	Program Personnel	Probation
Loss Determination	V/W Personnel	Program Personnel	Program Personnel	Probation
Ordering Restitution	Judge	Judge	Judge	Judge
Collecting Restitution	Primarily Probation	Primarily Probation	Probation	Probation

exist in individual programs, the exhibit captures the major patterns of case handling for the four program types.

As can be seen, the court is typically the primary referral source. Some programs receive their cases from the prosecutor, the police, or other agencies as well. Case screening personnel vary. In restitution efforts operated within victim/witness assistance programs, it is common for all of the victim assistance personnel to handle some restitution matters as part of their caseload. In these programs, victim assistance personnel throughout the office assess the relevance of their personal cases for restitution, and take steps to seek restitution where that seems appropriate. An exception to this approach occurs in the Multnomah County, Oregon Victim/Witness Assistance Program, and two staff members there specialize in restitution case processing and handle case screening and loss determination. They serve as a separate restitution project within the larger office as opposed to having restitution work integrated into the routine casework of all of the staff members.

In both the VORP programs and the restitution-employment efforts, restitution program staff members perform case screening and loss determination functions. Restitution-employment programs tend to be operated by probation offices, however, and although they have separate staff members, they are well integrated into probation office activities. Restitution activities occurring in probation offices as a part of routine case supervision are similar to the victim/witness assistance mechanisms in that restitution case handling is integrated into the routine casework of the probation officers rather than assigned to a specialized restitution staff.

Exhibit 3.2
Procedural Characteristics of Victim/Witness Assistance Restitution Programs

Program Name	Referral Sources	Case Criteria	Loss Determination Technique	Restitution Collection
Victim Assistance Program (Glendale, Arizona)	Police, Courts	Misdemeanors	Staff model and mediation	Courts/Probation
Victim/Witness Assistance (Los Angeles, California)	Prosecutor, Courts	Verifiable Loss	Staff model	Probation but monitored by Victim/Witness Coordinator
Victim/Witness Assistance (Marietta, Georgia)	Prosecutor	Misdemeanors	Staff model (prosecutors occasionally mediate)	Probation Department
Project Repay (Multnomah County, Oregon)	Prosecutor	Felonies Non-habitual Offender	Staff model	Probation Department
Victim Assistance (Rapid City, South Dakota)	Court	Felonies and Misdemeanors	Staff model	Probation but also monitored by Victim/Witness Director
Victim/Witness Assistance (Santa Clara County, California)	Court	Minor Offenses Property Crimes, Non-habitual offender	Staff model	Probation and Restitution Coordinator

In all jurisdictions, judges are responsible for ordering restitution, and probation offices typically have the primary responsibility for restitution collection. In some jurisdictions, the restitution program may assist in monitoring restitution payments and in keeping the victim informed of efforts to encourage compliance with the restitution order. In those instances in which restitution is arranged as a condition of pretrial diversion, the personnel at some victim/witness and VORP programs collect restitution payments and forward them to victims. But in the routine cases disposed by the court, following conviction of the offender, these duties are performed by probation personnel or court clerks' office financial personnel. As was discussed earlier, this report focuses upon restitution as a condition of probation rather than upon the less common use of restitution as a pretrial diversion strategy.

Exhibits 3.2 through 3.5 present summaries of the procedural characteristics of the four major types of restitution mechanisms, and infor-

Exhibit 3.3
Procedural Characteristics of Victim Offender Reconciliation Programs

Program Name	Referral Sources	Case Criteria	Loss Determination Technique	Restitution Collection*
V.O.R.P. (Atlanta, Georgia)	Court	Non-violent Offender admits guilt	Mediation	Probation
V.O.R.P. (Elkhart County, Indiana)	Court	Non-violent Offender admits guilt	Mediation	Probation
V.O.R.P. (Bloomington, Indiana)	Probation Public Defender Attorneys	Non-violent Offender admits guilt	Mediation	Probation
Victim-Offender Restitution Services (Kansas City, Kansas)	Court Community Corrections	Non-violent Offender admits guilt	Mediation	Probation
V.O.R.P. (Traverse City, Michigan)	Court	Non-violent Offender admits guilt	Mediation	Probation
Community Service/ Victim Assistance (Batavia, New York)	Court Prosecutors	Non-violent Offender admits guilt	Mediation	Probation
V.O.R.P. (Benton County, Oregon)	Police Court Juvenile Agency	Non-violent Non-habitual offender Offender admits guilt	Mediation	Probation
V.O.R.P. (Harrisburg, Virginia)	Court Attorneys	Non-violent Non-habitual Offender admits guilt	Mediation	Probation

*If restitution is arranged prior to trial and serves as pre-trial diversion, then the restitution program collects the funds rather than the probation department.

mation is provided regarding (1) referral sources, (2) case criteria, (3) loss determination techniques, and (4) restitution collection efforts. Each issue is discussed briefly in turn.

Referral Sources

The four exhibits indicate the major referral sources for the twenty-seven programs summarized. As was mentioned above, the court

Exhibit 3.4
Procedural Characteristics of Restitution/Employment Programs

Program Name	Referral Sources	Case Criteria	Loss Determination Technique	Restitution Collection*
Earn-It (Quincy, Massachusetts)	Court	Broad range of cases handled	Staff model and occasional mediation	Probation
Victim Restitution Unit (Warwick, Rhode Island)	Police Youth Services	Property crimes, Non-habitual offender	Staff model and occasional mediation	Program Director
Return-It (Waterbury, Vermont)	Court	Non-violent misdemeanors and felonies	Staff model and occasional mediation	Probation
Restitution Services (Wilmington, Delaware)	Court	Property Offenses	Staff model	Probation

predominates as the primary referral source. Projects operated within prosecutor's offices (such as many of the victim/witness assistance efforts) tend to receive their referrals directly from prosecution personnel or prosecution case information systems. The Warwick, Rhode Island restitution-employment program is operated by the local police department, and receives its referrals directly from the police.

Case Criteria and Case Screening

Once relevant staff personnel (listed in Exhibit 3.1) have obtained a case file, they need to determine if a case meets case criteria for restitution. The minimum criterion for any restitution effort is that the victim suffered some verifiable economic loss. Beyond that common criterion, some programs focus only upon misdemeanors (e.g., Glendale, Arizona), some on felonies (e.g., Multnomah County, Oregon), and some on both misdemeanors and felonies (e.g., Rapid City, South Dakota). Some programs specify, in addition, that an offender must not be a habitual criminal with an extensive prior record in order to be eligible (e.g., Multnomah County, Oregon and Santa Clara, California).

Restitution efforts need to be systematic in screening incoming cases to determine which ones are eligible for restitution. The procedures used in the Arizona state court system are typical of those in many jurisdictions. Probation personnel review all relevant criminal cases (misdemeanors and

Exhibit 3.5
Procedural Characteristics of Restitution as a Function of Routine Probation

Program Name	Referral Sources	Case Criteria	Loss Determination Technique	Restitution Collection
Restitution Fund (Denver, Colorado)	Court Parole Department	Economic loss	Staff model	Parole Department
Adult Probation (Hartford, Connecticut)	Court	Property offenses, Non-habitual offender	Staff model and occasional mediation	Probation
Probation and Parole (Fort Lauderdale, Florida)	Court	Property offenses, Felonies	Staff model	Probation
Probation and Parole (West Palm Beach, Florida)	Court	Broad range determined by court	Staff model	Probation
Restitution Unit (Minneapolis, Minnesota)	Court	Misdemeanors	Staff model	Probation
Restitution Unit (Las Vegas, Nevada)	Court	Broad range determined by court	Staff model	Probation
Justice Services (Raleigh, North Carolina)	Court	Non-violent First offenders	Staff model	Clerk of Court
Adult Probation (El Paso, Texas)	Court	Broad range determined by court	Staff model	Probation
Adult Probation (Harris County, Texas)	Court	Non-violent Felonies	Staff model	Probation

criminal traffic offenses) filed in the court to determine if the victim may have suffered an economic loss. This requires a review of the offense report for the case and other relevant file material. A restitution review form is filled out (see Exhibit 3.6) providing information on the extent of the economic loss (if any), the existence of documentation for the loss, and plans for a hearing if the defendant disagrees with the loss assessment. Information is also gathered regarding the defendant's financial condition. If there was no economic loss, this fact is also indicated on the form and placed in the case file. Victims are contacted in all cases involving economic loss and requested to explain the extent of the loss and provide appropriate documentation. The person screening the case also informs the victim that assessment of restitu-

Exhibit 3.6 Restitution Review

Defendant _____ Docket No. _____
 Charges _____ D.R. No. _____
 Victim: _____
 Address: _____

Phone: _____

- Offense report reviewed
- Offense report indicates victim did not suffer economic loss.
- Offense report indicates victim did suffer economic loss,
as follows:

	Reported by Police	Claimed by Victim	Amount Substan.
<input type="checkbox"/> Property damage:	\$ _____	\$ _____	\$ _____
<input type="checkbox"/> Property loss:	_____	_____	_____
<input type="checkbox"/> Medical expenses:	_____	_____	_____
<input type="checkbox"/> Loss of wages:	_____	_____	_____
<input type="checkbox"/> Other _____	_____	_____	_____

- Unable to contact victim:
Reason: _____
- Victim contacted, documentation of loss requested by _____
- Documentation of loss received, filed.
- Defendant agrees with claim.
- Defendant disagrees with claim.
 - Hearing set on _____ at _____.
 - Victim notified of hearing on _____ at _____.
 - Hearing held.
 - Defendant present, testifies.
 - Victim present, testifies.

DEFENDANT'S FINANCIAL STATEMENT

1. <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Married <input type="checkbox"/> Separated	2. Number of people you support:	3. Monthly take-home pay:	4. Other family income:
5. Home: <input type="checkbox"/> Rent <input type="checkbox"/> Own Value:	6. Amount of money in savings:	7. Year and make of car:	8. Employer:

9. List any outstanding debts and how much you owe:

UNDER THE PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THE ABOVE STATEMENTS MADE BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, EACH AND ALL ARE TRUE AND CORRECT.

DATED: _____

.....
Defendant

tion depends upon the offender's ability to pay and explains the procedures involved in assessing and collecting restitution. The use of a systematic case review form of the type used in Arizona can be helpful in case screening and encourages thorough review of the incoming caseload for matters appropriate for restitution.

Most restitution mechanisms seek to serve all eligible victims who have suffered a verifiable monetary loss. As a result, determining whether such a loss occurred is a critical step in case screening. Many restitution efforts mail all potentially relevant victims a form to ascertain whether economic losses have been sustained. The restitution case form used by the Multnomah County, Oregon Victims Assistance Program is typical of the loss estimation forms used by restitution mechanisms across the nation. The form asks the victim for an itemization of losses and information regarding insurance coverage. A copy of the form is presented as Exhibit 3.7. Victims are asked to sign the form attesting to the accuracy of the losses claimed. They are informed that if they make any false claims on the report, they could be prosecuted for a crime under Oregon law.

Victim participation in the restitution effort must be encouraged without promising the victims that they are guaranteed payment of their losses. In some cases judges do not order restitution when it is requested or order only a portion of it, and many offenders fail to make full payment of their restitution obligation.

Determining the Amount of Loss

The case screening procedures discussed above generally serve to determine if *any* economic loss occurred to the victim as a result of the offense. Restitution mechanisms vary considerably on the steps that are then taken to determine the precise amount of loss that will be recommended to the court.

Three basic approaches are used by restitution mechanisms in determining the amount of restitution to recommend: the staff model, the mediation model, and the combined model.

The Staff Model. This approach involves staff members of the restitution mechanism conferring with the victim to arrive at an appropriate restitution recommendation. The techniques described in Chapter 2 for loss determination by the Multnomah County, Oregon victim/witness assistance program restitution effort were an example of the staff model approach. During the course of such determinations, the staff member may contact the defendant or defense attorney to obtain their views regarding an appropriate amount of restitution.

The level of staff involvement in loss determination can vary considerably as part of the staff model. Different levels include:

(1) *Minimal Assistance.* Restitution mechanisms in this category would include those which simply provide guidance to victims who are completing victim impact statements. Such statements tend to request a wide range of relevant information. For example, the Maryland victim impact statement is mandated by statute and requests information regarding medical expenses, needs for psychological counseling, the impact of the crime on the victim's ability to earn a living, insurance coverage, and the like.

(2) *Routine Assistance.* This category includes programs in which staff members obtain relevant information from victims and complete appropriate forms, but do not take detailed steps to verify the accuracy of the information.

(3) *Intensive Assistance.* Programs in this group make a concerted effort to determine the accuracy of the claimed losses. Harland has termed this the "insurance model," and program staff members follow similar procedures to insurance agencies in determining the validity of claims.¹ Such an approach has obvious implications for program personnel needs.

The Mediation Model. As described in Chapter 2 in the discussion of victim-offender reconciliation programs, this model involves face-to-face meetings between victims and offenders and an effort to arrive at a mutually agreeable amount of restitution. Such programs place much less emphasis on the accurate determination of restitution losses than do programs using the staff model. Mediators are instructed not to take a position regarding the "reasonableness" of a victim's request for restitution, and they are informed that the program must rely upon the agency that referred the case to invalidate an unreasonable contract. Such a position is obviously a difficult one to take, since the mediators do not want injustices to occur, and they may not be confident that the referring agency will be able to screen out all unreasonable contracts. But the mediators also need to maintain their role as a neutral third-party facilitator in hearings in order to retain credibility with both parties. One approach used by the victim-offender reconciliation programs to deal with this complex dilemma is to provide agencies that referred cases with the mediator's final report on the case. This report includes a discussion of the restitution agreement, and the mediator can indicate any reservations he or she may have regarding the reasonableness of the agreed-upon restitution.

Programs using the mediation model for determining restitution loss amounts clearly run the risk that "unreasonable" and presumably manifestly unjust orders will emerge occasionally. Even if the mediator's reservations are included in a report to a referring agency, the reservations may not be noticed or given considerable weight. Defendants may be expected to acquiesce to unreasonable agreements in some cases, due to the fear that the sentencing judge will otherwise provide a harsher sentence, such as incarceration. A major concern with mediated restitution agreements is that

calculations of what is fair or proper may not be made as carefully as needed and that instead, the amount of restitution recommended will be based upon such extraneous factors as the persuasive abilities of the victim or the offender. Programs mediating restitution would respond that such injustices are unlikely to be common and that the many benefits associated with face-to-face mediation are likely to far outweigh the risks of great injustices being done.

The Combined Model. This approach simply involves the matching of cases to either the staff or mediation method for loss determination, depending upon the characteristics of the case. Such an approach provides added flexibility, but also adds costs, both in case screening and in providing multiple services. The Glendale, Arizona Victim Assistance Services program, for example, has the capacity to provide both the staff and mediation approaches to assessing victim losses.

Other programs indicating that mediation is used occasionally to supplement the staff model include the Marietta, Georgia Victim/Witness Assistance Program, three of the restitution-employment programs (in Quincy, Massachusetts, Warwick, Rhode Island, and Waterbury, Vermont), and the probation department in Hartford, Connecticut. The face-to-face mediation used by such programs is likely to be relatively informal and is not likely to incorporate the array of procedures characteristic of victim-offender reconciliation program mediation. In these programs the decision to have a case formally mediated rather than having the staff directly assess losses is likely to be influenced by a number of factors, including (1) a disagreement between the victim and offender on the nature or extent of damages associated with the offense, (2) the agreeability of both parties to meet face-to-face, and (3) a judgment that the parties would be likely to act in good faith and work to arrive at a mutually agreeable view of relevant losses. In some cases, a mediation session may be held if it is thought that either the victim or offender might benefit from confronting the other person (for the venting of emotions by the victim or the realization of the harm done by the offender).

Assessing the relative "fairness" of the different methods for loss determination is far from simple. In the narrowest definition of the term "fairness," a restitution recommendation would be viewed as "fair" if it was precisely accurate regarding the victim's out-of-pocket expenses caused by the offender. Such a definition would clearly favor the intensive assistance variety of the staff model. If, instead, one defined "fairness" in terms of the victim's *subjective* view of what is fair, then the mediation model might be favored, since it provides the victim with greater latitude in arriving at the restitution amount than the strict accounting method. Similarly, offenders may subjectively view a restitution amount as more "fair" if they have the opportunity to participate

in its formulation at a mediation hearing. Relevant research for restitution programs is not available, but suggestive evidence from civil small claims court case mediation and adjudication suggests that mediated outcomes are viewed as more fair.² Chapter 4 discusses research on the perceived fairness of restitution recommendations.

Exhibits 3.2 through 3.5 indicate the various loss determination techniques used by the four major types of restitution mechanisms. The staff model predominates for all of the program types except for the victim-offender reconciliation programs which use the mediation approach discussed above. A few programs indicate that they use the staff model combined with occasional mediation.

Ordering Restitution

Once restitution personnel have arrived at a recommendation for restitution, the information must be transmitted to the judge handling the case. In some jurisdictions, the restitution recommendation is incorporated in a report by the prosecutor; in other jurisdictions it may be included in a probation officer's presentence report, and in still others it appears as part of a victim impact statement.

In the later sections of this chapter dealing with making restitution fair for offenders, a number of key issues regarding the ordering of restitution are addressed, including (1) the need for an opportunity by the offender to challenge the restitution recommendation, and (2) the need for judges to develop precise restitution orders. Jurisdictions report that judges quite routinely accept the restitution recommendations developed by restitution personnel, and that restitution orders differ from these recommendations primarily in those cases in which the offender strongly contests the restitution recommendation and can demonstrate flaws in supporting evidence for the recommendation.

Restitution Collection

Exhibits 3.2 through 3.5 indicate which agency is responsible for restitution collection for the various restitution mechanisms surveyed. The probation department is the most typical agency. In some programs the restitution program personnel also monitor collections to determine the progress of the offender in making payments. Chapter 4 presents a detailed discussion of strategies for encouraging restitution payments and for sanctioning those offenders who fail to make ordered payments.

Summary

In short, all restitution mechanisms need to perform five basic functions:

- obtaining cases from referral sources;
- screening cases and applying case selection criteria;
- determining the amount of loss arising from the offense;
- ordering restitution; and
- collecting restitution.

The four major types of restitution programs take differing approaches to these tasks, and this section of the chapter has described major variations. The most striking difference involves techniques for determining the amount of loss, and the mediation techniques used by the victim-offender reconciliation programs are markedly different from the staff model used by other programs.

Ensuring the Fairness of Restitution Procedures

"Fairness" in restitution procedures and outcomes is needed for a number of pragmatic reasons. Victims and offenders would be unlikely to cooperate with a restitution mechanism that was fundamentally unfair in its operation. Offender cooperation is particularly critical, since rejection of the restitution obligation by the offender as unfair will probably result in failure to comply with the restitution order unless sanctions against non-compliance are harsh and enforced. Manifestly unfair restitution mechanisms are likely to be tested in the courts and found to be unacceptable in any event. A number of the procedures used for developing and ordering restitution have been shaped by court rulings regarding permissible and appropriate procedures.

To be fair to a victim, a restitution mechanism must provide the victim with an opportunity to claim all relevant losses and be structured to develop reasonable expectations on the part of victims so that they are not "victimized" a second time through the disappointment of hopes regarding restitution payments. Similarly, a restitution mechanism must have a number of features to be fair to offenders, including: (1) fair case selection criteria; (2) a fair procedure for determining the amount of damages; (3) the opportunity for the offender to challenge the recommended loss amount at a hearing if the amount seems inappropriate; and (4) the judicial development of a clear restitution order that specifies the nature of the obligation and the schedule of payments precisely. Each issue will be discussed in turn.

Making Restitution Fair for Victims

The Opportunity to Claim All Relevant Losses. The courts in most states limit recoverable losses to actual economic losses which are "easily ascertainable." State statutes vary considerably in their degree of specificity regarding relevant losses. Some simply refer to "losses and damages," while others list classes of relevant losses such as stolen property or medical expense. Restitution is typically not allowable for pain and suffering and other general damages. Such damages can be sought in a civil suit regardless of whether restitution is ordered.

Victims should be given the opportunity to claim all relevant losses associated with a criminal offense and should be instructed regarding means of documenting the losses so that they will be accepted by the court as legitimate.

Developing Realistic Expectations of Restitution by Victims. Regardless of the type of restitution program, it is critical that victims understand at the outset that they are not guaranteed restitution from the defendant. Given the fact that many defendants fail to pay restitution in full, it is unfair to give victims the impression that full restitution will be readily forthcoming. Such unrealistic expectations will be inevitably dashed in a substantial portion of cases and can leave victims feeling like they have suffered a second victimization at the hands of the offender (and indirectly, the justice system).

In order to minimize the development of unrealistic expectations, restitution programs should inform victims clearly, and probably in writing, in the initial cover letter or on the restitution filing form that only a portion of restitution orders result in full compliance by offenders. Program personnel should also attempt to ensure that police officers, assistant district attorneys, and other justice system personnel with whom the victim comes into contact are also candid regarding the performance of defendants in paying restitution. In the course of comforting victims, such personnel may provide unjustified or unrealistic assurances regarding restitution or victim compensation from state funds. Such assurances provide cold comfort when the victim is later faced with disappointment because the funds are not forthcoming.

Making Restitution Fair for Offenders

Fair Case Selection Criteria. An emphasis on the role of ability to pay as a consideration in ordering restitution would seem to make it inevitable that some bias based upon socioeconomic status could occur in ordering restitution. Research suggests that restitution may be applied in a substantially discriminatory fashion in some jurisdictions and has demonstrated that minorities are underrepresented among the offenders who are ordered to pay

restitution.³ Klein has noted that, "If dollars for leniency is a salient issue, then it should be clear that it is the poor who will be discriminated against, and it is they (and perhaps their dependents) who will suffer the consequences."⁴ This apparent selection bias seems troublesome, given our legal traditions emphasizing "equal protection before the law" and the "blindness" of justice to invidious social distinctions. The critical test of the bias, of course, is whether those defendants who are not ordered to pay restitution because of their poor economic condition receive more severe sentences than offenders who are ordered to pay restitution. One could argue, however, that a more severe sentence in the absence of restitution is not "added" punishment, but rather that a sentence of probation with the condition that restitution be paid is "reduced" punishment and valid criminal justice policy to attain the hypothesized benefits associated with restitution. While such an argument has some minimal face validity, it still may not eliminate the problem of bias.

The use of offender ability to pay as a selection criteria makes it difficult to readily eliminate unfairness in restitution. One strategy that can be helpful is the inclusion of an employment component in restitution programs akin to those described for restitution-employment programs described in Chapter 2. Such programs typically place offenders in relatively menial temporary positions which allow the offender to complete the restitution obligation. Few offenders are likely to be excluded from the positions due to lack of relevant abilities. As a result, the biases associated with job placement are likely to be far less severe than the biases associated with the assessment of ability to pay typical in programs not having an employment component. The development of such an employment component to a restitution program obviously requires resources. Individual jurisdictions need to assess the extent of their bias in case selection due to socioeconomic factors and decide if the addition of an employment component could mitigate or eliminate such biases.

An alternative strategy for responding to the problem of case selection bias is to shape restitution orders more to the offender's ability to pay. Reduced overall amounts for poor defendants and extended schedules for payments can help to reduce the problem of economic discrimination. The Maine Restitution Statute specifically underscores the need to avoid such discrimination, and states in its preface that, "The Legislature does not intend the use of restitution to result in preferential treatment for offenders with substantial financial resources."

Fair Procedures for Determining the Amount of Damages. Just as the victim should have the opportunity to claim all relevant losses, the defendant should be protected from illegitimate and exaggerated requests for restitution by victims. The various loss determination procedures discussed

earlier in this chapter are designed to at least constrain opportunities for illegitimate claims, and the intensive assistance staff model is designed to take particular efforts to ensure the accuracy of claims. Nevertheless, victims—in some cases—will be able to make distorted claims which are difficult to test for accuracy. Restitution personnel in many of the programs that were studied indicated that such cases were particularly difficult to handle. The restitution mechanism staff member may have a strong suspicion that the victim is lying, but also very strong inhibitions against letting the victim know of the suspicions, because if the hunch were wrong, the victim could be deeply and justifiably offended. In such cases, restitution program personnel need to investigate the suspicious claim as far as possible and then rely on the restitution/sentencing hearing as a means for ascertaining the truth of the matter. Issues involved with making such hearings “real” assessments of restitution recommendations as opposed to *pro forma* exercises are discussed in the following section of this report.

A number of complex issues arise in determining what types of out-of-pocket losses, if any, should be omitted from restitution recommendations. The question of whether restitution orders should include compensation for victims’ lost wages that are caused by attendance at court hearings related to the case is particularly worthy of attention. The issues involved in such compensation are complex. It is true that the victim’s lost wages in such circumstances are a direct result of the defendant’s alleged criminal act and, as a result, would appear to be compensable. But, if such lost wages are, in fact, treated as compensable, then the added costs serve as a penalty for the defendants who seek to assert their right to trial. The defendant is, in effect, being punished for presenting a defense in court. Due to this latter problem, it is probably unwise (and perhaps unconstitutional) to require defendants to pay the victim’s lost wages in attending court hearings as part of their restitution obligation.

The Opportunity to Challenge Restitution Recommendations at a Hearing. According to appellate court rulings, restitution orders must be based upon reasonable factual evidence, which is documented in the court record. The courts typically do not require highly restrictive standards for the documentation of losses, but rather use a “reasonableness” standard. Due process considerations require that the defendant have the opportunity to be heard and respond to the allegations regarding restitution needs. Many restitution statutes provide for the “opportunity to be heard” as an essential part of the procedure for ordering restitution. On the surface, adherence to such a constitutional requirement for due process would seem to be straightforward. The defendant can simply be present (with counsel, if necessary) and respond to the allegations that restitution of a certain amount is appropriate. Harland has noted that the situation is somewhat more complex than this simple picture, however.⁵ Defendants may feel very inhibited

about speaking up at a sentencing hearing in opposition to a restitution order if they feel that such opposition would be viewed negatively by the court and potentially affect the nature and severity of their sentence. As a result, the defendant may be provided with the physical opportunity to be heard, but may not feel free to *actually* be heard, due to possible negative consequences of speaking out. Harland has suggested that one solution to this problem would be the conduct of two-part sentencing hearings. In the first part, the defendant's sentence would be specified (e.g., a specific term of incarceration, probation, etc.). The second portion of the hearing would be devoted to an assessment of the victim's loss. At present, no state has instituted such two-part hearings for restitution.

Various states have implemented procedures to insure that defendants' rights to be heard are at least minimally respected. In some states, defendants are provided the opportunity to participate in the development of a restitution plan prior to the sentencing hearing. Defendants have the opportunity to speak out at sentencing hearings subject to the practical limitations noted above. In addition, a number of states have provided options for detailed hearings in those cases in which the defendant disagrees with a restitution order. For example, Kentucky, Tennessee, and Missouri provide defendants, by statute, with the option to have a jury trial for consideration of the appropriateness of restitution. In Massachusetts, a recent case, *Commonwealth v. Nawn* (reported February 7, 1985), provided that restitution must be reasonable, fair, and non-arbitrary, and that defendants may request a hearing in order to cross-examine the victim regarding alleged losses and the value of the losses and to rebut the victims' estimate with relevant evidence.

The Judicial Development of Precise Restitution Orders. The court cannot delegate the authority to formulate the restitution order to probation or correctional officials, since such a delegation would violate an offender's right to due process. Restitution orders must precisely indicate the amount and schedule of restitution payments. In some states, probation and parole personnel are provided with some discretion regarding the actual amount of restitution to be paid by an offender once the offender has paid a fixed amount ordered by the court. In general, however, appeals courts expect that a restitution order will clearly state the amount of restitution and terms of payment, and will strike down orders that are unacceptably vague.

Restitution orders may require the defendant to pay the victim in one lump sum if the money is available. Defendants typically have very limited resources, however, and schedules of payments to the victim are common. The restitution order typically specifies the schedule of payments expected of the defendant, and such schedules are made in light of the funds available to the defendant over time. In some states restitution can only be ordered as a condition of probation, and in such instances the probation period must

be long enough to enable the defendant to complete his restitution obligation. Harland has pointed out that in the absence of statutory authority for restitution, appellate courts typically view restitution orders as impermissible if they are not part of the conditions of probation.⁶

The requirement of judicial determination of restitution orders is a fundamental safeguard of the fairness of such orders for offenders. If the judge holds a hearing in which the offender can challenge the restitution order (and if the hearing provides a real opportunity to speak out if the defendant disagrees with the restitution recommendation), then offenders have obtained their due process rights. In the past, some judges relatively casually delegated responsibility for setting restitution amounts to probation personnel after sentencing. Such a procedure was likely to have far greater opportunities for unfairness to defendants than judicial determination of restitution in an open hearing with counsel for the defense present.

Summary Regarding the Fairness of Restitution Efforts

This chapter has summarized the issues involved in making restitution fair for victims and offenders. Restitution mechanisms can take a variety of steps to encourage the fairness of restitution procedures and outcomes. These strategies are set out throughout the chapter. They include:

For Victims:

- providing the opportunity to claim all relevant losses; and
- developing realistic expectations of restitution.

For Offenders:

- providing fair case selection criteria;
- using fair procedures for determining the amount of damages;
- providing the opportunity to challenge restitution recommendations at a hearing; and
- ensuring the judicial development of precise restitution orders.

Footnotes

1. A. Harland, M. Warren, and E. Brown. *A Guide to Restitution Programming* (Albany, N.Y.: Criminal Justice Research Center, 1979).
2. C. McEwen and R. Maiman, "Mediation in the Maine District Courts: An Empirical Study," *Maine Law Journal* (1981)
3. J. Hudson and S. Chesney. "Research on Restitution: A Review and Assessment," in *Offender Restitution in Theory and Action* by B. Galaway and J. Hudson (Lexington, Mass: Lexington Books, 1978).
4. R. Klein, "Revitalizing Restitution: Flogging a Horse that May Have Been Killed for Just Cause," *Criminal Law Quarterly* 20 (1970): 383-394.
5. A. Harland, *Restitution in Criminal Law* (Albany, NY: Criminal Justice Research Center, 1980).
6. A. Harland, "Monetary Remedies for the Victims of Crime: Assessing the Role of the Criminal courts," *U.C.L.A. Law Review* 30 (1982): 52-60.

FOUR

Effectiveness in Meeting Goals for Victims, the Justice System, and Offenders

Restitution programs have asserted a diverse array of goals. This chapter reviews available evidence regarding the effectiveness of restitution mechanisms in meeting their goals. Empirical data are not available regarding all of the relevant goals, and when data are not available, suggestions are provided for ways to collect appropriate information. When possible, the relative effectiveness of differing strategies for structuring and operating restitution mechanisms are examined and discussed. Goals for victims, the justice system, and offenders are reviewed in turn. The chapter concludes with recommended strategies for enhancing the collection of restitution from offenders. Effectiveness in restitution collection is central to the success of all restitution programs and is required if the major goals for victims, the justice system, and the offender are to be attained.

Effectiveness in Attaining Victim-Related Goals

Restitution mechanisms seek to provide victims with both economic and psychological benefits. Economic benefits arise from offenders paying ordered restitution or, in rare cases, repairing property that was damaged or providing some other service for the victim. Psychological benefits can include reduced fear, an increased sense that justice has been done, greater faith in the justice system, and related emotional and attitudinal changes. The evidence regarding the attainment of these goals by restitution mechanisms is reviewed here.

Economic Goals. The losses from the typical property offense tend to be relatively small. As was noted earlier, when insurance payments are taken into account, approximately 92 percent of cases involve losses of less than

Exhibit 4.1

Estimates of the Average Amount of
Restitution Ordered per Case

Publicly Sponsored Programs

Amount Per Case	Number of Programs
0 - 50	0
51 - 100	0
101 - 150	0
151 - 200	3
201 - 250	4
251 - 300	0
301 - 350	1
351 - 400	1

over 1,000	1
Not Available	9

Privately Sponsored Programs

Amount Per Case	Number of Programs
0 - 50	0
51 - 100	0
101 - 150	1
151 - 200	1
201 - 250	1
251 - 300	0
301 - 350	0
351 - 400	0
400 - 450	0
451 - 500	1
Not Available	5

\$249 according to data from the National Crime Survey.¹ Variations in the typical amount of restitution ordered occur across jurisdictions due to a number of factors including patterns of crime, case selection criteria, and the like. Exhibit 4.1 presents a summary of the estimated amount of restitution ordered per case for both the public and privately sponsored programs in our survey sample. Ten publicly sponsored programs provided an answer to the survey question regarding average restitution order amounts; the most frequently cited category in the distribution was \$201 to \$250. The average amount of restitution ordered varied somewhat across programs reporting

data. Three programs reported an average in the \$151 to \$200 range while one reported an average from \$351 to \$400. The major exception to the pattern is the Multnomah, Oregon program's reported average of \$1,324. That program includes a higher proportion of serious property crimes in its caseload than the other programs. The privately sponsored restitution mechanisms had a similar range of average restitution amounts, with three of the four responding having an average below \$250.

The sampled restitution programs are relatively similar in the estimated average amount of restitution per case, but very divergent in their estimates of the proportion of restitution cases resulting in full payment by the defendant. Exhibit 4.2 presents a summary of the distribution of estimated full payment across the various publicly and privately sponsored restitution programs. As can be seen from the table, programs range from estimates of 100 percent compliance to only 21 to 30 percent of cases resulting in full compliance. It is important to stress that these figures are based upon estimates by program personnel of the proportion of cases resulting in full payment. They have not been verified by independent reviews of case statistics in the programs, and in many programs such data would be very difficult to obtain due to limitations in statistical accounting systems.

The four publicly sponsored programs with the highest reported rates of full payment are the Warwick, Rhode Island Victim Restitution Unit (93 percent), the Marietta, Georgia Victim Witness Assistance Unit (95 percent), the Glendale, Arizona Victim Assistance Program (98 percent), and the El Paso, Texas Probation Department (100 percent). Examination of the program's structures and other reported characteristics does not reveal why these particular programs excel at having high reported rates of full payment of restitution orders. Interestingly, however, three of the four programs reporting the highest rate of compliance are victim assistance programs with the remaining program being a probation department. A central philosophical goal of victim-oriented programs is the provision of full restitution to the victims of crime, and as a result program personnel may be particularly vigorous in following up cases to insure that restitution is paid. Data on the number of revocation hearings and their outcomes per year would be one index of such follow-up activity, but such data are not available from the various programs. It is also possible that the programs with the highest rates of compliance more effectively sanction offenders who fail to comply and accurately convey information regarding such punishment to other persons owing restitution obligations.

Examination of the programs with the lowest reported rates of compliance with restitution orders similarly does not reveal a striking pattern of characteristics distinguishing them from other programs. The four publicly sponsored programs with the lowest reported compliance rates are: the Wilm-

Exhibit 4.2

**Estimated Percentage of Cases Resulting
In Full Payment of Restitution**

Publicly Sponsored Programs

Percentage of Cases	Number of Programs
0 - 10	0
11 - 20	0
21 - 30	1
31 - 40	1
41 - 50	2
51 - 60	0
61 - 70	2
71 - 80	1
81 - 90	4
91 - 100	4
Not Available	4

Privately Sponsored Programs

Percentage of Cases	Number of Programs
0 - 10	0
11 - 20	0
21 - 30	0
31 - 40	0
41 - 50	0
51 - 60	0
61 - 70	1
71 - 80	2
81 - 90	1
91 - 100	3
Not Available	2

ington, Delaware Criminal Justice Planning Commission (23 percent); the Denver, Colorado Restitution Fund (35 percent); the New Orleans, Louisiana Work Release Program (50 percent); and the Los Angeles, California Victim/Witness Assistance Program (50 percent). The Delaware program's data are based upon the findings of an empirical study conducted by the state, while the data from the other three programs are estimates. Average restitution amounts ordered in the various programs are similar to those in other programs in the sample. Interestingly, one of the publicly sponsored programs with a low reported rate of full compliance is the Los Angeles Victim/Witness Assistance Program. This program is similar in structure and

goals to the three victim/witness assistance programs that were among the four programs having the highest rate of compliance. This finding clearly suggests that having an emphasis upon victim assistance is not a guarantee of higher rates of compliance with restitution orders. Other factors such as the nature of the program's caseload, the availability of sufficient staff to monitor restitution orders, the assistance of the judiciary in sanctioning non-compliance, and similar variables can have a strong effect on ultimate rates of compliance, and these factors can vary greatly within individual types of programs such as victim/witness assistance programs providing restitution, restitution-employment programs, and the like.

The privately sponsored programs tend to report higher levels of full compliance with restitution orders than the publicly sponsored programs as can be seen from Exhibit 4.2. One privately sponsored program estimated that full payment occurs in 61 to 70 percent of cases, and of the remaining programs estimated that a higher percentage result in full compliance, with three programs providing estimates in the 91 to 100 percent range. In contrast, the four publicly sponsored programs noted earlier have made compliance estimates of less than 60 percent. One observer who has reviewed the data has suggested that some portion of the pattern of findings for public and privately sponsored programs could simply involve unintentional biases in the recall of program policymakers. Such biases could lead privately sponsored programs, reliant on grant money for their continued existence, to overestimate their success in receiving full compliance when compared to publicly sponsored programs and result in the systematic difference between the two types of programs in estimated success. Similarly, the public programs that are the least institutionalized (e.g. victim/witness assistance programs) may have a tendency to selectively perceive success rates.

Research data make it clear that the average offender does not fully comply with the restitution order. Miller's study of the Denver District Court Probation Department is perhaps typical of findings in this field.² The study reported that the typical offender in his sample of 414 cases paid 69 percent of the ordered restitution (i.e., an average payment of \$258 for an average obligation of \$376 in that jurisdiction). These payments were made in installments over time. How are these data to be interpreted? Does restitution provide a significant economic benefit to victims or do the delays in payments and typical partial payments make such benefits marginal? Different observers come to radically differing conclusions in viewing these data. Victim/witness advocates tend to stress that even partial and delayed payments are of considerable value to victims. These payments at least defray the losses associated with a crime, and also offer the victim some psychological benefit in knowing that justice is being done (at least partially). In contrast, some others have argued that delayed and partial payments are not of sufficient value to victims to justify restitution programs. Numerous problems can arise with

delayed and partial payments. Victims with limited resources are not able to replace stolen or destroyed property when payments are made over time and partially; the protracted payment period may keep the "wound" of the crime open rather than allowing victims to put the incident behind them and forget about it, and partial payments can be disappointing and disillusioning. Still others argue that, given the administrative costs associated with restitution, such outcomes do not justify the expense.

Detailed data are needed regarding the degree to which restitution payments meet victims' economic needs and are viewed as satisfactory by victims. The general concept of restitution has been viewed favorably by diverse groups according to survey studies. For example, a 1978 survey of police officers, social work students, community service organization personnel, and probation and parole officers suggested that, "The vast majority of the study sample indicated that creative restitution is of potential value to the criminal justice system."³

Very little data are available regarding victims' views on the adequacy of restitution payments, however. Hudson, Galaway, and Novack conducted a survey of 355 victims drawn from nineteen restitution programs across the country.⁴ One-hundred and fifty-two victims returned usable questionnaires for a response rate of 46 percent. The study focused upon victim perceptions of the adequacy of "ordered" restitution rather than their satisfaction with "actual payments" of restitution. The survey included both monetary restitution and community-service programs. Forty-four percent of victims (i.e., 28 victims) in monetary restitution programs reported that they were "very satisfied" or "satisfied" with the overall treatment offenders received; 51 percent said that they were "not satisfied" (i.e., 35 victims). The sample included both programs in which restitution is a condition of probation or an aspect of pretrial diversion and programs in which restitution was a condition of incarceration. The survey data suggest that even if offenders made full payment, approximately one-half of victims would view the monetary restitution as having significant problems.

Hudson, Galaway, and Novack also asked victims about the fairness of monetary restitution, and report that 36 percent of victims in the sample viewed the restitution amount as too lenient; 55 percent viewed the amount as fair, and only one percent viewed it as too harsh. This view of excessive leniency is evidently at the heart of victim dissatisfaction with the treatment of offenders in the sampled restitution efforts, and places a limit on the degree to which victims will be pleased with even full payments. The lack of complete fulfillment of the restitution obligation in the typical case must further aggravate this dissatisfaction. Data are not provided regarding victim responses to actual payments. Despite the considerable negative attitudes expressed by half of the victims to the treatment of the offender in their case,

it should be stressed that, in the abstract, victims are very supportive of the concept of restitution. In the same survey study, the authors report that 61 percent of victims sampled chose monetary restitution as the fairest form of punishment for their case (in contrast to 23 percent stating "jail or prison," nine percent "community service," six percent "probation," and one percent "personal service restitution.")

Rigorous research is needed on victims' attitudes toward restitution in practice as well as in the abstract. Data are needed on how victims perceive the adequacy of payments of restitution, and the impact of delayed and partial payments upon the economic value of restitution to them. Ideally, such a study should collect data from a sample of victims who have had monetary restitution ordered in their case, with the data being collected at a number of points in time. Victim expectations regarding restitution could be assessed prior to the time a restitution order is made. Victim satisfaction with the order could be examined shortly after the court processed the case. Then victim satisfaction could be assessed at various intervals while the order was in force in order to determine if payments were made, what use was made of the restitution funds, and whether the victim viewed the impact of restitution to be significant and satisfactory. Currently available research does not fully address these issues. Interestingly, some data suggest that victims in certain cases are not even aware that restitution has been ordered. Chesney found that 12 percent of victims were unaware that restitution had been ordered even after up to two years following the order. Such an approach is one way to mitigate disappointment arising from failure to pay restitution, but obviously does not serve the other goals associated with restitution for victims.

While detailed research of the type discussed above would be very helpful in expanding our understanding of restitution mechanisms, most jurisdictions will not have the funds to support such research efforts. As an alternative, program administrators should consider expanding their routine case management statistical collection to include information on the perceptions of victims. Victims could be provided with brief (perhaps one page) questionnaires by mail that inquire about their views of the fairness and adequacy of the restitution mechanism. Information from such questionnaires could be very valuable in identifying strengths and weaknesses of restitution, could suggest ways of improving program operations, and could provide data useful to program justification. Questions in such a survey of victims could be kept very simple and straightforward, "were you satisfied with the process of ordering restitution?," "were you satisfied with the amount of restitution ordered?," "was the restitution fair?"

In summary, crime victim restitution mechanisms do provide funds to victims of crime. Half of the victims in one study viewed the ordered restitu-

tion as not satisfactory, however, and research demonstrates that offenders typically only pay part of their restitution obligation. Rigorous research is needed on a range of restitution mechanisms to determine if victims adopt the position that "a half a loaf is better than none" and hence restitution, while flawed, is worthwhile, or if they view restitution as "too little, too late" and simply not worth the effort. Such research is likely to indicate variations in victim opinions on these issues and may help identify what types of victims are particularly appropriate for restitution and what other types feel the frustrations of restitution outweigh the advantages.

Psychological Goals. In addition to the economic goals discussed above, restitution programs often seek to attain psychological benefits for victims. This is particularly true of the victim-offender reconciliation programs. As was mentioned in Chapter 2, these programs seek to provide psychological benefits to victims through the conduct of face-to-face meetings with offenders. The meetings provide the opportunity for victims to vent emotions and to seek to arrange a satisfactory form of restitution on the part of the offender.

A recently completed evaluation by Coates and Gehm of five VORP programs in Indiana and Ohio found high levels of satisfaction with the programs.⁵ Ninety-seven percent of the victims contacted in the study indicated that they would participate in the program if they had the choice to do it over again. Fifty-nine percent of victims said they were satisfied and 30 percent said they were somewhat satisfied with the VORP process. Eighty-three percent of offenders indicated that they were satisfied. The study also sought to determine if participation in the VORP program changed attitudes of victims and offenders since the "reconciliation" process might be expected to have such an effect. Zehr reports that "In only a third of the cases were the researchers able to establish a change in attitudes about victims or offenders, but nearly half of both groups indicated change about attitudes toward crime and justice" with views of the justice system becoming more favorable.⁶

In short, victims appear to be very favorable toward the face-to-face meeting process provided by victim offender reconciliation programs, but they do not evidence substantial changes in attitudes toward offenders as might be hoped by proponents of the programs. The views of victims regarding the desirability of face-to-face meetings with offenders have been further assessed by Hudson, Galaway, and Novack in their survey of victims.⁷ They found that 46 percent of victims in their survey sample favored such meetings; 36 percent did not want such meetings; and 18 percent made no response to the question. The responses varied considerably depending upon the type of victim. Only 12 victims of the 152 in the sample had actually met with the offender in their particular case, and all 12 said that they would want to meet with the offender if they were in the same situation again.

The Coates and Gehm study of the impact of participation in victim-offender reconciliation programs upon victims was relatively limited in scope and did not tap the broad range of psychological impacts that such face-to-face meetings might have. Research by Davis, Tichane, and Grayson on a Brooklyn, New York felony mediation program sheds considerable light on the types of psychological impacts that might be anticipated.⁸ Their study involved a random assignment experiment with some cases proceeding to mediation and others to routine adjudication. While the researchers found no significant differences in the number of subsequent police contacts in the mediated and adjudicated cases, substantial differences occurred between the groups on psychological measures of attitudes. Major findings included:

- (1) Sixty-two percent of mediation case victims perceived that defendant behavior had improved following the hearing while only 40 percent of court case victims perceived an improvement in defendant behavior.
- (2) Only 23 percent of mediation case victims indicated that they were somewhat or very much angry at the defendant following the conclusion of their case versus 48 percent of court case victims.
- (3) Only 21 percent of mediation case victims stated that they somewhat or very much feared revenge compared to 40 percent of court case victims.
- (4) Fifty percent of victims having their case adjudicated indicated that they were somewhat or very much confused regarding the defendant's motive versus 38 percent of victims in mediated cases.

These findings are striking, and since they are the result of a random assignment experiment they cannot be explained in terms of preexisting differences in the attitudes of victims. The face-to-face mediation meetings held in the Brooklyn program appear to have had a considerable effect upon a range of psychological variables, and both fear and anger toward the defendant were significantly reduced by the meetings. It is important to note, however, that the Brooklyn program handled cases involving felonies among acquaintances. Many restitution cases in typical restitution programs involve cases arising among strangers. The study provides an excellent model for similar research dealing with victim-offender reconciliation programs and other restitution mechanisms. The combination of a random assignment experimental design with detailed assessment of the behavioral and psychological impacts of the restitution intervention would help to determine the actual psychological impact of restitution on victims.

In summary, much remains to be known regarding the psychological impacts of restitution mechanisms. Limited research has been conducted regarding the impact of victim-offender reconciliation programs upon victim attitudes, and the research suggests that such programs are viewed favorably but have a limited impact on victim attitudes toward offenders and a more substantial and favorable impact on attitudes toward the justice system.⁹ Research on a roughly similar restitution effort involving face-to-face meetings between victims and offenders who are acquaintances suggests that substantial psychological benefits can be attained including reduced fear and anger and increased understanding through the use of such meetings. Similar impacts need to be tested in programs having face-to-face meetings among strangers. Very little beyond anecdotal information is available regarding the psychological impact of restitution mechanisms that do not hold face-to-face meetings. Relevant satisfaction data were reported in the preceding section along with data on the perceived "fairness" of restitution ordered by such programs.

Effectiveness in Achieving Justice System Goals

The justice system may gain a variety of benefits from the operation of restitution mechanisms, and five major benefits have been suggested in the literature on restitution including: (1) reduction in prison and jail caseloads by the use of restitution as an alternative sanction, (2) reduction of justice system costs, (3) improved public credibility of the justice system, (4) improved crime reporting by citizens anticipating compensation, and (5) potential deterrence of offenders. Evaluation findings and issues relating to each of the goals will be discussed in turn.

Reduction in Prison and Jail Caseloads. While frequently cited as a goal, in order to reduce prison and jail caseloads, a restitution mechanism would need to structure its procedures to clearly serve as an alternative to incarceration. Case selection procedures would need to target those cases where incarceration was highly likely or assured. Such stringent procedures are not used by existing restitution mechanisms that assign restitution as a condition of probation. (Post-prison release restitution programs do serve incarcerated populations, but such programs are rare and release is not always caused by willingness to participate in restitution.)

It would be difficult to design a mechanism that reduces prison and jail overcrowding through the use of restitution as a condition of probation, and the goal of prison and jail caseload reduction appears to be unrealistic. The experience of probation departments with "intensive probation supervision" programs designed to divert offenders from imprisonment due to severe crowding indicates why this is the case. Some research studies that are currently available suggest that, instead of dealing with offenders who would

have been imprisoned, many intensive probation supervision programs provide services to offenders who would have been placed on probation in any event.¹⁰ Even though the programs provide increased levels of supervision associated with the programs, judges have been found to be hesitant to place highly serious offenders on probation rather than in prison. If such hesitancy to divert offenders from prison occurs for a program explicitly designed to handle high-risk, prison-bound offenders, then it seems likely that judges will be even more hesitant to divert offenders from prison to restitution programs combined with conditions of probation.

A restitution program that was strongly intent on diverting offenders from prison and reducing prison populations would need to develop policies and procedures that are considerably different from typical restitution mechanisms. Case selection procedures would need to be used to assure judges that release of the offender into the community was tolerably safe. Pending sentencing reform legislation in Massachusetts has provisions for such high levels of supervision, including daily contacts with probation officials, curfews, unannounced home and work visits by probation personnel, and the like. Further, the program would need to ensure that participants are truly "prison bound" to have an impact upon the prison population, and research would need to be conducted to determine the extent of impact of the program.

Reduction of Justice System Costs. Some proponents of restitution mechanisms have argued that the use of restitution can potentially reduce justice system costs. To reduce costs, restitution case handling would need to be cheaper than the costs of traditional case handling. If restitution served as a true alternative to incarceration, then it probably would be considerably cheaper than confinement since the annual cost of incarceration is very high throughout the United States, typically exceeding \$10,000 per year. Even with the inclusion of all direct and indirect costs, the per case costs of restitution are likely to be significantly less than incarceration. Nevertheless, as was discussed in the preceding section, restitution is rarely used as a true alternative to incarceration. Instead, persons receiving restitution orders are more likely to be offenders who would have received probation or suspended sentences in any event.

Given this situation, restitution practices and programs may actually increase rather than decrease the overall expenses of the justice system. The costs of determining restitution recommendations, holding hearings when the amount recommended is contested, and monitoring compliance and imposing sanctions for noncompliance can be substantial. None of these activities are needed if restitution is not considered. Furthermore, if failure to make restitution results in revocation of probation and incarceration of the offender for contempt or imprisonment for the term of a suspended sentence,

then restitution can inadvertently result in a large increment in justice system expenses.

Research on a community-based residential program for restitution in Minnesota indicated how participation in restitution efforts can potentially result in increased rates of return to incarceration.¹¹ The Minnesota Restitution Center, was developed in 1972 and differed from the typical programs discussed in this report in that it was a post-prison release program. Offenders were imprisoned for four months before parole release to the restitution center. The Minnesota Department of Corrections conducted a random assignment experiment in which some inmates meeting program criteria were assigned to the restitution program while a control group did not receive any special treatment. The researchers found that, within twenty-four months after release, a substantially larger proportion of restitution program participants were returned to prison for technical violations of parole than control group members (40 percent versus 10 percent respectively). This difference was thought to be primarily due to the relatively more intensive parole supervision provided to restitution program participants. If offenders convicted of new crimes and incarcerated as a new commitment within the twenty-four month follow-up period are added to those offenders returned to prison for technical parole violations, the total proportion of offenders returned to prison was 46 percent for the restitution program group and 34 percent for the control group. Furthermore, it was found that restitution program participants returned to prison more rapidly than control group members; within the first six months after release 23 percent of restitution participants returned to prison compared to nine percent of control group members.

Miller found somewhat similar problems for offenders participating in restitution while on probation.¹² Using a less rigorous quasi-experimental design with a matched sample, Miller compared the experiences of 419 offenders who were ordered to pay restitution as a condition of probation by the Denver District Court to a sample of 179 offenders who were not ordered to pay restitution. The two groups were compared on 28 variables and found to be similar. Though there were no statistically significant differences across the two groups in rearrests while on probation, 36 percent of the offenders who were ordered to pay restitution had at least one proceeding to revoke probation filed against them compared to 26 percent of comparison group members; the higher rate of revocation hearings may be attributable to more intensive supervision. While some offenders have multiple revocation hearings, and the number sent to prison cannot be precisely calculated from Miller's data, given the data presented above, it seems likely that slightly more of the restitution group offenders are sent to prison. Finally, Miller and other studies have suggested that restitution program participation tends to increase an offender's length of contact with the justice system.

Miller suggests that the Denver restitution program is likely to significantly increase local justice system costs. Major components of these increased costs include: (1) expenses for judges and court personnel associated with the higher proportion of revocation hearings, (2) expenses for probation personnel associated with more intensive supervision and somewhat longer periods of supervision, and (3) presumably some increase in correctional institution expenses if more offenders are, in fact, sent to prison following revocations. Though Miller did not gather precise estimates of the added administrative and other justice system costs associated with restitution in Denver, he concludes that, from a strict cost analysis perspective, costs of restitution may not justify the benefits of the effort.

In short, some evidence exists that instead of reducing justice system costs, restitution efforts may significantly increase such costs. The extensive use of resources by restitution efforts was recently underscored by Theresa Ramirez, the Deputy Chief of Field Services for the Harris County (Houston), Texas Juvenile Probation Department. She noted recently, "Often the victim isn't paid, and he calls and wants to talk to the judge, the probation officer, the district attorney, everybody. It takes a lot of time."¹³ These resource uses are in addition to the costs for determining losses, monitoring offenders, collecting funds, holding revocation hearings, and related expenses.

Some proponents of restitution have argued that restitution efforts cannot be expected to reduce justice system costs and that it is misguided to include cost reduction as a stated goal. They argue that the likely increases in costs associated with restitution are justified by potential benefits to victims, offenders, and the justice system. Interestingly, however, six of the eleven monetary restitution programs studied by Hudson, Galaway, and Novack stated that justice system cost reduction was a program goal. Though some of these programs may have thought that restitution would serve as an alternative to expensive community-based residential placement or imprisonment, they do not provide any evidence that the cases handled by the program were, in fact, diverted from such expensive alternatives.

Improved Public Credibility of the Justice System. Survey evidence suggests that the concept of restitution has broad support;¹⁴ hence, the implementation of such a widely praised concept should favorably affect citizen views of the justice system. This is particularly true because the justice system is far from universally praised. Problems with apprehending offenders, bringing cases to trial, extensive delays in case processing, and the like have led to severe public criticism of our system of criminal justice. The successful implementation of restitution would be thought to have a very favorable impact on public views in this context and lead citizens to feel that at least part of the system "works" as they feel that it should.

Relatively little direct evidence is available regarding the achievement of this goal. The Coates and Gehm study of victim-offender reconciliation programs cited earlier found that participation in victim-offender meetings led nearly half of persons interviewed to view the justice system more favorably. The previously discussed 1980 survey of victims participating in restitution programs found that 44 percent of victims were very satisfied or satisfied with the overall treatment of the offender by the justice system. This favorable view might presumably generalize to the system beyond the case at hand and increase victims' favorability toward the system. Finally, Chesney found that approximately 60 percent of victims in one restitution program viewed the amount of restitution ordered as a condition of probation to be fair.¹⁵ This attitude might also generalize to the system at large, although direct data on the issue is needed to confirm such generalization.

Research is needed on the degree to which participation in a restitution effort affects citizen attitudes towards the justice system, since such participation can potentially have a negative as well as positive impact on perceptions. Fifty-one percent of the Hudson, Galaway, and Novack sample of victims, for example, were not satisfied with the overall handling of offenders through restitution, and this negative viewpoint may have generalized to their views of the justice system as a whole. Such increased negative views would be reminiscent of the recent research of the National Center for State Courts suggesting that negative attitudes toward the civil justice system increased as a direct function of the citizen's degree of contact with the civil justice system. The attitudes of persons who have had their cases handled by restitution efforts are likely to reflect, at least in part, their experience with their case. Therefore, to accurately assess the impact of restitution on citizen attitudes, an appropriate study design should assess the perceptions of both a sample of citizens who have participated in restitution efforts and those who have not.

Other Justice System Goals. Two other frequently cited goals of restitution programs are (1) improvements in the rate of crime reporting by citizens anticipating restitution, and (2) increased deterrence of offenders. Barnett has speculated that the existence of restitution mechanisms may increase crime reporting by victims because they would anticipate compensation for their case.¹⁶ No direct data are available to test this notion. Given that most property offenses involve relatively small monetary losses, and given the relatively low clearance rates by arrest for such offenses, it is not clear that the mere availability of a restitution mechanism in a jurisdiction would serve as a strong stimulus to crime reporting.

Research on the impact of restitution upon crime reporting would be challenging for many reasons. First, crime reporting levels vary due to a number of factors, including community crime prevention efforts in a jurisdic-

tion, fluctuations in citizen confidence in the police, and the like. A study would need to take steps to weigh the impact of such variables in addition to the restitution effort as they relate to crime reporting. Second, because restitution programs do not have the funds to mount large-scale advertising campaigns, only a small fraction of the general population in any jurisdiction is aware that a restitution mechanism is available. Awareness of the program is obviously an essential precondition to the predicted increased crime reporting effect.

One strategy for dealing with the problem of low public awareness would be to study the crime reporting behavior of citizens who had had cases processed through restitution. A survey could be conducted of a sample of such citizens to determine if their rate of reporting criminal incidents is higher than that of a random sample of citizens. In addition to the fact that repeated crime victimization is a rather rare event, a major problem of this approach is that citizens who have participated in a restitution program are aware of the limitations of the program, limitations that may reduce the incentive value of restitution as a spur to crime reporting.

Tittle has discussed the possibility that restitution requirements may serve to deter other offenders from committing crimes.¹⁷ For restitution to have a deterrent effect, the criminal activity must involve a rational decision and the sanction must be sufficiently severe and certain to deter such a decision. As has been discussed earlier, typical restitution obligations are quite modest and are probably unlikely to generate considerable fear. Though the relatively small amounts of ordered restitution cause offenders difficulty in repayment as the Miller research indicates, it is unclear to what extent restitution as a sanction generates fear on the part of an offender. The probability of punishment for crime is often low, and the amount of rational decision-making that precedes criminal action is unclear.

In any event, it is extremely difficult to measure the deterrent impact of criminal justice policies. Tittle has stated that, "it is abundantly clear that knowledge about deterrence is far too meagre to permit any firm projections of what might happen under different systems of justice."¹⁸ Research on the deterrent impact of restitution could be interesting, although given the present structure and procedures of restitution mechanisms, such an impact is likely to be marginal.

Effectiveness in Achieving Offender-Related Goals

The most generally cited goals of restitution mechanisms for offenders are rehabilitation, reduced recidivism, and lessened intrusiveness of the justice system in the offender's life. Evidence bearing on the achievement of these goals by restitution mechanisms will be discussed in this section.

Possible Impact on Offender Recidivism. Some proponents of restitution have suggested that restitution may reduce the recidivism of offenders,¹⁹ in that it may make the offender realize the extent of harm that has been caused and provide an opportunity for the offender to reduce the negative psychological consequences of harm-doing by returning equity to their relationship with society.²⁰ The realization of the harm done and acceptance of responsibility is thought to result in changed offender attitudes and reduced future recidivism.

The research by Miller discussed earlier did not demonstrate any reduced recidivism on the part of offenders participating in restitution, and roughly equal proportions of restitution group offenders and non-restitution group offenders were rearrested (18 percent and 22 percent respectively). Similarly, no significant differences were observed in conviction rates of those arrested. Thirty-five percent of restitution group offenders were convicted following their first arrest after participation in restitution versus 38 percent of no-restitution offenders. Miller reports that persons who paid their restitution obligation in full were less likely to be convicted (25 percent) versus those who had paid some of their restitution obligation (60 percent) or none of it (42 percent). It is not clear the degree to which this finding is due to self-selection, with the offenders who paid in full also committing less serious offenses or crimes in which less evidence for conviction was readily available. Overall, these data suggest that restitution did not have an impact on recidivism for the population studied.

Furthermore, some have suggested that restitution orders may actually cause an increase in criminal behavior in some cases by motivating offenders to commit crimes to gather the money to pay the obligation. For example, Tittle (1978) speculated that restitution may, "induce strong incentives for further crime among many convicted offenders."²¹ No empirical evidence is available to support this assertion, but occasional anecdotes of this sort do surface.

Reduced Intrusion of the Justice System in Offenders' Lives. Since restitution is frequently viewed as an alternative to incarceration, proponents have suggested that restitution obligations can serve as less severe sanctions for offenders and provide the offender with the opportunity to maintain employment and community ties and become integrated into mainstream society. As was discussed earlier, for the most part, restitution is not used as a true alternative to incarceration, since most offenders receiving restitution obligations as a condition of probation were likely to have received probation in any event. Instead of reducing the intrusiveness of the justice system, many restitution efforts may, in fact, involve imposing more extensive sanctions upon offenders than would otherwise have been the case in the absence

of the program. Research indicates that offenders with restitution obligations experience more revocation hearings, somewhat longer periods of probation supervision, and more reported health and money problems than offenders without such obligations.

Research on the impact of restitution on recidivism and the degree to which restitution involves reduced or increased intrusion by the justice system in the lives of offenders would be useful. Both research questions require the use of rigorous comparison groups or randomly assigned control groups for the assessment of the impact of restitution on offenders.

In the case of recidivism studies, data should be collected both before and after program participation and include information regarding both offender attitudes and behavior. Attitudinal information would be helpful to determine if offenders view victims, crime, the justice system, or themselves differently following the participation in the restitution program. Behavioral information can suggest the success in terms of stimulating offender change and can shed light on how different degrees of compliance related to later criminal behavior.

Footnotes

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FIVE

Ensuring Offenders Make Restitution and Conclusions of This Study

Regardless of the particular procedures or goals of restitution programs, in order to be successful, programs must ensure that the restitution obligation is paid by the offender. If restitution is ordered and not paid, the victim's economic needs arising from the offense are not met, and any psychological benefits of the restitution process are likely to be greatly limited. Similarly, goals for the justice system, such as improved credibility, are not achieved if restitution is not paid, and offender-related goals, such as deterrence, become a sham if compliance with restitution orders is low.

A number of elements appear to be important in achieving an adequate level of compliance with restitution orders:

- (1) The amount of restitution ordered must be tailored to the offender's capacity to pay. An order that outstrips this capacity will clearly not be fulfilled. Some anecdotal evidence exists suggesting that if the ordered amount of restitution is far beyond the offender's means to pay, offenders may in some circumstances commit new crimes in order to pay off the restitution obligation and avoid imprisonment.
- (2) Attempts should be made to ensure that the offender views the restitution as a reasonable obligation, as such an attitude on the part of offenders is likely to increase compliance with restitution orders and promote any offender benefit that may be associated with the payment of restitution. Procedures that involve the offender actively in formulating the restitution plan can further the offender's sense of "ownership" of the plan.

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- (3) Once restitution is ordered, the court should have a range of tools at its disposal to encourage compliance with the restitution order. These tools can include (a) legal powers (to place liens on property, garnish wages, and the like), (b) staff resources to adequately monitor the offender's level of compliance with the restitution order, including computer data bases with the capacity to signal non-compliance if the caseload is large, and (c) appropriate incentives and punishments to encourage compliance. Offenders particularly need to know that there are consequences for nonpayment. A victim/witness coordinator in Maine noted that in her experience it is particularly important for judges to structure restitution orders so that failure to comply will potentially result in a jail sentence. She stated that, "no one wants to do jail time. They all pay up" when incarceration is a possible sanction.

A number of strategies can be used to attempt to ensure that offenders pay their obligation, including: (1) sanctions for non-compliance, (2) administrative options and incentives for compliance, and (3) efforts to have the offender internalize a commitment to make restitution. This section reviews the experiences of various restitution mechanisms in seeking to ensure offenders pay restitution obligations.

Sanctions for Non-compliance with Restitution Orders

The courts have established a number of sanctions within the criminal justice system for non-compliance. If an offender fails to make restitution payments on schedule, a hearing can be held to determine whether the failure justifies revocation of the offender's probation, parole, or suspended sentence. It is typically necessary to show that the failure to pay restitution was an intentional action on the part of the offender and was not a reasonable course of action. An offender, before such a hearing, can seek to defend himself by indicating that the default was not intentional. Failure to pay is unintentional if the offender was simply unable to make payments due to the lack of money (despite a good faith effort to obtain funds) or if the offender had money but could not make payments because such payments would cause great economic hardship to the offender or the offender's family.

In cases where the offender's default is unintentional, the court can take a number of steps, including: (1) revising the amount of restitution owed, (2) extending the payment period and revising the size of individual payments. Statutes in some states place limits on the maximum length of extensions to pay, and these maximums equal the statutory limits for penalties set out in the relevant criminal laws. Offenders whose economic circumstances change during the period that restitution is being paid can also seek to have

a hearing prior to the time that they actually default on their restitution obligation. Such hearings involve a review of the offender's economic circumstances and an effort to make the restitution plan comport with the offender's available funds.

In those cases in which the offender is found to have intentionally failed to make restitution, the court has the power to revoke the offender's probation, suspended sentence, or parole and have the offender incarcerated for the original sentence. The finding of "intentionality" is critical for such revocation, and the courts have recently held that an offender cannot be revoked solely for a failure to pay restitution without a finding of intentionality or bad faith. Such court findings are based upon federal equal protection constitutional principles and upon the provisions in some state constitutions prohibiting the use of criminal imprisonment in response to a failure to pay a civil debt. Such revocation has also been cited as a violation of the Eighth Amendment's prohibition against excessive fines and cruel and unusual punishment.

If an offender is incarcerated under the terms of his original sentence following willful failure to pay restitution, a number of procedures are used by different states to deal with the restitution obligation. In Alaska, for example, the state's restitution statute instructs the court to deduct \$50 from the offender's restitution obligation for every day of incarceration. Such offenders remain in custody until their restitution obligation is fulfilled or for one year, whichever period is shorter. In those states in which the victim is allowed to place a lien on the offender's property, an offender can be released from incarceration following revocation once the victim has been paid an execution upon the lien.

An alternative approach to respond to an offender's willful failure to pay a restitution obligation is to order community service work in lieu of the monetary restitution. This approach has been supported by statute in the state of Kansas and is in use in a number of jurisdictions depending upon the nature of the individual case and the magnitude of the restitution obligation. For example, a prosecutor in Missouri reported that judges in his jurisdiction favor adding conditions to probation in those cases in which an offender fails to pay restitution rather than revoking the probation and sending the offender to the state's crowded correctional facilities.

Administrative Options and Incentives for Compliance

A variety of incentives are used by the courts and restitution programs to encourage full compliance with restitution orders. Major approaches include reductions in the level of probation supervision and termination of probation when payment is made in full. Research is needed on the degree to

which offenders view the various incentives as valuable encouragement for compliance. It is possible that many offenders view probation supervision as only a minor irritation. In such cases, reduction or elimination of probation supervision may not serve as a substantial incentive for compliance with restitution orders.

A number of administrative procedures can increase the likelihood of offenders paying restitution obligations. For example, in Texas the court can require offenders to request their employer to send a certain portion of the offender's salary to the court for payment of restitution. In other states (e.g., Kentucky and Missouri), victims are empowered to place a lien on the assets of the offender. If the offender does not pay restitution, the victim can execute against the assets to pay the restitution obligation. A pretrial diversion program in Delaware has required offenders to agree that they will give up their driver's license if they fail to make restitution.

Other administrative and civil law procedures that restitution programs may wish to consider for the collection of funds include:

- voluntary payroll deduction arrangements with the offender's employer;
- the garnishment of offender wages; and
- the attachment of assets of the offender.

Most offenders have very limited assets and relatively unstable employment situations that limit the workability of these approaches. For offenders with substantial assets or stable, well paying jobs, however, these techniques should be considered if it appears that the offender will not otherwise voluntarily submit payments for restitution in a timely fashion.

As was noted earlier, some restitution programs provide offenders with temporary employment in order to enable them to pay their restitution obligation. For example, the Earn-It Program sponsored by the Quincy, Massachusetts District Court is a prominent example of this approach. The program has made arrangements with a wide variety of local merchants for the hiring of offenders who have restitution orders. The offenders pay their restitution obligations with funds raised from the temporary employment and the offenders, the victims, and the employers are reported to be pleased with the program's services.

A number of jurisdictions have empowered the courts to enforce restitution orders in the same fashion as civil judgments. For example, both Alabama and Delaware empower judges to enter civil judgments for victims following a determination of restitution. The Federal Victim and Witness Protection Act of 1982 states that, "an order of restitution may be enforced by the United States or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action." As was noted earlier,

the imposition of restitution obligations akin to civil judgments has raised constitutional challenges due to concern that offenders are being deprived of their right to due process safeguards. Stark and Goldstein report that judges in Rochester, New York have required offenders to consent to a civil judgment of damages for the purposes of paying their restitution obligation.¹ Such consent is required as a condition of "probation, pretrial diversion, or parole." This approach by judges in Rochester is interesting because it occurs in the absence of a statute authorizing the conversion of restitution orders to civil judgments.

Having Offenders Internalize a Commitment to Restitution

The victim-offender restitution programs described in Chapter 2 seek to have victims and offenders mutually agree upon the appropriateness of restitution. The mediation sessions sponsored by such programs are designed to enable the offender to develop an appreciation for the loss suffered by the victim and to encourage them to feel a sense of obligation to pay restitution. Such an approach differs considerably from the application of incentives for compliance with restitution orders or punishment for non-compliance. The use of rewards or punishment is targeted upon the offender's behavior, and sufficient incentives or sanctions may result in compliance with restitution orders independent of any attitude change on the part of the offender. The victim-offender reconciliation programs, on the other hand, target offender's attitudes directly through the face-to-face meetings with victims. These programs seek to have offenders internalize a commitment to restitution as an appropriate response to their behavior.

Summary and Conclusions

Many jurisdictions across America are experimenting with restitution practices. This report has reviewed the major types of mechanisms that have evolved, the procedures that they use, and their accomplishments and problems in attaining their goals.

Four major types of restitution programs are currently in operation:

- (1) **Victim/Witness Assistance Programs Providing Restitution.** These programs are sponsored by victim/witness assistance efforts and are structured to provide victims with a wide array of emergency and social services in addition to restitution case processing.
- (2) **Victim-Offender Reconciliation Programs.** These efforts hold face-to-face meetings between victims and offenders to arrange restitution and also to deal with the psychological issues con-

fronting both the victim and the offender following an offense. These programs are typically sponsored by non-profit agencies.

- (3) **Restitution-Employment Programs.** Programs of this type not only assess the damages arising from a crime and develop recommendations regarding the amount of restitution required, but also provide the offender with temporary employment in order to enable the offender to pay the restitution obligation. This type of program is typically operated by a probation department.
- (4) **Restitution as a Function of Routine Probation Supervision.** Many probation departments have integrated restitution practices into the routine casework of probation officers. Since probation departments often have the responsibility for collecting restitution from offenders, this approach enables a probation officer to follow a case from the initial restitution recommendation through collection.

Regardless of the type of restitution mechanisms, several basic tasks are required of all restitution programs, including: (1) referral mechanisms, (2) case criteria and case screening techniques, (3) loss determination methods, and (4) restitution collection procedures. In addition, restitution mechanisms need to have procedures that are fair to both victims and offenders. Minimal elements required for fair procedures include:

For Victims:

- The Opportunity to Claim All Relevant Losses; and
- Developing Realistic Expectations Regarding Restitution.

For Offenders:

- Fair Case Selection Criteria;
- Fair Procedures for Determining the Amount of Damages;
- The Opportunity to Challenge Restitution Recommendations at a Hearing; and
- The Judicial Development of Precise Restitution Orders.

Restitution mechanisms have a diverse array of goals, related to victims, the justice system, and offenders. Major conclusions regarding the various goals include:

Victim-Related Goals

- **Economic Goals.** Victim losses tend to be relatively small in most cases. The amount of restitution ordered is comparably

small. The compliance by offenders in paying restitution obligations is highly variable across programs, and these variations are reviewed in the text and summarized in Exhibit 4.2. The data suggest that privately sponsored programs have higher levels of full compliance with restitution orders than publicly sponsored programs, but the data are based on project self-reports and should be interpreted cautiously. Limited data are available regarding victim perceptions of the adequacy of ordered restitution. In one survey, approximately one-third of victims contacted indicated that they felt the ordered restitution was too lenient.

- **Psychological Goals.** Research on restitution efforts that use “face-to-face” mediation of restitution obligations suggests that victims may receive psychological benefits from participation in the mediation sessions. Benefits include reduced fear and anger and increased understanding of their situation. This research has focused upon cases involving acquaintances, and further research is needed on stranger-to-stranger offenses. Very little beyond anecdotal information is available regarding the psychological impact of restitution programs that do not hold face-to-face meetings.

Justice System Goals

- **Reduction in Prison and Jail Caseloads.** This goal does not appear to have been attained, and such a failure seems inevitable given the nature of the cases handled by typical restitution mechanisms. Restitution efforts typically do not focus upon cases in which incarceration is highly likely or assured, and thus a relatively low impact on prison and jail caseloads is the result. Problems with restructuring programs to target such populations are discussed.
- **Reduction in Justice System Costs.** To reduce costs, restitution case handling would need to be less expensive than routine case processing. For example, if restitution did serve as an alternative to incarceration, its impact on system costs would be likely to be substantial. Restitution efforts, as presently designed, are unlikely to reduce system costs since they do not replace a more expensive alternative. Some evidence exists that the programs may increase costs by increasing the monitoring of offenders and revocations of probation. The other benefits associated with restitution may justify cost increases.

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- **Improved Public Credibility of the Justice System.** Relatively little information is available regarding whether restitution efforts lead to increased justice system credibility. Options for research on this topic are discussed in Chapter 4.
 - **Improved Crime Reporting by Citizens Anticipating Restitution.** Empirical data on the attainment of this goal are not available. The relatively low public visibility of restitution efforts may limit the impact of restitution on crime reporting levels.
 - **Deterrence of Offenders.** Tittle (1978) has speculated regarding the potential deterrent impact of restitution. The issues involved in this area are discussed in Chapter 4 but data are not available to assess restitution's role in deterrence.

Offender-Related Goals

- **Possible Impact on Offender Recidivism.** Proponents of restitution have speculated that offender participation in restitution efforts may increase their appreciation of the harm that they have done, heighten their sense of responsibility, and result in changed attitudes and lower levels of recidivism. The issues involved in assessing such an impact are reviewed; however, detailed evidence regarding such an impact is not currently available.
- **Reduced Intrusion of the Justice System in Offenders' Lives.** Since restitution does not typically serve as an alternative to incarceration, restitution sanctions do not normally reduce the intrusiveness of the justice system in offenders' lives (unless they are used as a form of pretrial diversion). Research by Miller (1981) indicates that restitution obligations can result in significant increased monitoring of offenders. Such increased supervision of offenders is an intentional outcome of some restitutional proponents, and all supporters of restitution would not agree that reduced intrusiveness is a worthwhile goal to be sought for many offenders.

As was noted earlier in this report, the concept of restitution is straightforward. Translating that concept into workable and enduring mechanisms can be challenging, however. This report highlights the current major strategies for developing restitution mechanisms. The central aim of restitution—to help right a wrong—is viewed by many as the very essence of “justice.” Restitution efforts across the nation are striving to make the concept of restitution a practical reality for America's victims of crime.

Footnotes

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APPENDIX
NAMES AND ADDRESSES OF PROGRAMS IN
SURVEY SAMPLE

Surveyed Programs: Public

Glendale Victim Assistance
7025 North 58th Avenue
Glendale, Arizona 85301
602-931-5593
Rita Kappinger/Terry Neary

Victim/Witness Assistance
1600 City Hall East
200 North Main Street
Los Angeles, California 80012
213-485-4515, Ext. 5009
Mia Baker

Restitution Fund-Parole Board
701 South Logan
Denver, Colorado 80209
303-778-8207
Lou Gherarbini

Office of Adult Probation
643 Maple Avenue
Hartford, Connecticut 06114
203-566-8360
James M. Coughlin

Criminal Justice Planning Commission
State Office Building
820 North French Street, 4th Floor
Wilmington, Delaware 19801
302-571-3430
Frank Carver

Probation and Parole Services
201 Southeast Sixth Street
Ft. Lauderdale, Florida 33307
305-763-6993
Gill Trover

Probation and Parole
1225 Omar Road
West Palm Beach, Florida 33405
305-837-5175
Marty Simpson

Victim Witness Assistance
P.O. Box 649
Marietta, Georgia 30061
404-429-3576
David Anthony

Work Release Program
2800 Gravier Street
New Orleans, Louisiana
504-827-8557
Michael Geerken

Earn-It
Quincy District Court House
Dennis Ryan Parkway
Quincy, Massachusetts 02169
617-471-1650
Andrew Kline

Restitution
A-1100 Government Center
Minneapolis, Minnesota 55487
612-348-5051
Dennis Smith

Restitution Unit
215 East Bonanza
Las Vegas, Nevada 89158
702-385-0543
Karen Smith

Division of Victim and
Justice Services
P.O. Box 27687
Raleigh, North Carolina 27611
919-733-7974
Jim Scarcella

Multnomah Victim Assistance
1021 Southwest 4th Street
Room 804
Portland, Oregon 98203
503-248-3222
Marylin Culp

Surveyed Programs: Public (continued)

Victim Restitution Unit
Warwick Police Department
99 Veteran's Memorial Drive
Warwick, Rhode Island 02887
401-737-2244
Joseph P. Silvia

Seventh Circuit Victim Assistance
703 Adams Street
Rapid City, South Dakota 57702
605-394-2595
Ken Foss

Probation
4824 Alberta Street
Suite 361
El Paso, Texas 79905
915-546-2112
Frank Lozito

Harris County Court
Residential Program
49 San Jan Jacinto
Houston, Texas 77002
713-229-9561
Mike Bearden

Tom Ferras
Return-It
103 South Main Street
Waterbury, Vermont 05676
802-241-2295

Surveyed Programs: Private

Santa Clara County Victim
Witness Program
777 North First Street
Mezzanine Suite
San Jose, California 95112
408-295-2656
Joe Yompov

DeKalb County VORP
1020 DeKalb Avenue
N.E. Room #11
Atlanta, Georgia 30307
404-572-8151
Les Zook

Elkhart County VORP
220 West High Street
Elkhart, Indiana 46516
219-295-6149
David Ball

VORP
103 North College Street
Room 203
Bloomington, Indiana 47401
812-332-4488
Nan Witcher

Victim/Offender Restitution
Services
229 South 8th Street
Kansas City, Kansas 66101
913-621-1504
Sister Peg Driscoll

VORP
Box 506
U.S. 31 South
Alpha Center
Traverse City, Michigan 49685
616-947-4807
Gary Knapp

Community Service/Victim Assistance
County Building No. 1
Main and Court Streets
Batavia, New York 14020
716-344-2558
Dennis Whitman

VORP of Benton County
248 Southwest Jefferson
P.O. Box 1222
Corvallis, Oregon 97339
503-757-8677
Joan Shaye

VORP
298 Green Street
Harrisburg, Virginia 22801
703-434-0059
Barry Hart

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