

RESTITUTION IN NEW YORK STATE:

Recommendations for Improvement

A Joint Report to the Governor
and the Legislature



by the

New York State Division of Criminal Justice Services

John J. Poklemba
Director of Criminal Justice
and Commissioner

and the

New York State Crime Victims Board

Catherine Abate
Chair

June 1988

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NEW YORK STATE
MARIO M. CUOMO, GOVERNOR

A Joint Report of the

DIVISION OF CRIMINAL JUSTICE SERVICES
John J. Poklemba
Director of Criminal Justice and Commissioner

and the

CRIME VICTIMS BOARD
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EXECUTIVE SUMMARY

Chapter 965 of the Laws of 1984 requires the New York State Division of Criminal Justice Services (DCJS) to compile and review information transmitted by the Division of Probation and Correctional Alternatives (DPCA) and any other official designated collected agencies on the number of restitution and reparation orders issued in New York State, the number satisfied, and the types of crimes for which restitution is ordered. Chapter 965 further stipulates that DCJS is responsible for making recommendations to promote the use of restitution and encourage its enforcement.

Chapter 14 of the Laws of 1985 includes a similar mandate for the New York State Crime Victims Board (CVB). Specifically, CVB is required to compile and review data transmitted by DPCA on the number of victim impact statements prepared by local probation departments and, based on these data, make recommendations to promote the use of restitution and encourage its enforcement.

In order to provide a comprehensive overview of the use of restitution in New York State and to develop policy and programmatic recommendations, DCJS and CVB worked cooperatively to issue this joint report to the Governor and the Legislature. The findings presented in this report are based on analyses of DCJS's restitution reporting system, CVB's victim impact reporting system, and an exploratory survey of probation departments on the use and administration of restitution.

Collection and Reporting of Restitution and Victim Impact Statement Data

Between 1985 and 1986, both the number of restitution orders issued and the number satisfied increased. There was a 34.5 percent increase in restitution orders during this period and a 62.0 percent increase in the number of orders satisfied. It is important to note, however, that these reported changes may partially reflect problems surrounding implementation of the new restitution information system in addition to real changes in the volume of restitution activity.

Requests for victim impact information, victim responses to these requests, and the number of statements forwarded to the sentencing courts appear to have increased 100 percent from 1985, when reporting was first required, through 1986. However, these large changes in measures of victim impact statement activity are artifacts of problems surrounding implementation of the reporting system. During the second half of 1986, it appeared that victim impact statement data were reported more routinely than in prior months. These last six months of data suggest that approximately two-thirds of victims responded to requests for victim impact statements and that local probation departments forwarded almost all of the information they received to the sentencing courts.

Unfortunately the aggregate nature of both reporting systems places significant limits on the ability of DCJS and CVB to make recommendations to promote the use of restitution and encourage its enforcement as mandated by law.

A Survey of the Use and Administration of Monetary Restitution

An exploratory survey on the use and administration of restitution was developed by DCJS in cooperation with CVB and DPCA to supplement the data available through the existing reporting system. The objectives of the survey were (1) to examine the impact of restitution law on the policies and practices of both DPCA and local probation departments and (2) to identify gaps both in the law and in the policies and practices of DPCA and local departments that interfere with the use and administration of restitution. Local probation departments were chosen to be the recipients of this survey because of their responsibility for making sentencing recommendations to the courts, as well as their central role as designated collection agencies for restitution in New York State.

Victims' Rights: Victim Impact Statements

Victim impact statements, which are reported to the courts by local probation departments play a central role in informing the courts of victims' views regarding the disposition of cases, including the amounts of restitution sought by victims. The Criminal Procedure Law requires the inclusion of these statements in pre-sentence reports, but not in pre-plea reports. It is important that victim impact statements also be included in pre-plea reports because the courts are not required to request pre-sentence reports when pre-plea reports are prepared.

1. It is recommended that the Criminal Procedure Law be amended to require the inclusion of victim impact statements in pre-plea reports.

Locating Victims. Locating victims to request victim impact information for pre-plea or pre-sentence reports does not appear to be a problem for most probation departments. When the names and addresses of victims were not included in the case files provided by the courts, the police or district attorneys were usually able to provide departments with this information.

Methods used to contact victims. DPCA guidelines recommend that victims or victims' families be provided with victim impact statement forms to complete. The guidelines recommend that these forms be accompanied by cover letters explaining their purpose and advising victims who to contact for assistance. In cases involving serious or violent crimes, DPCA further

recommends telephone contact before this correspondence is mailed. The intent of this process is to convey professional sensitivity and interest and to assure victims that their rights and concerns will be considered by the courts at the time of sentencing.

Responses indicate that most departments have adopted, to some degree, the DPCA guidelines that recommend contacting victims by letter for victim impact information. While a majority of departments reported that some victims were also contacted by telephone or in-person, it was not possible to determine if these contacts with victims were always used when a serious or violent crime was involved.

2. It is recommended that DPCA promulgate rules and regulations requiring departments to provide victim impact statement forms accompanied by cover letters to victims.
3. It is recommended that DPCA promulgate rules and regulations that require departments to contact victims of serious or violent crimes prior to providing victim impact statement forms, except in those cases where victims have stated that they do not wish to be contacted regarding the crime.

How often victims provided victim impact information and sought restitution. The majority of victims appear willing to submit victim impact information. Data received by CVB on the number of requests for victim impact information indicate that roughly two-thirds of the victims in New York State responded to requests for this information. Probation departments reported a similar degree of willingness on the part of victims to provide victim impact information. The data suggest that while a majority of the victims responded to requests for victim impact information, there was still a sizable portion of victims that did not. In most instances victims did not provide reasons to departments for not seeking restitution. One of the reasons given by the remainder of victims who did provide reasons was "monetary compensation received from third-party payors."

Victim services programs. Victim services programs operating in 58 counties in New York State provide an array of services, including support and advocacy. These programs could provide an alternative method for contacting victims to secure victim impact information. Twenty departments were unaware that these programs were located in the counties they serve, and only 23 departments reported that they had sought their assistance in collecting victim impact information. A majority of departments sought the assistance of victim services programs to secure information from victims who were either reluctant or found it difficult, because of the trauma of the crime, to provide this information. In instances where the criminal courts do not request preparation of reports by probation departments, victim services agencies can play a central role in ensuring that victims, when appropriate, are informed of their right to restitution.

4. It is recommended that measures be taken by both DPCA and CVB to create an environment that would encourage a closer working relationship between probation departments and victim services programs.
5. It is recommended that DPCA encourage departments to explore the use of victim services programs to collect victim impact information.
6. It is recommended that DPCA, in conjunction with CVB, conduct an evaluation of the victim services programs operated by two probation departments in the State to determine the effect of these programs on the collection of victim impact information as it relates to restitution and related services provided by departments to victims.

Third-party payors. Third-party payors, such as the Crime Victims Board, who compensate crime victims have a legal right of subrogation to any money to be received by victims or victims' families through restitution orders or civil judgments. Forty-seven of the probation departments reported that they have implemented procedures to determine whether or not victims requesting monetary restitution have or will be receiving monetary compensation from third-party payors.

Only 32 departments reported that they "usually" or "always" recommended to the courts that restitution be paid to the third-party payors when they were aware that victims had or were going to receive compensation from these payors. The failure of the departments to always recommend that third-party payors receive restitution may be due to the fact that statutory directives for determining who is eligible to request restitution from offenders are not clear. New York State law supports the eligibility of third-party payors to receive restitution from offenders.

It is important that the subrogation rights of these payors are upheld in order to prevent the double recovery of losses by victims; otherwise, it is possible that victims or their families could receive more restitution than that to which they are legally entitled.

7. It is recommended that victim impact statement forms used by local probation departments to request victim impact information be amended to include questions to determine whether or not victims have received or will be receiving compensation from third-party payors.
8. It is recommended that CVB provide district attorneys and probation departments with the names of clients who have either applied for or been awarded compensation for crimes committed in the counties to which they provide services, to help prevent the double recovery of losses by victims.

9. It is recommended that Article 390 of the Criminal Procedure Law be amended to require that victim impact statements presented to the courts by probation departments include information on the amounts of financial assistance provided by third parties to the victims of crimes.
10. It is recommended that Article 390 of the Criminal Procedure Law be amended to require probation departments to recommend to the courts that restitution be paid to third-party payors in all instances where they are aware that victims or their families have received or will be receiving compensation from these payors--regardless of whether or not victims request restitution.
11. It is recommended that Section 60.27 of the Penal Law be amended with a subdivision that specifies third parties eligible to receive restitution from offenders. These third parties should include those specified in the ABA's proposed guidelines for restitution: the victim; a state crime victim compensation program or other governmental agency which has provided financial assistance or compensation to the victim as a result of the crime; a third party which has provided financial assistance or compensation to the victim as a result of the crime; or an insurer or surety with a right of subrogation, to the extent that the insurer or surety has reimbursed the victim for actual damages resulting from the crime.
12. It is recommended that DPCA monitor developments regarding the legality of ordering restitution in cases where there are no direct victims (e.g., drug distributors) to determine the feasibility of establishing special funds through restitution orders to provide services for indirect victims (e.g., rehabilitation for drug abusers).

Ability of Offenders to Pay Restitution

Chapter 965 of the Laws of 1984 "declares that it is the policy of this State to encourage restitution by a person convicted of a criminal offense to the victims of his or her criminal activities in appropriate cases, and to the extent that the defendant is reasonably able to do so". This policy regarding offenders' ability to pay restitution is not stated in Section 60.27 of the Penal Law which contains the statutes governing restitution. Similarly, Article 390 of the Criminal Procedure Law which deals with the preparation of pre-sentence reports, does not require that probation departments evaluate offenders' "ability to pay" in these reports. Furthermore, DPCA rules and regulations clearly state that pre-plea, pre-sentence, and pre-disposition reports must contain, when appropriate, information regarding offenders' financial resources including "ability to pay" restitution.

Evaluation and recommendation of offenders' "ability to pay" by probation departments. The majority of departments, 92.6 percent, reported that offenders "usually" or "always" had the financial resources to pay at least a

portion of the restitution victims had requested and were legally entitled to receive. However, criteria used by departments to measure "ability to pay" varied dramatically. The lack of standard criteria permits broad discretion on the part of both probation departments and courts when determining whether or not offenders have the ability to pay restitution.

13. It is recommended that Section 60.27 of the Penal Law be amended to require that the courts use a standard statewide formula for evaluating the amounts of restitution offenders have the ability to pay.
14. It is recommended that DPCA develop a standard statewide formula for evaluating the amounts of restitution offenders have the ability to pay and to promulgate this formula in their rules and regulations. This formula should address two levels of evaluation: (1) types of income, assets, and debts to be considered and, based on this information, (2) how the amounts of restitution to be paid by offenders will be calculated for payment schedules.
15. It is recommended that Section 390 of the Criminal Procedure Law be amended to require probation departments to assist the courts in evaluating offenders' ability to pay restitution by including an assessment of this information in pre-plea and pre-sentence reports requested by the courts.
16. It is recommended that Section 390 of the Criminal Procedure Law be amended to require departments to include recommendations in those reports that specify the amounts of restitution to be paid and the manner of payments.

Clarification of New York State's "ability to pay" policy. Current law does not stipulate whether "ability to pay" must be considered when determining the amounts of restitution to be ordered or when establishing payment schedules. A majority of departments reported that they usually recommended offenders pay full restitution even though they had the ability to pay only a portion of the amounts. While most probation departments reported that in some instances they ordered partial restitution, victim/community service, or both for these type of offenders, responses indicated that full restitution was ordered most frequently.

Some probation departments reported that the courts they serve had established policies that demanded full payment of restitution regardless of offenders' "ability to pay." Probation departments recommended and the courts ordered the payment of restitution with similar frequency, suggesting that the courts' policies regarding "ability to pay" may have influenced the restitution recommendations of probation departments. There were some probation departments that established full-payment policies even though the courts they serve had not.

22. It is recommended that Section 170.55 of the Criminal Procedure Law be amended to permit the courts to extend adjournments in contemplation of dismissal for one year in those instances when it is necessary to provide defendants with additional time to complete restitution payments.

Multiple offender crimes: joint and several liability. New York State case law directs the courts to order the full amount of restitution for each offender involved in a multiple offender crime. In People v. Turco, 130 A.D.2d 785, 515 N.Y.S.2d 853 (2nd Dept. 1987), the court found that each offender convicted for a multiple offender crime could be ordered to pay the full amount of restitution that both the victim and the insurance company were legally entitled to receive. The intent of this decision was not to compensate the victim in excess of actual loss but to aid in the rehabilitation of the offender. The legislative intent of the New York State restitution statutes is to make the victim whole and serve the rehabilitative purpose of requiring the defendant to appreciate the economic consequences of his or her crime. This legislative intent would be fostered by requiring each defendant to be jointly and severally responsible for the entire amount of the damage caused.

23. It is recommended that Section 60.27(5) of the Penal Law be amended to require the courts to order each convicted offender of a multiple-offender crime to pay the full amount of restitution the victim is legally entitled to receive, allowing these orders to be modified or vacated once the victim is fully compensated.

Administration of Restitution

The administration of restitution is a complex task that is governed primarily by the statutory directives contained in Article 420 of the Criminal Procedure Law. DPCA has issued guidelines to local probation departments to assist them in the performance of this task. These guidelines, however, have not yet been incorporated into the rules and regulations promulgated by DPCA. Executive Law empowers the State Director of the DPCA to adopt general rules concerning the administration of probation services and correctional alternatives. Such rules, stipulating minimum acceptable levels of performance, have the full force and effect of law. Variations in practices identified by the survey point to the need for standardization and enhancement of the administration of restitution by designated collection agencies.

24. It is recommended that DPCA promulgate rules and regulations for the administration of restitution to ensure standardization in practices across the State.
25. It is recommended that the Criminal Procedure Law be amended to specify DPCA as the State agency responsible for oversight and enhancement of restitution administration in all designated

The State's restitution policy does not specify at what point "ability to pay" should be taken into consideration by the courts when restitution is used as a criminal sanction. Some case law requires the courts to consider "ability to pay" when ordering restitution, while other case law requires that "ability to pay" only be considered when determining the manner of payments.

The lack of clarity in statutory directives regarding "ability to pay" is reflected in the conflicting restitution practices of a large number of criminal justice practitioners responsible for carrying out this policy. By clarifying the role that "ability to pay" plays in the State's restitution policy, it may be possible to more adequately address the rights of victims without diminishing the consideration of "ability to pay."

17. It is recommended that Section 60.27 of the Penal Law be amended to specify that the States' restitution policy require the courts to consider offenders' ability to pay restitution.
18. It is recommended that Section 60.27 of the Penal Law be amended to require the courts to direct offenders, in all cases involving restitution, to pay the full amounts of restitution that the courts determine victims are legally entitled to receive.
19. It is recommended that the manner of payments for restitution ordered by the courts be based on offenders' "ability to pay." This would not preclude the courts from ordering partial restitution with the agreement of victims; if victims choose not to participate, the courts, at their discretion, could reduce the amounts of restitution that victims would have been legally entitled to receive. Any portion of the restitution that offenders are financially unable to pay before the conclusion of their sentences could be vacated by the courts when offenders have made "good faith" efforts to comply with orders.
20. It is recommended that DPCA develop a schedule for the periodic re-evaluation of offenders' ability to pay restitution to allow the courts to adjust offenders' restitution payments when there are significant changes in their financial status.

Extension of Sentences. In telephone interviews, officials in Minnesota, North Carolina, and Texas reported that in their states probation sentences can be extended to provide offenders with additional time to pay restitution. At the present time, a conditional discharge is the only sentence that can be extended by the courts in New York State.

21. It is recommended that Section 65.00 of the Penal Law be amended to permit the courts to convert probation sentences to conditional discharges in instances where offenders have been financially unable to pay the amounts of restitution ordered by the courts in order to provide these offenders with additional time to complete payments.

collection agencies. In doing so, rules and regulations promulgated by DPCA would also be applicable to designated collection agencies not under the purview of DPCA.

26. It is recommended that appropriate resources be allocated to DPCA for promulgation of rules and regulations for the administration of restitution and for the oversight and enhancement of restitution administration in all designated collection agencies.

Notifying victims of the conditions of orders. Section 420.10(1)(d) of the Criminal Procedure Law instructs the courts to direct that notice be given to victims regarding the amounts of restitution ordered, the conditions of restitution orders, the name and address of the designated collection agency, and the availability of civil proceedings for collection, but does not specify who is to give this notice. DPCA guidelines recommend that probation departments provide written notification of this information to victims.

27. It is recommended that Section 420.10(6) of the Criminal Procedure Law be amended to specify that the courts direct designated collection agencies to provide written notification to victims of the amounts of restitution ordered, the conditions of restitution orders, the name and address of the designated collection agency, and the availability of civil proceedings for collection.
28. It is recommended that a standard "court order" form specifically for restitution orders be developed by DPCA and used by the courts when ordering restitution. This form would explicitly state the courts' directives to probation departments and any other parties involved in the administration of restitution (e.g. directives requiring district attorneys to file restitution orders with county clerks).

Collection of restitution and the designated surcharge from convicted offenders. The only point in the criminal justice process where the courts have the statutory authority to order offenders to pay both restitution and a five percent designated surcharge is at the time of sentencing. In addition, the courts must direct offenders to remit payments for restitution orders imposed on them and the five percent surcharge to designated collection agencies.

Survey responses indicate that some courts have not fully complied with these directives. Possible reasons for this non-compliance may include: sensitivity to offenders' financial difficulties, desire to reduce "red tape", need for personal involvement, and tradition. The failure of the courts to direct the payment of the surcharge in all cases to designated collection agencies creates a disparity in the administration of justice and undermines the ability of the State to monitor the extent to which restitution is used. It was not possible to determine whether this lack of compliance reflects the courts' lack of familiarity with or willful disregard of these statutes.

29. It is recommended that DPCA contact the Office of Court Administration (OCA) to determine the feasibility of developing a restitution component for inclusion in OCA training programs in order to disseminate information regarding the State's restitution policies.

Collection of restitution from non-convicted offenders. While there are no legal provisions governing the collection of restitution from offenders who pay restitution at other points in the criminal justice process prior to sentencing, no law prohibits designated collection agencies from collecting this restitution. However, the statutory authority of the courts to direct payment of the five percent designated surcharge is limited to convicted offenders on whom the courts have imposed restitution orders.

- o **Adjournments in contemplation of dismissal.** The courts lack statutory authority to impose conditions such as the payment of restitution upon offender granted adjournments in contemplation of dismissal (ACD) except in cases where the sole remaining charges are for misdemeanor marijuana offenses. As a result, when defendants who agree to pay restitution as part of an ACD dispute resolution agreement fail to do so, the courts cannot revoke ACDs and restore cases to court calendars.

30. It is recommended that Section 170.55 of the Criminal Procedure Law be amended to allow the courts when granting ACDs to require offenders, with their consent, to make restitution to the victims of their crimes.

- o **Restitution paid prior to sentencing.** While 48 departments reported that they collected at least some portion of restitution paid by offenders granted ACDs, only eight of these departments reported collecting ACD restitution during 1986 to DPCA. Underreporting of ACD restitution and other restitution paid prior to sentencing may have occurred because departments are required to report only on restitution orders imposed by the courts on convicted offenders.

Payment of restitution by offenders at other points in the process prior to sentencing occurs as a result of informal agreements among the parties involved. Because of the informal nature of ACD and other pre-sentence restitution agreements, there are no statutes that currently govern the conditions of payment. As a result, it is likely that known restitution activity in the State was underreported for 1986 by many departments.

31. It is recommended that Section 60.27 of the Penal Law be amended to require that all restitution, regardless of type of disposition, be directed to designated collection agencies.

Collection of restitution through restitution/employment programs. Several states have established restitution/employment programs designed to enable offenders who might not normally have the ability to compensate their

victims to do so. These programs can generally be classified under two different program models: (1) programs whose primary objectives are both the diversion of offenders from incarceration and the payment of restitution, and (2) programs whose primary objective is the payment of restitution. These community-based programs, which are either residential or non-residential, provide employment in the community for participants.

32. It is recommended that DPCA plan and develop restitution/employment programs to assist offenders in securing employment to facilitate compliance with restitution orders.

Forms of payment accepted from offenders. DPCA guidelines state that both cash and some types of checks are acceptable forms of payment of restitution. All of the 58 probation departments reported that money orders were the most widely accepted form of payment from offenders. Cash was the next most widely accepted form of payment, followed by certified checks, bank drafts, personal checks, and third-party checks. Departments' estimates indicate that during the month prior to the survey, roughly 60.0 percent of the restitution collected statewide was paid in cash. None of the departments reported that credit cards were used for the payment of restitution.

33. It is recommended that DPCA take appropriate measures to institute the use of credit cards to facilitate the payment of restitution.

Monitoring offenders' compliance with restitution orders. Designated collection agencies are required by law to inform the courts whenever offenders fail to make scheduled payments. Because payment schedules play an integral role in the monitoring of compliance to restitution orders, it is critical that these schedules be included in restitution orders issued by the courts. While probation departments are not required to include payment schedules in restitution recommendations to the courts, case law stipulates that the courts must include specific payment schedules in restitution orders--they cannot delegate this responsibility to the designated collection agencies. However, departments estimated that a substantial proportion of the orders did not contain specific payment schedules. The more frequently departments recommended payment schedules to the courts in pre-plea and pre-sentence reports, the more often the courts included payment schedules in restitution orders. Forty-nine departments reported that they "usually" or "always" established payment schedules when the courts failed to do so. However, if offenders fail to comply with schedules established by probation departments, enforcement of those schedules might be hindered because they were not included in original court orders.

34. It is recommended that Section 60.27 of the Penal Law be amended to require that the courts include payment schedules in all restitution orders to enhance the enforcement of restitution and conform statutory law to case law.

Notifying the courts of non-compliance. Although Section 420.10(1)(d) of the Criminal Procedure Law and DPCA guidelines state that the courts should be notified whenever payments are not made on schedule, the vast majority of probation departments did not always take this action. This lack of compliance may have occurred because neither Section 420.10(1)(d) of the Criminal Procedure Law, nor DPCA guidelines explicitly state what constitutes default.

35. It is recommended that DPCA develop and promulgate rules and regulations that provide uniform and detailed procedures governing non-compliance with restitution orders, including what constitutes default.

36. It is recommended that DPCA develop and promulgate rules and regulations to specify procedures that should be followed to secure delinquent payments from offenders before they are returned to the courts because of their failure to pay restitution.

Enforcement of restitution orders. If either probationers or non-probationers fail to comply with restitution orders, only the courts or district attorneys have the statutory authority to invoke enforcement mechanisms. The role of the designated collection agencies in administering restitution is limited to fiscal monitoring of orders. Probation departments can attempt to enforce probationer restitution orders by filing violation reports which petition the courts to revoke the probation sentences of probationers who fail to fulfill the restitution conditions of their sentences. Filing of violation reports is not an actual enforcement mechanism but, rather, is a means of facilitating enforcement action by the courts. At present, incarceration and judgments are the only measures available to the courts and district attorneys for the enforcement of restitution orders.

The civil measures currently provided for in statute for the enforcement of restitution are less extensive than those provided in statute for the enforcement of child support orders. In addition to the filing of judgments, Section 454 of the Family Court Act also provides for income execution (e.g., garnishment of wages), and income tax (federal and state) interception as enforcement mechanisms. Under the Family Court Act, child support collection agencies also have the statutory authority to institute civil actions on behalf of aggrieved parties to enforce support orders. At present, district attorneys are the only government officials who have statutory authority to institute civil actions to enforce restitution. Current statutory language implies that district attorneys, alone, have the authority to institute civil actions and that these actions can be undertaken at their discretion or must be undertaken at the direction of the courts. However, conversations with probation practitioners suggests that the role of district attorney in the enforcement of restitution is unclear.

37. It is recommended that DCJS develop a restitution component for inclusion in the district attorney training program in order to disseminate information regarding the State's restitution policies.

38. It is recommended that appropriate measures currently specified in sections 454 of the Family Court Act for the enforcement of child support orders be adapted for use in the enforcement of restitution (e.g., income execution and income tax interception).
39. It is recommended that Section 420.10(6) of the Criminal Procedure Law be amended to also allow designated collection agencies, upon approval from the courts, to institute civil actions to enforce restitution orders.
40. It is recommended that Section 420.10(6) of the Criminal Procedure Law be strengthened to require district attorneys and designated collection agencies to institute civil proceedings when offenders have defaulted on restitution orders.
41. It is recommended that the statutory directive contained in Section 420.10(6) of the Criminal Procedure Law be strengthened as follows: "The district attorney [may, in his discretion, and must, upon order of the court] or designated collection agency shall, when appropriate, and with the approval of the court, institute proceedings to collect such fine, restitution or reparation."

Methods for disbursing restitution to victims. Guidelines prepared by DPCA recommend that restitution checks be mailed to victims by probation departments and that checks not be delivered in person by probation officers. This guideline is important in light of the fact that probation department staff are not usually bonded and if checks were stolen and cashed, departments would be liable for these losses. The vast majority of departments reported that checks were usually mailed to victims in accordance with DPCA guidelines.

Schedules for disbursing restitution. There are no statutes or guidelines that specify how often restitution should be disbursed to victims. Fifty-three of the departments reported that they had specific schedules for disbursing restitution that ranged from "as soon as possible," to "once a month." Some schedules were dependent upon the amounts of restitution to be disbursed.

Policies that require orders to be satisfied before disbursement are undesirable because victims are entitled to receive any restitution paid by offenders within a reasonable period of time. Similarly, policies that require substantial amounts of money to be collected before restitution can be disbursed to victims may be unfair.

42. It is recommended that DPCA develop and promulgate rules and regulations specifying procedures for the disbursement of restitution to victims.

Disbursement of restitution to third-party payors. Probation department estimates indicated that, Statewide, 11.5 percent of the restitution orders they received directed payment of restitution to third-party payors such as CVB

or insurance companies. In many instances, third-party payors have a legal right of subrogation to restitution for compensation paid to victims or victims' families. This contractual right of subrogation may not be diminished by the courts or designated collection agencies absent the consent of third parties with this right. In instances where these third parties have not fully compensated victims for their losses, both victims and third parties should receive their proportional share of each restitution payment.

Disbursing restitution to multiple victims. Restitution orders issued by the courts can direct offenders to pay restitution to more than one victim. At the present time, there are no statutes or guidelines that deal with the disbursement of restitution to multiple victims. Probation department responses indicated that there were a number of procedures used to disburse restitution to multiple victims. Departments' disbursement policies or directives from the courts that arbitrarily establish the order in which victims are paid do not treat victims equitably, and policies that withhold restitution from victims until an order is satisfied, unnecessarily deprive victims of restitution they are entitled to receive within a reasonable period of time. Policies that disburse restitution on a rotating basis to victims may deprive some victims of their share of restitution if offenders fail to pay the full amounts ordered by the courts.

43. It is recommended that Section 420.10 of the Criminal Procedure Law be amended, along with DPCA rules and regulations, to specify that each of the victims receive their proportional share of each restitution payment made by offenders. Any third-party with the right to subrogation would be entitled to the proportional amount the compensated victim would have otherwise received if compensation had not been provided by this third party.

Inability to disburse collected restitution. Probation departments may not always be able to disburse restitution that has been collected. This situation occurs when victims do not inform departments of changes of address. Probation departments' estimates indicated that, statewide, only 3.1 percent of the victims could not be located for the disbursement of restitution. There is little departments can do to rectify this problem other than notifying victims to inform them of any changes of address.

Unsatisfied orders and disbursement of restitution. Section 420.10(7) of the Criminal Procedure Law stipulates that: "interest accrued from restitution bank accounts and any undisbursed restitution payments shall be designated for the payment of restitution orders that have remained unsatisfied for the longest period of time." DPCA guidelines state that interest accrued and undisbursed restitution must be deposited in an "Interest and Undisbursed Payment" (IUP) account. Neither the statute nor the guidelines specify how often these payments should be disbursed from IUP accounts.

In addition, limits are not placed on the amounts of restitution that can be disbursed to satisfy orders during a given period. For example, it is very likely that some counties deposit small amounts of interest and undisbursed restitution into IUP accounts each year. If the order that has remained unsatisfied the longest in one of these smaller counties has several hundred dollars of restitution that is still unpaid, the entire sum of money in the IUP account would be paid to one victim if payments are made annually. If a limit were established on the amount of money that could be disbursed to any one victim during a given year, several other victims would also be recipients of at least some of the restitution to which they are entitled.

44. It is recommended that Section 420.10(7) of the Criminal Procedure Law be amended to specify how often payments should be made to victims from IUP accounts.
45. It is recommended that Section 420.10(7) of the Criminal Procedure Law be amended to establish a ceiling on the amounts of restitution that would be paid from IUP accounts toward the satisfaction of any single restitution order during a given year.

Fiscal management and record keeping. Fiscal management and record keeping tasks associated with the administration of restitution are complex. Only 12 of the probation departments reported that they used computerized fiscal accounting systems for these tasks. An automated restitution accounting/reporting system would address fiscal management and record keeping needs of departments, reduce the costs of administering restitution, and would facilitate the implementation of recommendations made elsewhere in this report.

46. It is recommended that DPCA, with technical assistance from the Systems Improvements for Enhanced Community Safety (SIF ECS) Task Force, develop a standardized case-based automated restitution accounting/reporting system with the goal of statewide implementation that addresses the needs of both local probation departments and the State. This systems development effort should build upon the foundation established by those local probation departments with existing automated restitution systems.

Staff involved in the administration of restitution. The average department estimate of what proportion of their time was devoted to the administration of restitution was 12.0 percent. It was unlikely that departments could provide anything more than an estimate of the amount of time devoted to this task, due to the fact that most departments had not established programs that dealt solely with the administration of restitution. Instead, restitution has been subsumed under more general activities such as probation supervision and accounting.

Departments' estimates indicated that 13.6 percent of the work related to restitution was done by management, 29.5 percent by probation officers, and 56.9 percent by support staff. Among the tasks associated with departments' administration of restitution are: notification of victims of the conditions

of orders and the availability of civil proceedings for collection; collecting restitution; monitoring and enforcing probationer restitution orders; monitoring non-probationer restitution orders; disbursing collected restitution to victims; fiscal account management; record keeping; and reporting data to the State.

Costs of administering restitution. When the New York State Legislature enacted Chapter 965 of the Laws of 1984, no monies were appropriated in the budget to help cover the costs incurred by designated collection agencies for administering restitution. Instead, to cover these costs, the Legislature enacted the mandate that instructs the courts to direct offenders to pay a five percent surcharge to the designated collection agencies on the amounts of restitution ordered. This surcharge has proven to be inadequate for two reasons. First, the courts are not fully complying with the statutory mandate. Second, the collected surcharge is not used to administer restitution; the surcharge becomes general revenue, so the counties are not obligated to include these monies in appropriations to departments. Probation department budgets do not currently reflect the costs of administering restitution. This function is subsumed under other line items in department budgets.

47. It is recommended that Section 420.10 of the Criminal Procedure Law be amended to stipulate that the five percent designated surcharge be used specifically for the administration of restitution in the county in which it is collected.
48. It is recommended that departments, when feasible, establish the administration of restitution as a separate program within their agencies to allow them to request appropriations specifically for this program.

CHAPTER 1

RESTITUTION: A HISTORICAL AND LEGAL OVERVIEW

SECTION 1 INTRODUCTION

Chapter 965 of the Laws of 1984 amended Section 420.10 of the Criminal Procedure Law to require the New York State Division of Criminal Justice Services (DCJS) to compile and review information on the number of restitution orders issued in New York State, the number satisfied, and the types of crimes for which restitution was ordered. These data are transmitted to DCJS through the Division of Probation and Correctional Alternatives (DPCA) and, in the case of New York City, the Office of the Criminal Justice Coordinator. DCJS is further required to make recommendations to promote the use of restitution and encourage its enforcement.

The New York State Crime Victims Board (CVB) has a similar mandate related to the use of restitution in this State. Chapter 14 of the Laws of 1985 requires CVB to compile and review data transmitted by DPCA on the number of victim impact statements prepared by local probation departments and, based on those data, to make recommendations to promote the use of restitution and encourage its enforcement.

In an effort to provide a comprehensive overview of the use of restitution in New York State and to develop policy and programmatic recommendations in this area, DCJS and CVB engaged in a cooperative effort to issue this joint report.

While the analysis of statistical information derived through the existing data collection systems enables us to measure restitution activity statewide to some degree, the data do not provide sufficient information for the mandated development of sound policy recommendations. In recognition of the need for additional knowledge to support the policy making process, DCJS, in cooperation with CVB and DPCA, designed a survey to examine the use and administration of restitution in local probation departments throughout New York State. The survey, which was sent to each local probation department director, provided a systematic means for gathering information about current policies and practices

related to this sanction. Findings from this research are discussed in Chapter 3 of this report.

Organization of the Report

Chapter 1 of this report contains an introduction to the concept of restitution, including historical and legal overviews. Crime victim compensation in New York State and the subrogation right of the Crime Victims Board (CVB) are discussed and major laws affecting restitution in this State are reviewed.

The focus of Chapter 2 is the collection and reporting of both restitution data by the Division of Criminal Justice Services (DCJS) and victim impact statement data by CVB as required by law. The limitations of these data are reviewed. Restitution data reported to DCJS for the years 1985 and 1986 are presented, including the number of orders issued, satisfied, and active for this period. In addition, restitution amounts ordered and collected are discussed, as well the disparity between satisfaction and collection rates. The major offenses and violations for which restitution was ordered are also ranked. Victim impact statement data reported to CVB are presented, including the number of statements requested, received, and reported to the courts.

Finally, Chapter 3 describes the survey research conducted for this report and contains the results of that research. The major subject areas addressed are victims' rights, ability of offenders to pay restitution, and the administration of restitution. A number of policy recommendations, based on the survey findings and related research, are made throughout Chapter 3.

SECTION 2
HISTORICAL ROOTS OF RESTITUTION AND VICTIM COMPENSATION

Recent interest in restitution can be traced to a growing sentiment during the 1960s that the criminal justice system was unbalanced in favor of offenders, largely ignoring the needs of crime victims (Newton, 1976, p. 368). New York State's commitment to strengthening and expanding alternatives to incarceration has also focused increasing attention on restitution.

The use of restitution as a criminal sanction through which offenders make payment to victims of crime or society dates back to ancient times. It is important to note that the terms "restitution" and "reparation" are often used synonymously. An excellent explanation of the difference between these two concepts can be found in The Attorneys' Victim Assistance Manual prepared for the Sunny Von Bulow National Victim Advocacy Center in cooperation with the American Bar Association (December 1987).¹

Technically, restitution and reparation are not the same. The term "restitution" has been construed to mean the return of the property, or a sum of money equivalent to the value of the property, wrongfully obtained by the defendant to the victim who suffered the loss. Reparation carries a broader meaning and has been defined as repairing or restoring to good condition. Reparation includes not only returning the property or its value, but also reimbursement to a victim for damages he or she might have received to the property or the person. Thus, in principle, restitution would not be applicable to victims of violent crimes, but reparation would.

¹This cite contained several references: State v. Stalheim, 552 P.2d 829 (Or. 1976); See, e.g., VWPS, 18 U.S.C. 3579 ("the court...may order...that the defendant make restitution to any victim of the offense. The order may require that such defendant...pay an amount equal to the cost of necessary medical and related professional services."); Nev. Rev. Stat.209.4839 (1985) ("In determining the total restitution....the director shall.... consider [t]he following which were actually and reasonably incurred as a direct or indirect result of the crime.") (emphasis added); See In re Trantino, 89 N.J. 347, 446 A.2d 104 (1982).

Nevertheless, in practice, restitution is used to cover and compensate for injuries and related expenses suffered by violent crime victims as well as those victimized by property crimes. Many restitution statutes specifically state that defendants can be ordered to compensate the victim for losses suffered as a result of injuries received at the hands of the defendant during the criminal act.

Wolfgang (1965, p. 223) stated that "[t]he basis of primitive and early Western criminal law was personal reparation by the offender or the offender's family to the victim". Personal reparation often involved the use of the vendetta or blood feud as a means of obtaining adequate compensation for the injuries sustained by the victim. As man and culture developed, the use of the vendetta or blood feud as a means of compensation for injuries sustained as a direct result of criminal acts was replaced by a common practice which equated "... economic goods with physical and mental hurt" (VanRensselaer, 1974, p. 12).

Laws established following the Middle Ages did include provisions for the use of "restitution," a method of compensating victims that was distinctly separate and apart from the concept of criminal punishment, but it was not widely used (VanRensselaer, 1974, p. 12). As time elapsed and the idea of a central governmental authority and criminal law evolved, crime victims' rights to personal reparation were eliminated. "The historic choice between individual restitution or revenge was taken out of the hands of the persons involved in the offense" (McGillis and Smith, 1982, p. 1). Wolfgang (1965, p. 228) attributed this to the "... increasing claim of the State to the exclusive right to inflict retributory punishments ... in the interest of peace." "Crime ha[d] become an offense not against the victim but against the State, while the civil wrong ha[d] become a separate offense against the individual" (Elias, 1983, p. 20). This dual system of justice gained widespread support and its proponents subsequently shaped the structure and intent of Anglo Saxon, as well as American criminal law. The concept of restitution, as well as the "... connection between restitution and punishment" (Jacob, 1977, p. 45), was severed when the right of crime victims to compensation was no longer considered an appropriate response to criminal behavior, much less an issue in the context of criminal law. Instead, crime

victims found their legitimate rights to compensation limited in scope by the parameters of the law of torts, a civil rather than criminal process, which dealt primarily with actions arising from property damages. Little consideration was given to victims' rights to compensation for actual physical injuries or losses.

"While the practice of offender reparation to the victim(s) of crime came to play an insignificant role in the administration of criminal law, the concept ... remained alive" (Hudson and Galway, 1975, p. xix). The rekindled interest in victim compensation first surfaced in the sixteenth century and again in the late 1800s when the concept of restitution to the victim gained widespread conceptual support from noted criminologists and penologists. It was not until 1951, however, that a legitimate interest in victim restitution as a concept in criminal law was renewed by governments in response to the collective outcry for a viable method of providing victim compensation. As a result, statutory language of existing criminal law was amended to include restitution sanctions which took the form of personal service or monetary compensation. These sanctions included restitution to society through the performance of community service, or were narrowly defined to refer to the return or restoration of stolen property.

Even with necessary governmental support, restitution, as a sanction of criminal law, again proved to be an ineffective means of providing compensation to crime victims until the mid 1970s. This situation exists for two primary reasons: many offenders are never apprehended and those who are apprehended and convicted often do not have the financial resources to adequately compensate their victims.

In 1957, Margaret Fry, an influential advocate for victims rights, published an article in The Observer, acknowledging the failing of restitution as an equitable means of providing compensation to crime victims. She subsequently came out in support of the need to implement government funded compensation schemes as an appropriate means of compensating crime victims. Due to overwhelming evidence and identifiable need, governmental entities began

to establish government funded compensation programs by the early 1960s.² Victim compensation programs are typically administered by "... a separate agency created by the enacting legislation, though in a few states either the workmen's compensation program or the Court of Claims administers the program" (Gaynes, 1981, p. 13). Funding for compensation programs generally comes from three sources: general revenues, fines, and penalties, or a combination of all three.

Typically, in order to be eligible for awards, crime victims (1) must file police reports within designated timeframes and cooperate with subsequent law enforcement efforts to the extent possible, (2) be innocent victims who did not provoke the crimes or contribute to their own injuries, (3) file claims for crime victim compensation within designated timeframes, and (4) sustain unreimbursed or unreimbursable expenses as a result of being physically injured. All programs are "payors of the last resort" providing compensation for varying amounts of medical expenses, lost earnings, and, in the case of a death, funeral expenses and loss of support.

²At this time, advocates for the provision of victim compensation diverged into three distinct areas of concern: restitution within the context of criminal law, restitution within the context of civil law, and restitution as a remedy distinctly separate from both criminal and civil law to be made available by an independent governmental entity.

SECTION 3
CRIME VICTIM COMPENSATION IN NEW YORK STATE

Until recently, the great majority of crime victims in the State were forced to bear the financial damages arising out of the crimes committed against them. This is evidenced by the relatively small amounts of restitution money collected and distributed to crime victims (New York State Crime Victims Board, 1987, p. 33). The Crime Victims Board (CVB) was established to help ease this problem.

Establishment of the New York State Crime Victims Board

It was not until the highly visible and tragic death in 1965 of a good samaritan, Arthur Collins, and subsequent unrecoverable financial damages brought to bear upon his family that the need for a government funded crime victim compensation program was discussed in earnest in New York State. Governor Nelson A. Rockefeller embraced the compensation concept and appointed a special committee to develop legislation to provide monetary compensation for victims of violent crime or for their families who are in need of financial assistance.

Legislation was subsequently enacted as Chapter 894 of the Laws of 1966, creating the New York State Crime Victims Compensation Board³ which is known today as the Crime Victims Board (CVB). With the passage of this legislation, the primary function of the Board was mandated--to provide financial

³ Chapter 17 of the Laws of 1982 amended Section 621 and 622 of the Executive Law to change the name of the Crime Victims Compensation Board to the Crime Victims Board. This name change was made to emphasize the rapidly expanding duties and mandates of the agency other than providing compensation. For example, Chapter 415 of the Laws of 1979 had established the Board as the official State advocate on behalf of the rights needs, and interests of crime victims. In 1981, the Board was given specific appropriation authority to fund community-based, not-for-profit, victim/witness assistance providers. The Board was later given statutory authority for this function by Chapter 688 of the Laws of 1985.

assistance to crime victims and/or their families for out-of-pocket expenses, as well as other eligible unreimbursed expenses arising out of the personal injury to or the death of crime victims. Since CVB's inception in 1966, and as awareness of victims financial needs for assistance has grown, the Legislature has enhanced the compensation program's eligibility criteria and available awards.

Subrogation Right of the New York State Crime Victims Board

When the Crime Victims Board (CVB) was created to provide financial assistance to victims of crime in New York State, the Legislature was careful not to negate the legitimate financial responsibilities of other parties, including offenders, relative to losses sustained as a result of victimization. This is evident in the provisions of CVB's governing statute, Article 22 of the Executive Law, which established the agency as a "payor of last resort" with the right of subrogation. According to Blacks Law Dictionary (1979), subrogation is "the lawful substitution of a third-party in place of a party having a claim against another party."

Section 631(4) of the Executive Law states that financial awards provided by the CVB "... shall be reduced by the amount of any payments received or to be received on behalf of the person who committed the crime." Similarly, crime victims who accept financial awards granted from CVB shall, in accordance with Section 634(1), "... subrogate the State, to the extent of such award, to any right or right of action accruing to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made." These statutory provisions allow CVB to recover monies, otherwise paid to crime victims through orders of restitution and civil judgments, which are legitimately owed to the State.

In an effort to enhance the ability of CVB to identify and recover monies owed to the State as a result of criminal dispositions specifically involving orders of restitution or successful civil actions, the Legislature amended the agency's subrogation rights in 1982. Chapter 513 of the Laws of 1982 amended Section 634 of the Executive Law to allow CVB to file liens against crime

victims in the amounts of any awards provided. While these lien filings have assisted CVB in recovering subrogated monies through successful civil actions, their overall efficacy is highly questionable.

The monetary recoveries realized by CVB in comparison to the money granted to crime victims through its compensation program are meager: 1982, \$7,938; 1983, \$5,253; 1984, \$7,671; 1985, \$7,411; and 1986, \$20,179. In contrast, during those years CVB expended the following amounts for awards to crime victims: 1982, \$6,468,847; 1983, \$8,807,474; 1984, \$7,033,465; 1985, \$7,813,274; and 1986, \$11,271,107. The average percentage of recovery realized by CVB for over 23,000 awards granted between FY 1982 and 1986 is less than one-half of one percent. CVB's ability to ensure compliance with Section 634 of the Executive Law would appear to be problematic. The extent of this problem, however, cannot be determined due to inadequacy of existing information systems to identify those crime victims who receive compensation from the State, as well as restitution from offenders.

SECTION 4
RESTITUTION IN NEW YORK STATE

Restitution has been advanced as benefitting offenders, victims, the criminal justice system, and the community at large. Major goals of restitution may include (Worral, 1981, pp. 3-4):

- o Victim compensation for losses suffered.
- o Offender rehabilitation and reduced recidivism.
- o Limitation of offenders' penetration into the criminal justice system.
- o Restoration of equity.
- o Relief of the overburdened criminal justice system through a reduction in court cases and probation caseloads.
- o Alleviation of overcrowding in correctional institutions.
- o Reduction in the costs of processing offenders through the system.

Restitution as a sanction can be utilized at various stages of the judicial process: in private settlements between offenders and victims, in civil matters, as a condition of pretrial diversion, or as a condition of sentence. In New York State, restitution has typically been ordered by the courts in conjunction with probation and conditional discharge sentences, and sometimes as a condition of an adjournment in contemplation of dismissal (ACD).⁴ Restitution ordered by the courts in New York State is collected by designated agencies which include local probation departments, the Victim Services Agency (VSA) in New York City, and, in one county, a sheriff's department.

⁴ The courts can require offenders who have been granted ACDs to pay restitution only in instances where the sole remaining charges are for misdemeanor marijuana offenses (Section 170.56 of the Criminal Procedure Law).

In New York State, the restitution programs administered by designated collection agencies deal solely with the administration of monetary restitution. Symbolic "restitution" involving the provision of services to victims or communities is not statutorily defined in New York State as restitution and, therefore, was not addressed in this report.

Major Laws Affecting Restitution in New York State⁵

Under Penal Law Section 65.10 (Chapter 1030 of the Laws of 1965), the criminal courts in New York State were given the authority to order restitution as a condition of probation or conditional discharge. This section of law provides that courts can, as a condition of the above sentences, require that offenders make restitution in amounts they can afford to pay. The courts must fix amounts, set payment schedules, and specify the date restitution is to be paid in full prior to the expiration of sentence.

In 1980, the availability of restitution as a sanction was substantially increased. Chapter 290 of the Laws of 1980 added a new section to the Penal Law that authorized sentencing judges to order offenders to make restitution for losses or damages in conjunction with any disposition authorized under Article 60 of the Penal Law. Prior to enactment of this law, judges could not sentence offenders to terms of imprisonment in excess of 60 days and also require restitution. This situation was due to the fact that restitution could only be used as a condition of probation or conditional discharge, and such dispositions could only be ordered when offenders were sentenced to terms of imprisonment of 60 days or less. This law also contained restrictions in terms of the total amounts of restitution courts could require. Specifically, the amounts required by courts were not to exceed \$5,000 in cases of felony convictions, or \$1,000 in cases of conviction for any other offenses.

⁵Portions of this section of the report were excerpted from the following report: New York State Division of Criminal Justice Services, Restitution 1985: An Analysis of Restitution Reported Under Chapter 965 of the Laws of 1984, (May 1986).

The enactment of Chapter 612 of the Laws of 1982 affected the general purpose of the Penal Law, as well as the pre-sentence reporting process upon which the use of criminal sanctions, including orders of restitution, is predicated. For the first time, the State's penal system addressed the need to "... provide for an appropriate public response to particular offenses, including the consideration of the consequences of the offense for the victim, including the victim's family, and the community" (Section 1.05, Penal Law).

To effectuate this general purpose of the Penal Law, necessary changes were made to Section 390.30 of the Criminal Procedure Law regarding the pre-sentence reporting process. These changes addressed the report's inclusion of "... the victim's version of the offense, the extent of injury or economic loss or damage and the amount of restitution sought by the victim, subject to availability of such." Through the enactment of the statutory provisions contained in Chapter 612 of the Laws of 1982, crime victims were finally provided a forum for informing the courts of the physical, financial, and emotional injuries suffered as a result of crime.

After the 1982 legislative session, the needs of crime victims as they relate to the criminal justice system were predominant in a number of Penal Law and Criminal Procedure Law enactments. Several changes in the existing restitution provisions were enacted during the 1983 legislative session which were of benefit to crime victims. Chapter 468 of the Laws of 1983 amended Section 60.27 of the Penal Law to allow restitution in excess of the amount established in 1980 for selected dispositions. The court could impose restitution in excess of previously established limits with the consent of offenders or when it is imposed as a condition of probation or conditional discharge. Restitution in excess of these limits could not exceed victims' property losses and their medical expenses incurred prior to the sentencing of offenders.

Chapter 397 of the Laws of 1983 created an affirmative position regarding restitution orders. With this statutory change, New York State established its policy to encourage the use of restitution when offenders are reasonably able to pay restitution. Chapter 397 also stipulates that upon notification by

victims that they are seeking restitution, district attorneys must advise the courts at the time of sentencing of victims' interests, the amounts of restitution sought, and the extent of injuries, economic losses, or damages incurred.

Prior to 1984, centralized records were kept only for those restitution collections processed by local probation departments. Record keeping was inconsistent and lacked uniformity. Chapter 965 of the Laws of 1984 added a new subdivision to Section 420.10 of the Criminal Procedure Law in order to standardize the reporting of restitution data. This law was enacted to encourage payment of restitution by financially able offenders to the victims of their criminal acts and to provide for a centralized data collection and reporting system.

The 1984 statute authorized local officials to designate an agency other than the district attorney to collect and disburse restitution payments. The State Division of Probation and Correctional Alternatives directly operates one local probation department and was authorized to designate this department as the collection agency. County chief executives throughout the State designated their local probation departments to administer restitution in every jurisdiction except New York City, where the Mayor designated the Office of the Criminal Justice Coordinator. In the fall of 1987, Hamilton County transferred this responsibility from their probation department to the Sheriff's Department. In New York City, the Probation Department and the Victim Services Agency (VSA) actually collect restitution and report the data to the Coordinator's Office. The law also provides that in cases where restitution has been ordered, offenders must pay a five percent surcharge of the total amount of restitution to designated agencies to cover the costs of administering restitution.

According to the provisions of the restitution reporting law, each designated agency must collect monthly data regarding the number of restitution orders issued and satisfied for each crime category. Outside of New York City, data collected by local probation departments are forwarded to DPCA. DPCA is responsible for reviewing the data and transmitting it to DCJS. Upon receipt

of data from the New York City Probation Department and VSA, the Office of the Criminal Justice Coordinator reviews the numbers and transmits them to DCJS. As noted earlier, DCJS is required to compile and review the restitution data and to "make recommendations to promote the use of restitution and encourage its enforcement."

In other legislative action, Chapter 335 of the Laws of 1984 required that if crime victims should die prior to completion of restitution orders, remaining payments must be made to victims' estates.

The desire by the Legislature to formally encourage the use of restitution as a criminal sanction also led to the enactment of Chapter 14 of the Laws of 1985. Chapter 14 repealed Section 390.30(3) of the Criminal Procedure Law and added new subdivisions (3) and (4) as a part of a series of amendments designed to enable victims or the victims' families to participate more fully in the pre-sentence and sentencing process. To further encourage the use of restitution, Chapter 14 contained specific provisions regarding district attorneys' responsibilities to crime victims and sentencing courts. Section 390.50 of the Criminal Procedure Law was amended to enable prosecutors to examine and copy pre-sentence reports, and allow victims or victims' families to examine actual victim impact statements contained therein. In addition, Chapter 14 also amended Section 60.27(1) of the Penal Law, specifying that district attorneys shall, where appropriate, advise the courts at the time of sentencing of victims' desire to receive restitution pursuant to their responsibilities under Section 390 of the Criminal Procedure Law and Article 23 of the Executive Law. Previously, district attorneys were only required to inform the courts upon receiving notification from victims that restitution was being sought.

Further changes occurred with the passage of Chapter 233 of the Laws of 1985, whereby Section 420.10(4) of the Criminal Procedure Law established that the courts shall not determine that offenders are unable to pay restitution ordered based solely on the fact of their incarceration. The courts must consider all sources of income, including "moneys in possession of an inmate at the time of admission into such facility, funds earned by him in a work release

program... funds earned by him as provided for in Section 187 of the Correction Law, and any other funds received by him or on his behalf and deposited with the superintendent or municipal official of the facility where the person is confined."

Chapter 506 of the Laws of 1985 established that in such cases where the courts have imposed a fine, restitution, and the designated five percent surcharge, payment of the fine shall be the last priority.

Finally, in 1985, the enactment of Chapter 94 which created Article 23 of the Executive Law--Fair Treatment Standards for Crime Victims--was a landmark in legislative policymaking. These standards represented the culmination of four years of effort by crime victim advocates, criminal justice professionals, and public officials to legitimize the rights and needs of victims of crime in New York State. In addition, Section 642(1) of the Executive Law stipulates that:

The victim of a violent felony offense, a felony involving physical injury to the victim, a felony involving property loss or damage in excess of two hundred fifty dollars, a felony involving attempted or threatened physical injury or property loss or damage in the excess of two hundred fifty dollars, or a felony involving larceny against the person [or the family of a minor victim or a homicide victim] should be consulted by the district attorney in order to obtain the views of the victim regarding disposition of the criminal case... the release of the defendant in the victim's case pending judicial proceedings upon an indictment, and concerning the availability of sentencing alternatives such as community supervision and restitution.

Through the enactment of Article 23 of the Executive Law--Fair Treatment Standards for Crime Victims--and subsequent amendments thereto, New York State is demonstrating its concern and commitment to addressing the legitimate rights and needs of all crime victims. In this manner, the criminal justice system has begun to serve both offenders and crime victims to the presumed, overall betterment of the entire system.

The rules and regulations promulgated by CVB set forth procedures to be followed by criminal justice personnel who are involved in assisting or responding to crime victims throughout the criminal justice process (9 NYCRR Section 6170). The promulgation of the Fair Treatment Standards for Crime Victims has provided the necessary framework to bridge the gaps in information, services, and treatment that exist between criminal justice personnel and crime victims. By building upon this framework, the problem of "secondary victimization" experienced by many crime victims as a result of their treatment by criminal justice system is reduced. It is hoped that increased public cooperation and support of the criminal justice process will be encouraged as a result of affording crime victims the opportunity to participate more fully in the criminal justice process.

In an effort to improve the overall effectiveness of the criminal justice system and provide more equity in the administration of justice, specifically as it relates to restitution, the Fair Treatment Standards for Crime Victims as enacted (9 NYCRR Section 6170), are intended to:

- o Ensure that crime victims routinely are given information on the following:
 - a) the role of the victims in the criminal justice process, including what they can expect from the system, as well as what the system expects from them; and
 - b) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.
- o Ensure notification of victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims, if such persons provide the appropriate official with a current address and telephone number, either by phone or by mail, if possible, or judicial proceedings relating to their case, including:
 - a) the arrest of an accused.
 - b) the initial appearance of an accused before a judicial officer.

- c) the release of an accused pending judicial proceeding.
- d) proceedings in the prosecution of the accused including entry of a plea of guilty, trial, sentencing, and where a term of imprisonment is imposed, specific information shall be provided regarding maximum and minimum terms of such imprisonment.

In 1986, Chapter 615 amended Penal Law Section 60.27(5)(a) to provide increases in the amounts of restitution that can be ordered. The amount of restitution that can be ordered in association with conviction for felonies was increased from \$5,000 to \$10,000. Those convicted of non-felony offenses can be ordered to pay up to \$5,000, as compared with the previous limitation of \$1,000. However, the courts could continue to impose restitution in excess of these amounts with the consent of offenders or when it is imposed as a condition of probation or conditional discharge. Restitution in excess of these limits must not exceed the victims property losses and medical expenses incurred prior to offenders' sentencing.

Chapter 466 of the Laws of 1986 amended Sections 259-i and 259-j of the Executive Law to indicate that parolees who have previously been ordered by the courts to pay restitution, may be required to comply with such orders as a condition of parole. This amendment further requires the Parole Board to indicate the designated collection agency to be responsible for the collection of restitution. Furthermore, in instances where the Parole Board has made payment of previously ordered restitution a condition of parole, it must be satisfied that parolees have made good faith efforts to comply with restitution orders prior to discharging them from parole. These Sections of the Executive Law were further amended again by Chapter 396 of the Laws of 1987, which stipulated that conditions of parole, where appropriate, shall contain a requirement that parolees comply with payment of any surcharges, previously ordered by the courts, including the designated surcharge.

CHAPTER 2

**COLLECTION AND REPORTING OF RESTITUTION
AND VICTIM IMPACT STATEMENT DATA**

SECTION 1
RESTITUTION DATA: 1985 AND 1986

Data for this analysis were obtained from the Computerized Restitution Database System (CRDS) maintained by the Division of Criminal Justice Services (DCJS). The CRDS system uses data from the DP-30R forms (see Appendix A) which are transmitted monthly to DCJS from DPCA and the New York City Criminal Justice Coordinator's Office.

The DP-30R form was designed and implemented in 1984 by the then Division of Probation for use by the designated collection agencies in New York State for reporting restitution data. These agencies use this form to report aggregate data each month on the numbers of orders issued and satisfied by offense type and on the amounts of restitution collected. Local probation departments submit DP-30R forms to the Division of Probation and Correctional Alternatives (DPCA), while in the case of the New York City Criminal Justice Coordinator's Office, the forms are submitted directly to DCJS as required by Section 420.10(8)(b) of the Criminal Procedure Law. As noted earlier, DPCA reviews the data received from the designated collection agencies and transmits the figures to DCJS. DCJS is responsible for compiling and analyzing the restitution data from which it is to make policy recommendations.

Limitations of Reported Data

Data Systems Issues. The aggregate reporting system created by DPCA pursuant to Chapter 965 of the Laws of 1984 meets minimum mandated legislative requirements. However, the data obtained through the aggregate reporting system limit the ability of DCJS to make meaningful recommendations to promote the use of restitution and encourage its enforcement as mandated by law.

The limitations of the system are extensive. The design of the DP-30R form does not link amounts of restitution ordered or collected to the offense classifications for which restitution orders have been issued or to the courts issuing these orders. The simple classification of offenses by Penal Law

Article prevents analysis by the seriousness of the offense (felonies versus misdemeanors or class D felonies versus class E felonies). Offender characteristics such as age, sex, race, financial status, and employment are totally absent making it impossible to determine for whom restitution orders are imposed. The system also fails to capture information on delinquent, resentenced, or suspended/cancelled restitution orders. Finally, since the system is not transactional, orders satisfied cannot be linked back to orders issued. This creates a situation in which it is impossible to determine if the orders satisfied in 1986 relate to orders issued in 1985 or 1986.

Implementation Issues. In addition to the structural limitations of the data collection system, reporting problems also exist. These difficulties, which take the form of incomplete reporting of restitution orders, satisfactions, and amounts collected, are often associated with the start-up or implementation of a new information system as local agencies attempt to familiarize themselves with the new reporting requirements and integrate them into their procedures and workflow.

The extent of these problems, as illustrated in the remainder of this section, make comparisons between 1985 and 1986 activity tenuous. Reported changes in the volume of orders issued, satisfied, and amounts collected between the two years may partially reflect the implementation process, in addition to any real changes in restitution activity. Given these problems, it is more realistic to consider the 1986 data as the baseline year for measuring restitution activity than the 1985 data.

The data system was designed as a reporting mechanism for activity on restitution cases filed subsequent to October 1984 with the instructions directing local agencies to specifically exclude satisfactions and collections related to earlier cases. Many restitution cases have payment schedules associated with them which often extend over several years. As a result, the number of 1985 satisfactions are atypical of future activity. For example, the satisfactions reported for 1985 reflect satisfactions of orders issued between November 1, 1984 and December 31, 1985--a 14 month period. The satisfactions reported for 1986 also reflect satisfactions of orders issued during this same

period and during 1986 as well--a 26 month period. Comparisons of these data may be artifacts created by this situation.

All of the above problems point to the need to implement a case-based automated restitution system that would permit the linkage of charge information, offender characteristics, restitution amounts, and case actions. The need for this system is addressed in Chapter 3, Section 4 of this report where the fiscal management and record keeping needs of local probation departments are discussed.

Analysis

For the purposes of analysis, these restitution data are presented for the State overall and in the following groupings to provide more discriminating measures of restitution activity in New York State:

- o New York City Probation Department.
- o New York City Victim Services Agency.
- o Non-New York City.⁶

Restitution data for individual localities are presented in Appendices B through G.

The reader is reminded that in activity measures between 1985 and 1986 may not entirely reflect changes in volume since implementation artifacts affect the two-year reporting period.

⁶ Tables 1 and 4 also present non-New York City data based on the "urbanization index" developed by the Division of Probation and Correctional Alternatives (see Appendix L). The "urbanization index" was used in the analysis of the restitution survey data.

Definitions of Terms⁷

Restitution orders issued. The number of restitution orders received from the criminal court by a designated collection agency.

Restitution orders satisfied. The number of restitution orders for which payment was completed.

Restitution amount ordered. The amount of restitution to be paid by offenders to victims as specified by the criminal court(s) in the restitution orders issued.

Restitution amount collected. The amount of partial or complete restitution payments collected by the designated collection agencies.

Restitution Orders Issued⁸

The designated collection agencies reported that 13,190 restitution orders were issued during 1986 by the criminal courts in New York State, an increase of 34.5 percent from the 9,809 orders reported issued in 1985 (see Table 1). The New York City Victim Services Agency (VSA) reported 3,876 restitution orders issued in 1986, a rise of 10.7 percent from 1985. The number of New York City Probation Department orders rose by a reported 3.6 percent to 813 orders in 1986. The non-New York City region, where the majority of orders were reported, experienced the most substantial increase in orders issued. This region reported an increase of 53.9 percent in the number of restitution orders issued from 1985 (5,523) to 1986 (8,501). When the number of orders reported issued was examined across the urbanization index for the non-New York City region, it appeared that the large increases occurred in the urban-downstate (237.9 percent) and urban-upstate (66.6 percent) counties. More modest increases were reported in the urban/rural (21.6 percent) and rural (26.4 percent) counties.

⁷ As defined on the DP-30A form used for the collection of restitution data which replaced the DP-30R form as of January 1987.

⁸ Changes in the volume of orders issued may reflect implementation artifacts.

TABLE 1

**Restitution Orders Issued and Satisfied
by Region and Urbanization Index
1985 and 1986**

Region and Urbanization Index	Orders Issued ^a	Orders Satisfied ^a
New York State		
1986	13,190	6,999
1985	9,809	4,321
% Change	34.5%	62.0%
NYC Probation		
1986	813	284
1985	785	302
% Change	3.6%	-6.0%
NYC VSA		
1986	3,876	2,420
1985	3,501	2,246
% Change	10.7%	7.7%
Non-NYC		
1986	8,501	4,295
1985	5,523	1,773
% Change	53.9%	142.2%
Urban-Downstate ^b		
1986	2,078	790
1985	615	62
% Change	237.9%	1174.1%
Urban-Upstate		
1986	1,273	518
1985	764	236
% Change	66.6%	119.5%
Urban-Rural		
1986	2,211	1,201
1985	1,819	486
% Change	21.6%	147.1%
Rural		
1986	2,939	1,786
1985	2,325	989
% Change	26.4%	80.6%

^a Changes in the volume of orders issued and, particularly, orders satisfied may reflect implementation artifacts.

^b Excludes NYC Probation and NYC VSA.

The large non-New York City increment reflected a number of very sizable increases reported for certain counties. For example, Suffolk County reported the largest increase in the number of orders issued for an individual county (1,418.0 percent). In 1986, 926 orders were issued by Suffolk criminal courts, up from the 61 reported during the previous year (see Appendices B and C). It is probable that many more orders were actually issued in 1985 than reported. Among the other non-New York City counties reporting large increases were: Chautauqua, 112.5 percent; Genesee, 241.2 percent; Monroe, 221.1 percent; Nassau, 112.8 percent; Orange, 187.5 percent; Oswego, 150.8 percent; and Westchester, 95.5 percent. It is reasonable to assume that the large increases reflected a combination of improved reporting procedures and increased restitution activity from the courts.

Restitution Orders Satisfied⁹

In 1986, designated collection agencies in New York State reported an increase of 62.0 percent in the number of orders satisfied, from 4,321 in 1985 to 6,999 in 1986 (see Table 1). In New York City, VSA reported a 7.7 percent increase, from 2,246 in 1985 to 2,420 orders satisfied in 1986. The New York City Probation Department reported a -6.0 percent decrease in the number of restitution orders satisfied in 1986, from 302 in 1985 down to 284 in 1986. Designated collection agencies outside of New York City reported 4,295 restitution orders satisfied during 1986, an increase of 142.2 percent from 1985. When the number of orders reported satisfied was examined across the urbanization index for the non-New York City region, it appeared that the largest increase in orders satisfied, 1174.1 percent, was reported by urban-downstate agencies. Substantially smaller increases were reported by urban-upstate (119.5 percent), urban/rural (147.1 percent), and rural (80.6 percent) agencies.

A number of factors probably contributed to the large increase outside of New York City. It is likely that a sufficient amount of time had elapsed in

⁹ Changes in volume of orders satisfied may reflect implementation artifacts.

which many of the payment schedules for orders issued in 1985 were fulfilled sometime in 1986. Additionally, there was probably an increase in satisfactions associated with the increased number of orders issued in 1986. Finally, as with the number of orders issued, it can be assumed that the large increase in the number of orders satisfied outside of New York City reflected more complete and thorough reporting interacting with an increase in restitution activity. The degree to which this sizeable increase could be attributed to these factors is impossible to determine given the aggregate nature of the data reporting system.

Of the 22,999 orders issued statewide since January 1, 1985, 49.2 percent had been satisfied by December 31, 1986; 4,321 in 1985 and 6,999 in 1986 (see Table 2). In New York City, VSA reported a higher percentage of orders satisfied than the Probation Department. Since 1985, almost two-thirds (63.3 percent) of the 7,377 orders reported by VSA had been satisfied by the close of 1986. Comparatively, the New York City Probation Department reported that only slightly more than one-third (36.7 percent) of the 1,598 orders issued and assigned to it since 1985 were satisfied by the end of 1986. Of the 14,024 orders issued in the non-New York City region since 1985, 43.3 percent had been satisfied by the close of 1986.

The seriousness of offenses for which restitution is ordered can have an impact on how quickly cases are satisfied. This may partially explain why VSA had a much higher satisfaction rate than the New York City Probation Department. For example, VSA reported that approximately 42.0 percent of the orders assigned to it for collection in 1985 (New York State Division of Criminal Justice Services, May 1986, p. 25) and 1986 (see Appendix F) were for cases involving disorderly conduct which is a violation; adjournment in contemplation of dismissal (ACD) cases represented 31.5 percent of the orders assigned in 1985 and 34.5 percent in 1986. Conversely, disorderly conduct represented less than 1.0 percent of the New York City Probation Department's caseload and no ACDs were assigned to that agency during either year. The major restitution offense categories for the New York City Probation Department in 1985 and 1986 were larceny (42.0 percent and 38.1 percent, respectively) and

TABLE 2
Restitution Activity by Region
1985 and 1986

Region/Agency	Orders Issued			Orders Satisfied			Total Orders Unsatisfied ^a (as of 12/31/86)
	TOTAL	1985	1986	TOTAL	1985	1986	
NYS	22,999 100.0%	9,809	13,190	11,320 49.2%	4,321	6,999	11,679 50.8%
NYC	8,975 100.0%	4,286	4,689	5,252 58.5%	2,548	2,704	3,723 41.5%
Probation	1,598 100.0%	785	813	586 36.7%	302	284	1,012 63.3%
VSA	7,377 100.0%	3,501	3,876	4,666 63.3%	2,246	2,420	2,711 36.7%
Non-NYC	14,024 100.0%	5,523	8,501	6,068 43.3%	1,773	4,295	7,956 56.7%

^a Number of 1985 and 1986 orders issued but not satisfied by December 31, 1986.

burglary/trespass (8.2 percent and 6.9 percent, respectively). These offenses are classified as felonies and misdemeanors. Clearly, VSA's restitution caseload involved less serious offenses and most probably smaller restitution amounts (see Table 4) than that of the New York City Probation Department. Approximately three-quarters of VSA's cases involved either ACDs or disorderly conduct charges. Given the short dispositional periods of these two charges, six months and one year respectively, it is likely that shorter payment schedules contributed to VSA's higher satisfaction rate.

Restitution Orders Active in 1986

In New York State a total of 18,678 restitution orders were active during all or part of 1986 (see Table 3). Approximately 30 percent (5,488) of these orders were carried over from 1985, while the remaining 13,190 were orders issued in 1986. The 6,999 restitution orders satisfied in 1986 (see Table 2) represent 37.5 percent of the 18,678 orders active at any point in 1986. The balance of the active orders, 11,679, were carried over for possible satisfaction during 1987.

TABLE 3
Active Restitution Caseload: 1986

Region/Agency	Active Caseload 1986	Orders	
		Pending 1985	Issued 1986
NYS	18,678	5,488	13,190
NYC	6,427	1,738	4,689
Probation	1,296	483	813
VSA	5,131	1,255	3,876
Non-NYC	12,151	3,750	8,501

NOTE: Active Caseload = Pending Orders and Orders Issued.

Restitution Amounts Ordered¹⁰

Statewide, \$15,748,360 in restitution was reported ordered by the criminal courts during 1986. This represents an increase of 37.6 percent from the \$11,445,553 ordered in 1985 (see Table 4). The Victim Services Agency reported

¹⁰ Changes in the amount of restitution ordered may reflect implementation artifacts.

\$2,030,368 in restitution orders in 1986, an increase of 35.0 percent from the previous year. The amounts of restitution for orders assigned to the New York City Probation Department declined by -1.7 percent, from \$4,629,404 in 1985 to \$4,548,447 in 1986. The amounts of restitution reported ordered outside of New York City rose by 72.6 percent to \$9,169,545 in 1986. When the amounts of restitution reported collected were examined across the urbanization index for the non-New York City region, Table 4 shows that urban-downstate agencies reported the largest increase, 191.1 percent, in collected restitution. Relatively smaller increases were reported by urban-upstate (47.1 percent), urban/rural (43.7 percent), and rural (37.5 percent) departments.

Statewide, the average amount ordered per case increased by 2.3 percent from \$1,167 in 1985 to \$1,193 per order in 1986 (see Table 4). The average amount ordered for cases administered through the New York City Probation Department was almost \$5,600 in 1986, an amount significantly higher than for VSA or the non-New York City jurisdictions, \$523 and \$1,078, respectively. This variation points to a considerable qualitative difference in the caseloads administered by these agencies. In the non-New York City region, both urban-downstate and urban-upstate agencies reported decreases in the average amounts ordered, -13.9 percent and -11.7 percent, respectively. Urban/rural agencies reported a 18.2 percent increase in the average amounts collected, and rural agencies reported an 8.1 percent increase.

TABLE 4

**Restitution Amounts Ordered and Collected by Region
and Urbanization Index
1985 and 1986**

Region and Urbanization Index	Amount Ordered ^a	Average Amount Ordered	Amount Collected	Average Amount Collected Per Active Case
New York State				
1986	\$15,748,360	\$1,193	\$4,212,613	\$226
1985	11,445,553	1,167	2,086,670	213
% Change	37.6%	2.3%	101.9%	6.1%
NYC Probation				
1986	\$4,548,447	\$5,594	\$221,206	\$171
1985	4,629,404	5,987	228,202	291
% Change	-1.7%	-5.1%	-3.1%	-41.2%
NYC VSA				
1986	\$2,030,368	\$523	\$939,338	\$183
1985	1,504,406	430	799,233	228
% Change	35.0%	21.9%	17.5%	-19.7%
Non-NYC				
1986	\$9,169,545	\$1,078	\$3,052,069	\$251
1985	5,311,743	962	1,059,235	192
% Change	72.6%	12.2%	188.1%	30.7%
Urban-Downstate ^b				
1986	\$3,213,515	\$1,546	\$645,819	\$245
1985	1,104,083	1,795	181,655	295
% Change	191.1%	-13.9%	255.5%	-16.9%
Urban-Upstate				
1986	\$1,043,575	\$820	\$579,954	\$322
1985	709,639	929	86,280	113
% Change	47.1%	-11.7%	572.2%	185.0%
Urban/Rural				
1986	\$2,365,174	\$1,070	\$795,374	\$224
1985	1,645,790	905	373,195	205
% Change	43.7%	18.2%	113.1%	9.3%
Rural				
1986	\$2,547,281	\$868	\$1,030,922	\$241
1985	1,852,231	797	418,105	180
% Change	37.5%	8.1%	146.6%	33.9%

^a Changes in the amount of restitution ordered and collected may reflect implementation artifacts.

^b Excludes NYC Probation and NYC VSA.

Restitution Amounts Collected¹¹

In 1986, \$4,212,613 in restitution was collected by designated agencies in New York State, an increase of 101.9 percent from the \$2,086,670 collected in 1985 (see Table 4). The Victim Services Agency reported that it collected \$939,338 in 1986, an increase of 17.5 percent from 1985. The New York City Probation Department, however, experienced a slight decline, -3.1 percent, in the amounts of restitution it collected, from \$228,202 in 1985 to \$221,206 in 1986. A total of \$3,052,069 in restitution was collected by non-New York City agencies in 1986, an increase of 188.1 percent from the \$1,059,235 reported in 1985. When the amount of restitution collected was examined across the urbanization index for the non-New York City region, it appeared that urban-upstate counties experienced the largest increase, 572.2 percent, in the amount collected. Urban-downstate agencies reported a 255.5 percent increase in collected restitution, rural agencies reported a 146.6 percent increase, and urban/rural agencies reported a 113.1 percent increase. Improved reporting of restitution activity in the Upstate area was assumed to have contributed to the large increases in restitution amounts both ordered and collected during 1986.

Standardizing the amounts collected by the number of active cases in a year reveals that the average amount collected per active case in New York State rose by 6.1 percent, from \$213 to \$226 (see Table 4). The New York City Victim Services Agency and the New York City Probation Department reported significant decreases (-19.7 percent and -41.2 percent, respectively) in the average amount collected per active case between the two years. While it would appear that all of the statewide increase was attributable to the non-New York City area which experienced a 30.7 percent increase from \$192 in 1982 to \$251 in 1986, examination of the average amounts collected across the urbanization index indicated that urban-downstate agencies also reported a decrease of -16.9 percent. Increases in the average amounts collected were limited to urban-upstate agencies which reported the most substantial increase, 185.0 percent,

¹¹ Changes in the amount of restitution ordered may reflect implementation artifacts.

and to urban/rural and rural agencies which reported more modest increases, 9.3 percent and 33.9 percent, respectively.

Of the \$27,193,903 in statewide restitution payments ordered since January 1, 1985, 23.2 percent or \$6,299,283, had been collected by the close of 1986: \$2,086,670 in 1985 and \$4,212,613 in 1986 (see Table 5).

TABLE 5
Restitution Amounts
Ordered, Collected and Uncollected
by Region
1985 and 1986
(Thousands of Dollars)

Region/Agency	Amount Ordered			Amount Collected			TOTAL Amount Uncollected ^a
	TOTAL	1985	1986	TOTAL	1985	1986	
NYS	27,194 100%	11,446	15,748	6,299 23.2%	2,086	4,212	20,894 76.8%
NYC	12,713 100%	6,134	6,580	2,188 17.2%	1,027	1,169	10,526 82.8%
Probation	9,178 100%	4,629	4,548	449 4.9%	228	221	8,728 95.1%
VSA	3,535 100%	1,504	2,030	1,739 49.2%	799	939	1,796 50.8%
Non-NYC	\$14,481 100%	\$5,312	\$9,170	\$4,111 28.4%	\$1,059	\$3,052	\$10,370 71.6%

^a Amount of monetary restitution ordered in 1985 and 1986 but uncollected by December 31, 1986.

The Victim Services Agency collected more payments, proportionately, than either the non-New York City region or the New York City Probation Department. Of the \$3,534,773 ordered since 1985, VSA had collected 49.2 percent by the end of 1986: \$799,233 in 1985 and \$939,337 in 1986. Comparatively, the New York City Probation Department reported that the courts had ordered \$9,177,851 in restitution payments since 1985, of which 4.9 percent had been collected as of December 31, 1986: \$228,202 in 1985 and \$221,205 in 1986. A total of \$14,481,271 had been ordered in the non-New York City region since 1985, of which 28.4 percent was collected: \$1,059,235 in 1985 and \$3,052,069 in 1986.

In 1986, a total of \$25,107,243 in restitution was available for possible collection, of which \$9,358,883 was outstanding from 1985, with the balance reflecting the \$15,748,360 ordered in 1986 (see Table 6). Crediting the four and one-quarter million dollars collected in 1986 against the total available for collection during the year results in almost \$21 million in outstanding restitution orders being carried over into 1987 (see Table 5).

TABLE 6

Total Amount of Restitution Available to Collect: 1986

Region/Agency	TOTAL Amount Available to Collect in 1986 ^a	TOTAL Amount Uncollected in 1985	TOTAL Amount Ordered in 1986
NYS	25,107,243	9,358,883	15,748,360
NYC	11,685,190	5,106,375	6,578,815
Probation	8,949,649	4,401,202	4,548,447
VSA	2,735,541	705,173	2,030,368
Non-NYC	13,422,053	4,252,508	9,169,545

^a Total Amount Available to Collect in 1986 = Total Amount Uncollected in 1985 + Amount Ordered in 1986.

As previously noted in relation to the satisfaction of cases, VSA's ability to collect such a high percentage of its restitution relative to the New York City Probation Department and other counties was related to the fact that 75 percent of its caseload was comprised of disorderly conduct cases and ACDs. Alternatively, the fact that a sizable proportion of restitution amounts were not collected by the New York City Probation Department may be a function of the types of offenses and offenders and larger individual orders involved in the restitution administered by that agency.

Disparity of Satisfaction and Collection Rates

Comparison of the percent of restitution orders satisfied to the percent of restitution amounts collected consistently revealed that proportionately more cases were satisfied than amounts collected. In New York State, 49.2 percent of the 1985-86 orders were satisfied (see Table 2), while only 23.2 percent of the total amount ordered was collected (see Table 5). For VSA, the satisfaction rate was 63.3 percent and the collection rate was 49.2 percent. In the non-New York City region, the satisfaction rate was 43.3 percent and the collection rate was 28.4 percent. These large differences exist despite the fact that partial payments on orders not yet satisfied should have mitigated against such differences. The large number of orders involving smaller amounts for VSA may explain the disproportionate number of the satisfactions when compared to New York City.

The largest difference between the satisfaction and collection rates was reported by the New York City Probation Department. In 1986, that agency had an order satisfaction rate of 36.7 percent (see Table 2) and a collection rate of only 4.9 percent (see Table 5). This extreme disproportion also existed in 1985. While the New York City Probation Department received a higher proportion of orders for more serious offenses than other agencies, the composition of its caseload would have had to be very extreme to account for such a difference in its satisfaction and collection rates, i.e., a very few cases with very large restitution amounts combined with a sufficient number of less serious cases with considerably smaller restitution amounts. Additionally, substantial modification and resentencing activity could have affected these rates. A potentially stronger explanation for these differences

is that there has been some difficulty in accurately reporting the appropriate data. Unfortunately, the aggregate nature of the restitution data collection system did not assist in answering these questions.

The impact of potential reporting problems on the data and its subsequent analysis was reinforced when data reported by other agencies were examined. For example, in one county during 1986, \$373,225 in restitution was collected, although only \$324,991 was reported as available for collection for that period. The problem appears to be that this county was reporting restitution collections for sentences imposed prior to November 1, 1984. The extent of this particular problem could not be determined with any precision using the current data collection system.

Ranking of Major Offenses/Violations

There were 2,449 restitution orders (Table 7) issued in 1986 relating to disorderly conduct charges, two-thirds (1,634) of which were reported by VSA (see Appendix F). Outside of New York City, 814 disorderly conduct orders were issued, of which nearly one-half were reported by Suffolk County. Disorderly conduct charges represented 42.8 percent of all orders issued in Suffolk County (see Appendix G). Contrastingly, the New York City Probation Department reported that only one disorderly conduct case had been assigned to it by the court (see Appendix F).

Designated agencies reported that 2,383 orders (see Table 7) had been issued in 1986 for the offense of larceny, making it the second most prevalent offense for which restitution was ordered (18.1 percent of all offenses). In 1985, larceny also ranked second in frequency behind disorderly conduct. Larceny cases represented 38.1 percent of all orders assigned to the New York City Probation Department in 1986, but only 6.5 percent of all orders assigned to VSA during the same year.

The Suburban New York City counties also reported that a large proportion of their restitution orders involved larceny. For example, Nassau County reported that 26.4 percent (223) of its orders were for larceny cases. Suffolk

County reported 17.3 percent (160), and Westchester County reported 33.6 percent (193) (see Appendix G).

Adjournment in contemplation of dismissal (ACD) dispositions ranked third in the number of restitution orders issued in New York State during 1986. Of the 1,369 ACD orders issued statewide, 97.7 percent were reported by VSA. No offense categories for ACD cases were available under the current reporting system.

TABLE 7
**Ranking of Major Restitution Offenses/Statuses
 1986 and 1985**

Offense/Status ^a	1986		1985	
	Orders Issued	% of TOTAL	Orders Issued	% of TOTAL
Disorderly Conduct	2,449	18.6	1,832	18.3
Larceny	2,383	18.1	1,659	16.9
ACD	1,369	10.4	1,146	11.7
Criminal Mischief	1,150	8.7	883	9.0
Burglary/Trespass	1,106	8.4	782	8.0
Bad Checks/etc.	736	5.6	670	6.8
Assault	726	5.5	564	5.7
Theft/CPSP	682	5.2	548	5.6
Youthful Offender	506	3.8	271	2.8
Forgery	443	3.4	311	3.2
DWI/DUI	430	3.3	277	2.8
Other	1,210	9.2	866	8.8

^a Offense categories reflect those on the DP-30R form. With the exception of ACD cases, these represent conviction categories for which restitution has been ordered.

SECTION 2
VICTIM IMPACT STATEMENT DATA: 1986

Under the provisions of Section 390.3(5) of the Criminal Procedure Law, the Division of Probation and Correctional Alternatives (DPCA) is responsible for the collection and subsequent transmission of data to the Crime Victims Board (CVB) on the number of victim impact statements prepared by local probation departments. Local probation departments report aggregate data on the number of victims from whom victim impact information was requested, the number of victims who provided this information, and the number of victim impact statements included in reports to the courts. These data are presented for the State overall and by county.

Limitations of Reported Data

While the victim impact statement reporting requirement has been in existence since November 1, 1985, it was not until January 1, 1987 that victim impact statement data were formally incorporated into the monthly reporting form completed by each local probation department. Prior to January 1, 1987, victim impact statement data was reported at the discretion of individual departments.¹²

As currently reported, these data meet minimum reporting requirements for the local probation departments, but do not provide the detail necessary for CVB to meet its reporting mandate. This mandate requires the compilation and review of these data in order to make recommendations on how to promote the use of restitution and encourage its enforcement. The aggregate nature of the reporting system made it impossible to accurately determine what percentage of victims responded to requests for victim impact information. Similarly, it was not possible to accurately measure how often information provided by victims was included in reports to the courts. Finally, and most importantly, it was not possible to measure the effect that victim impact statements actually had on sentences, including restitution, imposed by the courts.

¹² Eight departments did not report data during the last month of 1986.

In order to measure the effect of victim impact statements on the use of restitution, the current aggregate reporting system would have to be replaced with a case-based system. The need for such a system is addressed in Chapter 3, Section 4, of this report where the fiscal management and record keeping needs of local probation departments are discussed.

Victim Impact Information/Statements Requested, Received and Reported to the Courts

The aggregate number of requests for victim impact information and the number of responses received, as well as the number of statements reported monthly for the 1986 calendar year are graphically displayed in Figure 1. It would appear that requests for victim impact information and the number of responses received and statements subsequently forwarded to the courts increased dramatically between January 1985 and December 1986. It should be noted, however, that large changes in measures of victim impact information/statement activity during this period were artifacts of the problems surrounding implementation of the reporting system rather than accurate reflections of any real changes in the volume of such activity. During the last six months of 1986, it appeared that data were reported more routinely than in prior months.

Another significant trend is also evident in Figure 1. Probation departments forwarded almost all the victim impact statements they received to the sentencing courts. This suggests that the information received in victim impact statements was relevant to sentencing and was, therefore, included in pre-sentence reports. However, it was not possible to determine from these data the impact these statements had on final dispositions, including restitution.

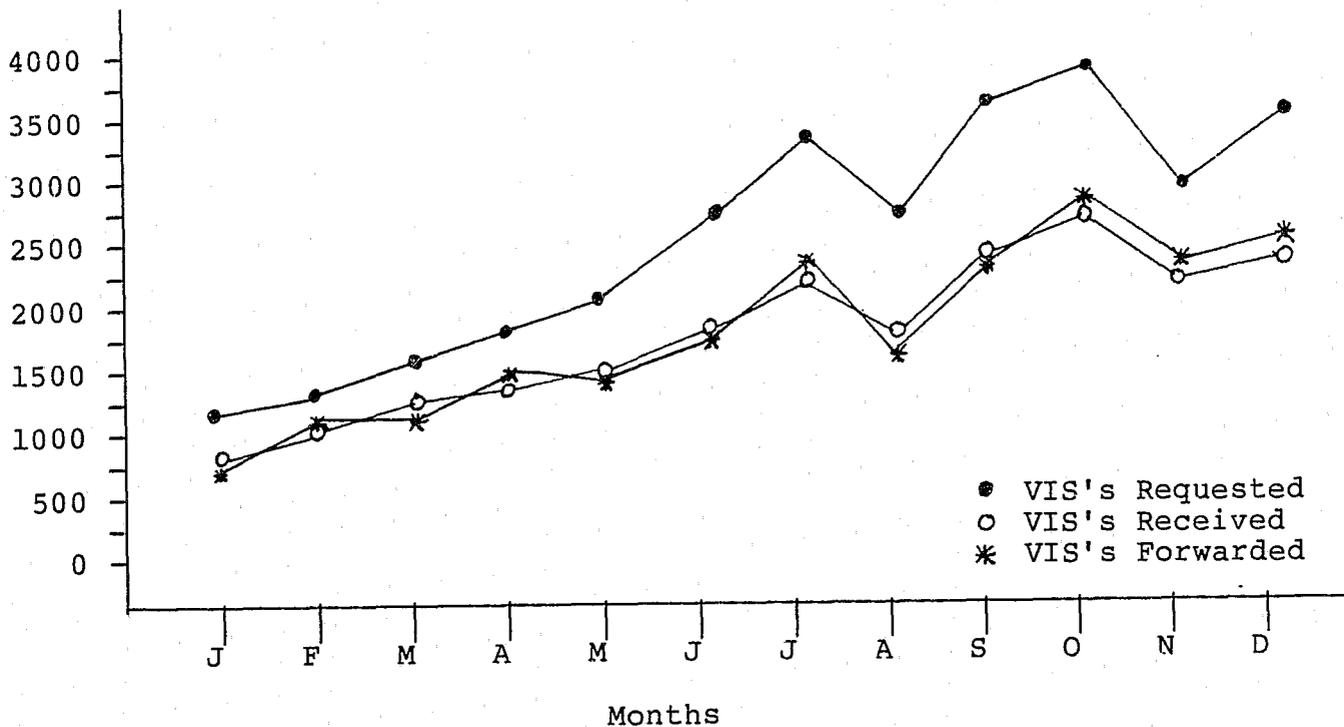
The numbers of victim impact information requested and received, and statements forwarded to the courts by probation departments are presented by department/county in Table 8. Some of these departments reported forwarding more victim impact statements to the sentencing courts than the number of responses they reported receiving from victims. This situation may be the

result of one victim impact statement being used for crimes involving multiple offenders although no data currently exists to test this hypothesis.

As mentioned earlier, the aggregate nature of these data make it impossible to link a request for victim impact information with a victim's response. Because these data elements cannot be linked, it is not possible to accurately determine what percentage of victims responded to requests for information. While the data were not transactional in nature (i.e., data elements cannot be linked), they were treated as such in order to get some idea of the response rate of victims to requests for impact information. Assuming that the victim impact information/statement data were transactional, the data in Appendixes H through J suggest that during the last six months of 1986, approximately two-thirds (66.5 percent) of the victims responded to departments' requests for victim impact information.¹³

FIGURE 1

Victim Impact Information/Statements (VIS) Reported Statewide
1986



¹³ Estimates of victim response rates reported by departments in the joint DCJS and CVB survey were similar.

Table 8

1986 Victim Impact Statement Data

<u>County</u>	<u>VIS Requested</u>	<u>VIS Received</u>	<u>VIS Forwarded</u>
Albany	806	676	714
Allegany	182	131	157
Broome	653	451	451
Cattaraugus	152	58	34
Cayuga	164	63	63
Chautauqua	673	363	363
Chemung	274	145	91
Chenango	138	92	90
Clinton	56	50	59
Columbia	105	59	57
Cortland	52	27	31
Delaware	114	90	90
Dutchess	249	57	73
Erie	1,417	728	685
Essex	131	62	62
Franklin	210	188	188
Fulton	150	81	76
Genesee	120	86	117
Greene	64	56	54
Hamilton	2	2	1
Herkimer	112	81	64
Jefferson	143	86	86
Lewis	40	35	41
Livingston	133	66	76
Madison	154	90	97
Monroe	1,837	825	928
Montgomery	34	20	18
Nassau	1,612	1,612	1,612
Niagara	422	183	183
Oneida	1,354	1,184	1,184
Onondaga	2,455	1,336	1,336
Ontario	361	261	261
Orange	846	875	868
Orleans	115	57	57
Oswego	384	291	291
Otsego	61	33	33
Putnam	217	172	172
Rensselaer	29	29	29
Rockland	533	470	470
St. Lawrence	142	142	142
Saratoga	177	82	53
Schenectady	465	412	465
Schoharie	0	34	34
Schuyler	151	121	127
Seneca	158	97	97
Steuben	212	137	113
Suffolk	1,102	939	939
Sullivan	171	93	90
Tioga	28	15	9
Tompkins	258	164	146
Ulster	600	600	600
Warren	54	54	54
Washington	0	0	0
Wayne	280	203	204
Westchester	1,321	600	600
Wyoming	67	64	64
Yates	30	20	16
Upstate Total	21,771	14,948	15,015
NYC Total	8,560	5,706	5,798
State Total	30,331	20,654	20,813

CHAPTER 3

A SURVEY OF THE USE AND ADMINISTRATION OF MONETARY RESTITUTION

SECTION 1 INTRODUCTION

It has been approximately three years since the State's current restitution laws became effective, but little is known about the actual policies and practices implemented by criminal justice agencies to comply with legislative directives related to restitution. The restitution data collected and reported by designated collection agencies enables the Division of Criminal Justice Services to measure restitution activity in the State to some degree. However, while a fluctuation or inconsistency in the numbers reported may indicate that a problem exists, it is not always possible to determine the nature of the problem from the numbers alone. For example, we do not know to what degree the variation in the percentage of restitution collected across agencies is related to efficacy in enforcement, offender indigency, or some other factor. Similarly, victim impact information/statement data, as currently reported to the Crime Victims Board (CVB), meet the minimum reporting requirements for local probation departments, but do not provide CVB with the type of data that are needed to meet its reporting mandate related to restitution. For example, it is not possible to measure the effect that victim impact statements actually have on sentences, including restitution, imposed by the courts.

The data alone have proven to be inadequate measures of compliance with the law and fail to provide sufficient information for the development of sound policy recommendations. It was important, therefore, to find some other method for identifying impediments to both the use and enforcement of restitution. Because there is so little documentation about the current policies and practices of criminal justice agencies in regard to restitution, a survey was viewed as the appropriate mechanism for the initial exploration of the use and administration of restitution in New York State.

Research Objectives

The objectives of the survey were (1) to examine the impact of restitution law on the policies and practices of both the State Division of Probation and

Correctional Alternatives (DPCA) and local probation departments and (2) to identify gaps both in the law, in the policies of DPCA and in the policies and practices of and local departments that interfere with the use and administration of restitution.

Local probation departments were chosen to be the recipients of this survey because of their central role in the use and administration of restitution in New York State. In those instances where the courts request pre-plea, pre-sentence, or pre-disposition reports, probation departments assist the courts in determining the legitimacy of victims' requests for restitution and the ability of offenders to pay restitution to the victims of their crimes. In addition, probation departments have been designated to administer restitution ordered by the courts at the time of sentencing.¹³

Research Methods

Sample. The survey was mailed on August 19, 1987 to each of the directors of the 58 probation departments in the State.¹⁴ Survey instructions recommended that the survey be completed by the staff members most knowledgeable about the use and administration of restitution within the department. Each of these 58 departments returned a completed questionnaire to the Division of Criminal Justice Services (DCJS) and, in some instances, attached written policies and guidelines developed by the department for the use and administration of restitution.

¹³ While the Hamilton County Probation Department is no longer the designated collection agency for Hamilton County, it was serving in that capacity at the time this survey was conducted. The Hamilton County Sheriffs' Department is now the designated collection agency for restitution.

¹⁴ One probation department is located in each of the 57 counties outside New York City, while one department provides services to the five New York City boroughs/counties.

Questionnaire construction. The survey questionnaire was developed by DCJS in cooperation with the Crime Victims Board and the Division of Probation and Correctional Alternatives. The questions asked in the survey (see Appendix K) spanned the entire restitution process for probation departments:

- o Obtaining the views of victims regarding the disposition of cases and the amounts of restitution sought by victims.
- o Evaluating the ability of offenders to pay restitution.
- o Restitution recommended by departments and ordered by the courts when offenders do not have the financial ability to pay the full amount of restitution.
- o Offender payment schedules.
- o Collecting restitution and the five percent surcharge.
- o Monitoring and enforcing restitution orders.
- o Disbursing restitution to victims.
- o Assignment of agency staff to the administration of restitution.

Analysis. Many of the survey questions required respondents to report their "best estimate" of the frequency of given events or situations "during the past twelve months." While some of these questions asked departments to estimate the percentage of time events or situations occurred during this period, most often departments were asked whether events or situations "never, seldom, sometimes, usually, or always" occurred. For the purpose of analysis, these responses were scaled from one to five, respectively, to calculate mean response scores. The statistical procedures used to analyze these data were limited to frequencies, percentages, means, and correlations.

The degree of urbanization in counties the departments serve was also considered in the analysis because of its possible effect on the policies and practices of departments. Probation departments were divided into four categories--urban-downstate, urban-upstate, urban/rural, and rural. These categories reflect the degree of urbanization in the counties to which the departments provide services. The departments included in each of the four

groupings of the "probation department urbanization index"¹⁵ are as follows:

- o Urban-Downstate Departments - New York City, Nassau, Suffolk, and Westchester;
- o Urban-Upstate Departments - Erie, Monroe, and Onondaga;
- o Urban/Rural Departments - Albany, Broome, Chemung, Dutchess, Niagara, Oneida, Orange, Rensselaer, Rockland, Saratoga, Schenectady, and Ulster;
- o Rural Departments - all other departments.

Because so little is currently known about restitution policies and practices across the State, the interpretation of analyses was limited to the aggregate State data. Any attempt to interpret the variations in policies and practices across the urbanization index would have produced explanations that were purely speculative. Given the exploratory nature of this study, however, it was believed important to present a more discriminating measure of these data in the hope that it might benefit future analytic endeavors in the area of restitution.

Data Limitations

It is important for the reader to understand that the frequency of activities reported by probation departments was not based on quantitative analyses, but on departments' perceptions of how often activities occurred. Departments were asked to provide their "best estimate" of how often a given activity occurred and were advised that while reasonable accuracy was important, it was not expected that special analyses would be performed to respond to any of the questions. A "not known" category was available if departments found it difficult to estimate the level of activities. This "not known" category was included to deter departments from estimating how often activities occurred when they could not do so with reasonable accuracy.

¹⁵ The "urbanization index" was developed by the Division of Probation and Correctional Alternatives (see Appendix L).

Questions that explored the use of restitution by the probation departments and the courts considered only those cases for which the courts had requested pre-plea or pre-sentence reports.¹⁶ As a result, the survey was not able to examine the restitution policies and practices of the courts in instances where these reports were not requested.

Organization of the Chapter

The presentation of survey results are preceded with a discussion of relevant statutes and Division of Probation and Correctional Alternatives (DPCA) rules and regulations that govern the use of restitution, along with the guidelines developed by DPCA to assist probation departments in the administration of restitution.

Section 2 focuses on the rights of victims in relation to the use of victim impact statement forms which are used to secure information on losses, property damages, or injuries suffered as the result of crimes. The methods used by departments to contact and collect victim impact information--including the role played by victim service programs in helping to secure this information--and the willingness of victims to provide this information are also examined. The frequency with which victims entitled to monetary restitution actually requested it is explored, along with the reasons why it may not have been requested. The importance of determining whether or not victims have received compensation through third-party payors such as the Crime Victims Board or insurance companies is also discussed, along with the need to statutorily define who, other than actual victims of a crime or their families, is entitled to receive restitution (e.g., the New York State Crime Victims Board and insurance companies).

¹⁶ Pre-sentence reports are required for offenders convicted of felonies and for offenders convicted of misdemeanors who will receive "... a sentence of probation; a sentence of imprisonment for a term in excess of ninety days; or consecutive sentences of imprisonment for terms aggregating more than ninety days." At the courts' discretion, they may also request for the purposes of sentencing, pre-sentence reports for any other types of cases. (CPL Section 390.20).

Section 3 focuses on the rights of victims to restitution in relation to the State's restitution policy which stipulates that offenders' "ability to pay" restitution must be considered. The criteria used to evaluate "ability to pay" are examined as well as how the ability of offenders to pay restitution affects departments' restitution recommendations to the courts. The possible impact of the courts' restitution policies on probation recommendations is also explored. The appropriateness using "ability to pay" to determine the amounts of restitution to be paid versus the manner of payments is discussed.

The various components of the administration of restitution are the focus of Section 4. This section first examines who notifies victims of the conditions of restitution orders. Second, compliance with statutory directives regarding the collection of restitution and the fine percent designated surcharge is examined. Third, the frequency with which the courts and the probation departments establish specific payment schedules for offenders is examined. Fourth, the monitoring of offenders' compliance to restitution orders and the enforcement mechanisms available to departments and the courts for non-compliance are explored. Fifth, the forms of payment that are accepted from offenders are examined, as well as departments' policies and mechanisms for disbursing restitution to victims and the impact of subrogation rights on the disbursement of restitution. Sixth, the complexity of fiscal management and record keeping are discussed, along with the need for the development of an automated case-based restitution system. Finally, the amount of staff time and type of staff devoted to the administration of restitution are investigated, as well as the budgetary impact of these programs on probation departments.

SECTION 2
VICTIMS' RIGHTS: VICTIM IMPACT STATEMENTS

Section 60.27(1) of the Penal Law instructs the courts to consider restitution to crime victims:

... the court shall consider restitution to the victim of the crime and may require restitution as the part of the sentence imposed upon a person convicted of an offense...

Victim impact statements, which must be included in pre-sentence reports where appropriate, play a central role in informing the courts of the desire of victims to seek restitution.¹⁷

In instances where pre-sentence reports are required or have been requested by the courts, the local probation departments must advise the courts, when possible, of victims' views regarding the disposition of cases, including the amount of restitution sought by victims. Section 390.30(3)(b) of the Criminal Procedure Law stipulates that when information provided by victims or victims' families:¹⁸

... would be relevant to the recommendation or court disposition, the [pre-sentence] report shall also contain a victim impact statement which shall include an analysis of the victim's version of the offense, the extent of injury or economic loss or damage to the victim and the views of the victim relating to disposition including the amount of

¹⁷ District attorneys are also responsible for informing the courts of the desire of victims to receive restitution. Section 60.27(1) of the Criminal Procedure Law specifies that: "The district attorney shall where appropriate advise the court at the time of sentencing that the victim seeks restitution, the extent of injury or economic loss or damage of the victim, and the amount of restitution sought by the victim in accordance with his responsibilities under subdivision two of Section 390.50 of the Criminal Procedure Law and Article 23 of the Executive Law. The court shall hear and consider the information presented by the district attorney in this regard."

¹⁸ "In the case of a homicide or where the victim is unable to assist in the preparation of the victim impact statement, the information may be acquired from the victims's family." (CPL Section 390.30(3)(b)).

restitution sought by the victim, subject to the availability of such information... Nothing contained in this section shall be interpreted to require that a victim supply information for the preparation of this report.

Prior to the passage of this law in 1985, the Division of Probation and Correctional Alternatives (DPCA) promulgated rules and regulations that require the inclusion of victim information in pre-plea reports, as well as pre-sentence reports. These rules and regulations stipulate that when conducting investigations for these reports, probation departments must contact victims (9 NYCRR Section 350.6(c)(3)(i)):

... when it is deemed necessary for obtaining additional and clarifying information regarding the offense, restitution, or defendant/ respondent which is likely to influence the recommendation or court disposition.

It is important that victim impact statements also be included in pre-plea reports because the courts are not required to request pre-sentence reports when pre-plea reports are prepared. DPCA rules and regulations (9 NYCRR Section 350.10(b)) state:

Upon a conviction by plea, in all cases where a pre-sentence investigation is required by statute and whenever sentencing does not occur at the time of such conviction by plea, the pre-plea investigating and report shall be utilized as a pre-sentence report unless:

- (1) the court orders the report to be updated; or
- (2) the probation department has learned of other material information.

In such cases, an addendum may be attached to the pre-plea report.

At the present time, victim impact statements are included in pre-plea reports where appropriate, even though the Criminal Procedure Law does not require it. To correct this technical oversight in the law, it is recommended that the Criminal Procedure Law be amended to also require the inclusion of victim impact statements in pre-plea reports.

The availability of victim impact information for pre-plea or pre-sentence reports, including the amount of restitution sought by victims, hinges on two factors: the ability of probation departments to locate and contact victims and the willingness of victims to provide this information. This section of Chapter 3 first examines the degree of success probation departments had in locating victims in order to inform them of their right to submit victim impact information to the courts. Second, methods used by departments to contact victims are discussed. Third, the frequency with which victims responded to requests for victim impact information is examined. Furthermore, the frequency with which victims eligible to receive restitution requested it is discussed, along with the reasons why it was not requested by some of these victims. Fourth, the role that victim services programs can play in the collection of victim impact information is discussed, and the frequency with which departments requested the assistance of these programs along with the reasons why is also examined. Finally, the right of third parties who provide financial assistance to victims requesting restitution is examined, along with the frequency with which departments recommended to the courts that offenders be ordered to pay restitution to these third parties.

Locating Victims

Locating victims to request victim impact information did not appear to be a problem for most probation departments. Case files provided to the probation departments by the courts when pre-plea and pre-sentence reports are requested may contain the names, addresses, and telephone numbers of victims. If this information is not included in these case files, departments normally contact the police or district attorneys for it. When asked how often these two agencies were able to provide departments with accurate information when they were contacted, Table 9 shows that the majority of probation departments, 96.5 percent, reported that they were "usually" (74.1 percent) or "always" (22.4 percent) able to contact victims using the provided with adequate information by these agencies. Only two departments reported they were only "sometimes" able to contact victims. The frequency with which the police and district attorneys were able to provide accurate information did not differ dramatically across the urbanization index.

TABLE 9

**How Often Probation Departments Received Sufficient Information
From the Police or the District Attorney to Contact Victims
by Urbanization Index**

Probation Department Urbanization Index	How Often Departments Received Sufficient Information from the Police or District Attorneys						Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always	TOTAL	
Urban-Downstate Departments	-	-	-	3 75.0%	1 25.0%	4 100.0%	4.3
Urban-Upstate Departments	-	-	-	3 100.0%	-	3 100.0%	4.0
Urban/Rural Departments	-	-	1 8.3%	10 83.3%	1 8.3%	12 100.0%	4.0
Rural Departments	-	-	1 2.6%	27 69.2%	11 28.2%	39 100.0%	4.3
TOTAL	-	-	2 3.4%	43 74.1%	13 22.4%	58 100.0%	4.2

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

Methods Used to Contact Victims

While victims are not required to submit victim impact information in writing, the Division of Probation and Correctional Alternatives (DPCA) recommends that victims or victims' families be provided with victim impact statement forms to complete. DPCA also recommends that these forms be accompanied by cover letters explaining the purpose of the forms and advising victims who to contact for assistance in their preparation. In cases involving serious or violent crimes, DPCA further recommends that victims or their families be contacted by telephone before this correspondence is mailed (Probation Directors' Memorandum, No. 26-85). The intent of this process is to convey to victims or their families the professional sensitivity and interest of departments and to assure them that their concerns and rights as victims

will be considered by the courts at the time of sentencing. A copy of the suggested cover letter and victim impact statement form are presented in Appendix M.

The use of letters as the primary method of contact requires less staff time than telephone or in-person contacts. These latter two methods of contact are used only when serious or violent crimes are involved, when the addresses of victims are not available, or when victims request assistance to prepare victim impact statement forms.

Letters were used by all probation departments with varying degrees of frequency (see Table 10). An overwhelming majority of the departments, 91.4 percent, reported that they "usually" or "always" contacted victims by letter to inform them of their right to submit victim impact information to the courts. Four departments reported that they "sometimes" used letters to contact victims, and only one department reported that it "seldom" used letters.

A majority of the departments reported that some victims were also contacted by telephone or in-person. As the average response scores in Table 10 show, departments reported that telephone contacts with victims (2.7 average score) were used somewhat more frequently than meetings with victims (2.2 average score) to secure victim impact statements. Responses also indicate that the more often letters were used by departments to contact victims, the less often telephone contact¹⁹ or in-person contact²⁰ was used and vice versa. Only six probation departments reported that they relied solely on letters and did not contact victims by telephone or in-person.

¹⁹ Kendall's Tau C coefficient of $-.2191$ with $.010$ probability.

²⁰ Kendall's Tau C coefficient of $-.2045$ with $.016$ probability.

TABLE 10

**How Often Probation Departments Used Letter, Telephone, or In-Person Contacts
to Inform Victims of Their Right to Submit Victim Impact Information**

Method of Contact	How Often Methods Were Used by Departments						Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always	TOTAL	
Letter	-	1 1.7%	4 6.9%	17 29.3%	36 62.1%	58 100.0%	4.5
Telephone	7 12.3%	13 22.8%	29 50.9%	6 10.5%	2 3.5%	57 100.0%	2.7
In-Person	14 24.1%	23 39.7%	18 31.0%	3 5.2%	-	58 100.0%	2.2

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

When the average response scores were examined across the department urbanization index, there were no significant differences in the frequency with which methods were used by the urban groups. As Table 11 shows, urban-upstate departments used letters slightly less frequently than the other groups, and both urban-downstate departments and urban-upstate departments used in-person contacts somewhat more frequently than the other two urban groups. The frequency with which the telephone contacts were used decreased as the level of urbanization decreased.

Responses indicate that most departments have adopted to some degree the DPCA guidelines that recommend contacting victims by letter for victim impact information. However, it was not possible to determine from these responses how often victim impact statement forms accompanied these letters to victims. Nor was it possible to determine whether or not telephone and in-person contacts with victims were always used when a serious or violent crime was involved. It is recommended that DPCA promulgate rules and regulations requiring departments to provide victim impact statement forms accompanied by cover letters to victims. Furthermore, it is recommended that DPCA promulgate rules and regulations that require departments to contact victims of serious or

violent crimes prior to providing victim impact statement forms, except in those cases where victims have stated that they do not wish to be contacted regarding the crime. As was mentioned earlier, these procedures are intended to convey to victims the departments' professional sensitivity to and interest in victims' rights, as well as make more efficient use of staff resources.

TABLE 11

How Often Probation Departments Used Letter, Telephone, or In-Person Contacts to Inform Victims of Their Right to Submit Victim Impact Information by Urbanization Index

Probation Department Urbanization Index	Average/Mean Response ^a (Number of Probation Departments)		
	Letter	Telephone	In-Person
Urban-Downstate Departments	4.0 (4)	3.3 (4)	2.5 (4)
Urban-Upstate Departments	4.7 (3)	3.0 (3)	3.0 (3)
Urban/Rural Departments	4.4 (12)	2.8 (12)	2.1 (12)
Rural Departments	4.6 (39)	2.6 (38)	2.1 (39)
TOTAL	4.5 (58)	2.7 (57)	2.2 (58)

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

How Often Victims Provided Victim Impact Information and Sought Restitution

While victims are not required by law to provide victim impact information, the majority of victims appear to be willing to do so. Data received by the Crime Victims Board on the number of requests for victim impact information and the number of victims who responded to these requests from July through December 1986,²¹ suggested that roughly two-thirds of the victims responded to requests for this information (see Chapter 2, Section 2). Because some of the departments had not yet fully complied with the law during this reporting period, these data must be interpreted with some caution. Survey data, however, indicated that this estimate was reasonably accurate.

Probation departments reported a similar degree of willingness on the part of victims to provide victim impact information. Forty-eight probation departments, or 82.8 percent, reported that victims "usually" provided victim impact information, with the remaining departments reporting that victims only "sometimes" provided this information (see Table 12). When the proportional distributions of responses were examined across the urbanization index, the lack of victims' willingness to provide victim impact information was reported to have occurred with somewhat greater frequency by urban-upstate departments than by departments in the other urban categories. While 66.7 percent of the urban-upstate departments stated that victims "sometimes" provided victim impact information, only 25.0 percent of the urban-downstate departments, 16.7 percent of the urban/rural departments, and 12.8 percent of the rural departments reported that victims only "sometimes" provided this information. It is also important to note that as the level of urbanization decreased for these latter three urban groups, so did the proportion of departments reporting that victims only "sometimes" provided victim impact information.

²¹ Under the provision of Section 390.3(5) of the Criminal Procedure Law, which became effective on November 1, 1985, the Division of Probation and Correctional Alternatives is responsible for the collection and subsequent transmission of data to the Crime Victims Board on the number of victim impact statements prepared by county probation departments.

TABLE 12
How Often Victims Provided Victim Impact Information
by Urbanization Index

Probation Department Urbanization Index	How Often Victims Provided Victim Impact Information						Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always	TOTAL	
Urban-Downstate Departments	-	-	1 25.0%	3 75.0%	-	4 100.0%	3.8
Urban-Upstate Departments	-	-	2 66.7%	1 33.3%	-	3 100.0%	3.3
Urban/Rural Departments	-	-	2 16.7%	10 83.3%	-	12 100.0%	3.8
Rural Departments	-	-	5 12.8%	34 87.2%	-	39 100.0%	3.9
TOTAL	-	-	10 17.2%	48 82.8%	-	58 100.0%	3.8

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

Probation departments also reported that restitution was requested with similar frequency by eligible victims, particularly in urban/rural and rural departments (compare Table 12 and Table 13). This suggests that the possibility of receiving restitution did not increase the likelihood of victims providing victim impact information. Forty-six, or 83.6 percent, of the probation departments reported that victims "usually" or "always" sought restitution from offenders (see Table 13). The remaining departments, 16.7 percent of the urban/rural departments and 18.4 percent of the rural departments, reported that victims only "sometimes" sought restitution.

While a variety of reasons were given to probation departments by victims for not requesting restitution, in most instances victims gave "no reasons" (see Table 14). Of those reasons that were given, no single reason dominated. In addition, probation departments reported that none of these reasons were given very often; average response scores ranged from 1.9 to 2.5. "Small

monetary losses" and "monetary compensation received from third-party payors" such as the Crime Victims Board or insurance companies were the two reasons given most frequently by victims, with "fear of offender retaliation" given the least frequently. "Other" reasons reported by probation departments for the failure of victims to request restitution included: victims wanted offenders incarcerated, victims and offenders had continuing relationships, victims were not interested in receiving restitution, victims wanted offenders sentenced to community service, and victims chose to sue offenders for losses in civil court.

TABLE 13

How Often Restitution Was Requested by Eligible Victims by Urbanization Index

Probation Department Urbanization Index	How Often Victims Requested Restitution						Mean/Average Response ^a
	Never	Seldom	Sometimes	Usually	Always	TOTAL	
Urban-Downstate Departments	-	-	-	3 100.0%	-	3 100.0%	4.0
Urban-Upstate Departments	-	-	-	2 100.0%	-	2 100.0%	4.0
Urban/Rural Departments	-	-	2 16.7%	9 75.0%	1 8.3%	12 100.0%	3.9
Rural Departments	-	-	7 18.4%	31 81.6%	-	38 100.0%	3.8
TOTAL	-	-	9 16.4%	45 81.8%	1 1.8%	55 ^b 100.0%	3.9

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Three probation departments responded "not known."

TABLE 14

Reasons Given by Victims for Not Requesting Monetary Restitution

Reasons	How Often Reasons Were Given By Victims (Number and Percent of Probation Departments)					TOTAL	Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always		
No reasons	6 13.3%	14 31.1%	18 40.0%	6 13.3%	1 2.2%	45 100.0%	2.6
Monetary losses were too small	4 8.0%	20 40.0%	24 48.0%	2 4.0%	-	50 100.0%	2.5
Receiving monetary compensation from third party	9 17.6%	11 21.6%	26 51.0%	5 9.8%	-	51 100.0%	2.5
Restitution would not be received	9 18.0%	20 40.0%	18 36.0%	3 6.0%	-	50 100.0%	2.3
Submitting information was to much trouble	10 22.2%	21 46.7%	11 24.4%	3 6.7%	-	45 100.0%	2.2
Wanted to forget about Crime	14 30.4%	16 34.8%	14 30.4%	2 4.3%	-	46 100.0%	2.1
Discouraged by delays in the court process	14 32.6%	15 34.9%	14 32.6%	-	-	43 100.0%	2.0
Feared offender retaliation	16 37.2%	17 39.5%	10 23.3%	-	-	43 100.0%	1.9
Other reasons	-	2 15.4%	11 84.6%	-	-	13 100.0%	NA

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

The average response scores of probation departments are presented by the urbanization index in Table 15. The receipt of "monetary compensation from third-party payors" is the reason given most frequently by victims to probation departments across the index. When department responses were examined in aggregate, "fear of offender retaliation" was cited by departments as one of the reasons given least frequently by victims (see Table 14). However, when responses were examined across the urbanization index, "fear of offender retaliation" was one of the reasons given most frequently by victims to both urban-downstate and urban-upstate departments.

The data from both the Crime Victims Board and this survey suggest that while a majority of the victims responded to requests for victim impact information, there was still a sizable portion of victims that did not. It would be helpful to know if a relationship existed between the willingness of victims to provide victim impact information and the method or combination of methods used by departments to contact these victims. In order to answer this question, the quality of these contacts would have had to have been measured. This task, however, was beyond the scope of this exploratory survey. It would also have been necessary to address how aggressively departments followed-up on victims who did not respond to letters. For example, was it the policy of departments to assume that these victims were not willing to provide this information, thereby making follow-up unnecessary? Did departments send follow-up letters or attempt to follow-up by telephone or in-person? Was the assistance of victim service programs sought when victims were reluctant to provide this information? Only this last question was addressed by the survey and is discussed in the next portion of this section.

Victim Service Programs

The victim services programs operating in New York State provide an array of services in response to the various needs of crime victims. Many programs do provide support to victims, as well as acting as advocates for crime victims in the criminal justice system. This support and advocacy may involve accompanying crime victims to police stations or to courts and establishing working relationships with police departments, district attorneys, courts, and

TABLE 15
Reasons Why Victims Did Not Seek Restitution From Offenders
by Urbanization Index

Probation Departments Urbanization Index	Mean/Average Response ^a (Number of Probation Departments)						
	Monetary compensation from third party payor	Monetary losses too small	Restitution would not be received	Submitting information was too much trouble	Wanted to forget about the crime	Discouraged by delays in the court process	Feared offender retaliation
Urban-Downstate Departments	3.0 (3)	2.3 (3)	1.7 (3)	2.0 (3)	2.7 (3)	1.5 (2)	3.0 (2)
Urban-Upstate Departments	3.0 (2)	2.0 (2)	3.0 (2)	3.5 (2)	2.0 (2)	3.0 (2)	3.0 (2)
Urban/Rural Departments	2.6 (9)	2.4 (10)	2.0 (10)	2.3 (10)	2.5 (10)	2.4 (9)	1.9 (9)
Rural Departments	2.5 (37)	2.5 (35)	2.4 (35)	2.0 (30)	1.9 (31)	1.8 (30)	1.7 (30)
TOTAL	2.5 (51)	2.5 (50)	2.3 (50)	2.2 (45)	2.1 (46)	2.0 (43)	1.9 (43)

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

probation departments to facilitate the participation of victims in the criminal justice process.

During FY 1987-88, approximately \$9,237,000 in State and Federal monies was awarded by three State agencies--the Crime Victims Board (CVB), the Department of Health, and the Department of Social Services--to victim services programs that are located in 58 of the State's 62 counties.²² The Crime Victims Board typically funds comprehensive programs which provide services to all types of victims, although funds were allocated to programs delivering specialized services to elderly victims or to victims of rape or domestic violence. The Department of Health provides funding to rape crisis programs, while the Department of Social Services funds domestic violence programs. A list of the counties in which the programs funded by each agency were located can be found in Appendix N.

Assisting in the collection of victim impact information. Fifty-four of the 58 probation departments were located in counties with victim service programs. However, 20 of the these 54 departments, or 34.5 percent, reported that they were not aware that these programs were located in their counties (see Table 16). When departments' awareness of victim service programs was examined across the urbanization index, the proportion of departments that were unaware of these programs increased as the level of urbanization decreased. All of the urban-downstate departments and urban-upstate departments were aware of these programs, while 25.0 percent of the urban/rural departments and 43.6 percent of the rural departments were unaware that victim service programs were located in their counties.

When departments were asked if they had sought the assistance of victim service programs to collect victim impact information, only 23, or 41.1 percent, of the 56 departments that responded to this question reported seeking such assistance. The data presented in Table 17 show that the majority of urban-upstate departments (66.6 percent) and urban/rural departments (81.9

²² New York State Crime Victims Board.

percent) sought the assistance of these programs, while only one-fourth of the urban-downstate departments (25.0 percent) and rural departments (29.0 percent) sought such assistance. Almost all of the departments that sought assistance reported that they were aware that these programs were located in their counties.²³

TABLE 16
 Probation Departments' Awareness of Victim Services Programs
 Located in Their Counties by Urbanization Index

Probation Department Urbanization Index	Number and Percent of Probation Departments			TOTAL
	Aware of Programs	Unaware of Programs	No Programs	
Urban-Downstate Departments	4 100.0%	-	-	4 100.0%
Urban-Upstate Departments	3 100.0%	-	-	3 100.0%
Urban/Rural Departments	9 75.0%	3 25.0%	-	12 100.0%
Rural Departments	18 46.2%	17 43.6%	4 10.3%	39 100.0%
TOTAL	34 58.6%	20 34.5%	4 6.9%	58 100.0%

²³ Twenty-one or 61.8 percent, of the 34 probation departments that were aware that victim services programs were operating in their county, sought the assistance of these programs, while only one department that had been unaware of the program in its county and one department located in a county with no program reported seeking assistance.

TABLE 17

**How Often Departments Sought the Assistance of Victim Services Programs
to Collect Victim Impact Information by Urbanization Index**

Probation Department Urbanization Index	How Often Departments Sought the Assistance of Victim Service Programs					TOTAL	Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always		
Urban-Downstate Departments	3 75.0%	1 25.0%	-	-	-	4 100.0%	1.3
Urban-Upstate Departments	1 33.3%	1 33.3%	1 33.3%	-	-	3 100.0%	2.0
Urban/Rural Departments	2 18.2%	5 45.5%	3 27.3%	1 9.1%	-	11 100.0%	2.3
Rural Departments	27 71.1%	5 13.2%	6 15.8%	-	-	38 100.0%	1.4
TOTAL	33 58.9%	12 21.4%	10 17.9%	1 1.8%	-	56 ^b 100.0%	1.6

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Two departments responded "not known."

Two of the 23 departments that did seek assistance in collecting victim impact information operate their own victim assistance programs; one of these departments reported that it "usually" sought assistance, while the other department reported that it "sometimes" sought this assistance. The remaining 21 departments, only "seldom" or "sometimes" sought the assistance of victim services programs. As Table 17 shows, the frequency with which assistance was sought by these 23 departments was very similar across the urbanization index.

A majority of the 23 probation departments, 69.4 percent, that sought the assistance of victim services programs did so to secure information from victims who were either reluctant or found it difficult (e.g., trauma of crime) to provide this information (see Table 18). Considerably fewer probation departments sought the assistance of these programs because of a lack of resources to support outreach services (40.9 percent) or a lack of trained staff (4.3 percent). "Other" reasons reported by probation departments for using victim service agencies included: victims' preferred to provide information through these programs, court directives, probation departments needed assistance in locating victims, and restitution information provided by victims required verification with CVB. The one urban-downstate probation department that sought the assistance of victim services programs did so only when it lacked resources to support outreach services (see Table 19), while urban-upstate departments used these programs most frequently to secure victim impact information from victims who were reluctant to provide such information. Urban/rural departments and rural departments reported that both the lack of resources for outreach services and the reluctance of victims to provide impact information were reasons for seeking the assistance of these programs.

It is not possible to determine from these data whether or not seeking the assistance of victim services programs increased victims' responses to requests for victim impact information. However, the ability of these programs to provide an alternative method for contacting victims to secure information should be recognized by probation departments.

The fact that 20 departments were unaware that these programs even existed in the counties they serve suggests, however, that either the programs or the departments were operating in somewhat of a vacuum. It is recommended that measures be taken by both CVB and the Division of Probation and Correctional Alternatives (DPCA) to create an environment that would encourage a closer working relationship between victim services programs and probation departments. It is also recommended that DPCA encourage departments to explore the use of these programs to collect victim impact information. Finally, it is

TABLE 18

Reasons Why Probation Departments Sought the Assistance
of Victim Services Programs to Collect Victim Impact Information

Reasons	How Often Departments Sought Assistance (Number and Percent of Probation Departments)					TOTAL	Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always		
Lack of Resources to Support Outreach Services	13 59.1%	-	2 9.1%	4 18.2%	3 13.6%	22 100.0%	2.3
Victims Were Reluctant to Provide Victim Impact Information	7 30.4%	7 30.4%	7 30.4%	1 4.3%	1 4.3%	23 100.0%	2.2
Lack of Trained Staff to Collect Victim Impact Information	22 95.7%	1 4.3%	-	-	-	23 100.0%	1.0
Other Reasons	-	2 28.6%	3 42.9%	1 14.3%	1 14.3%	7 100.0%	NA

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

TABLE 19

Reasons Why Probation Departments Sought the Assistance
of Victim Services Programs to Collect Victim Impact Information
by Urbanization Index

Probation Department Urbanization Index	Average/Mean Response ^a (Number of Probation Departments)		
	Lack of Resources to Support Outreach Services	Victims Were Reluctant to Provide Victim Impact Information	Lack of Trained Staff to Collect Victim Impact Information
Urban-Downstate Departments	5.0 (1)	1.0 (1)	1.0 (1)
Urban-Upstate Departments	1.0 (2)	2.0 (2)	1.0 (2)
Urban/Rural Departments	2.2 (9)	1.9 (9)	1.1 (9)
Rural Departments	2.3 (10)	2.6 (11)	1.0 (11)
TOTAL	2.3 (22)	2.2 (23)	1.0 (23)

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

recommended that DPCA, in conjunction with CVB, conduct an evaluation of the victim services programs operated by two of the probation departments to determine the effect of these programs on the collection of victim impact information as it relates to restitution and related services provided by departments to victims.

Assisting victims outside the jurisdiction of probation departments. In instances where the criminal courts do not request the preparation of reports by probation departments, victim services programs can play a central role in ensuring that victims, when appropriate, are informed of their right to restitution. For example, in New York City, the Victim Services Agency (VSA) plays a central role in informing victims of their rights in the criminal justice system, including their right to request restitution, when appropriate. VSA employs a variety of methods to inform victims of this right:

- o VSA is under contract with New York City to notify victims of court appearance dates in all boroughs except Manhattan, where the New York County District Attorney's Office operates its own victim notification system. In conjunction with the "appearance notification" process, victims receive written, and sometimes verbal, information about restitution.
- o VSA provides counseling services and operates reception centers where victims can wait safely until they are needed in the courtroom in all boroughs except Manhattan. Victims who seek these services are informed of their right to restitution when appropriate.
- o VSA staff are stationed in the District Attorney Complaint Rooms in the boroughs of Bronx, Kings, and Richmond. Staff interview all victims who are present and, when appropriate, inform them of their right to restitution.
- o In Kings County, VSA has victim advocates stationed in all arraignment courts. In appropriate cases, victims are informed of their rights to restitution.
- o District Attorneys' staff in all boroughs are periodically informed about VSA's services, including restitution advocacy and administration.

Whenever victims indicate an interest in restitution, the district attorneys are informed, either in writing²⁴ or verbally. It is the responsibility of the district attorneys--not VSA--to recommend to the courts that restitution be ordered. While VSA does not make restitution recommendations to the courts, it may occasionally investigate victims' restitution claims at the direction of the courts.

In addition to VSA, there were only seven victims services programs statewide that received funding from the State specifically for the provision of court-related services to victims during FY 1986-87 (see Appendix N). The usefulness of these programs in reaching victims that are outside the jurisdiction of probation departments should not be ignored.

Third-Party Payors

Third-party payors, such as the Crime Victims Board (CVB) or insurance companies, often compensate crime victims for personal injury, death, and property loss or damage. In many instances, these third parties have the legal right of subrogation to any money to be received by victims or victims' families through restitution orders or civil judgments. To date, the Division of Probation and Correctional Alternatives (DPCA) has not promulgated rules and regulations nor developed guidelines for local probation departments that provide direction for determining whether or not victims requesting restitution have received or will be receiving compensation from third-party payors. It is important that the subrogation rights of third-party payors' are upheld and that the double recovery of losses by victims be prevented; otherwise, it is possible that victims or their families could receive more compensation than that to which they are legally entitled.²⁵

²⁴ This information is included in the "court part information sheets" that are provided to district attorneys.

²⁵As discussed earlier, CVB has recovered less than one-half of one percent of the monetary compensation awarded to crime victims from FY 1982 through FY 1986 (see Chapter 2).

Forty-seven, or 81.0 percent, of the probation departments reported that they have implemented procedures to determine whether or not victims requesting monetary restitution have received or will be receiving monetary compensation from the Crime Victims Board, insurance companies, or other third-party payors (see Table 20). A greater proportion of urban-downstate and rural departments than urban-upstate and urban/rural departments have not implemented procedures to prevent victims from receiving more restitution than they are entitled to receive. The survey, however, did not explore the types of procedures that were used by departments. The most direct method, of course, is to ask victims or their families if compensation has been or will be received from these payors. Therefore, it is recommended that victim impact statement forms used by local probation departments to request victim impact information be amended to include questions to determine whether or not victims have received or will be receiving compensation from third-party payors. In addition to this method, it is recommended that CVB provide district attorneys and probation departments with the names of clients who have either applied for or been awarded compensation for crimes committed in the counties to which they provide services to help prevent the double recovery of losses by victims.

When departments were asked how often they recommended that restitution be ordered for these payors when departments learned that victims had or were going to receive monetary compensation from third-party payors, only 57.2 percent of the 56 departments that responded to this question reported that they "usually" or "always" recommended to the courts that restitution be paid to these third-party payors (see Table 21). Eight, or 21.1 percent, of the rural departments reported that they never recommend restitution in such instances. It is recommended that Article 390 of the Criminal Procedure Law be assistance provided by third parties to the victims of crimes. It is further recommended that Article 390 of the Criminal Procedure Law be amended to also require probation departments to recommend to the courts that restitution be paid to third-party payors in all instances where they are aware that victims or their families have received or will be receiving compensation from these payors -- regardless of whether or not victims request restitution.

TABLE 20

Probation Departments That Have Implemented Procedures
to Ensure Third-Party Payors Rights of Subrogation are Upheld
by Urbanization Index

Probation Departments Urbanization Index	Number and Percent of Probation Departments		
	Implementation of Procedure		
	Yes	No	TOTAL
Urban-Downstate Departments	2 100.0%	2 50.0%	4 50.0%
Urban-Upstate Departments	3 100.0%	-	3 100.0%
Urban/Rural Departments	11 91.7%	1 8.3%	12 100.0%
Rural Departments	31 79.5%	8 20.5%	39 100.0%
TOTAL	47 81.0%	11 19.0%	58 100.0%

TABLE 21

How Often Probation Departments Recommended Restitution be Paid to Third-Party Payors When Departments Learned That Victims Had Received or Would Receive Compensation From These Payors by Urbanization Index

Probation Department Urbanization Index	How Often Departments Recommended Restitution Be Paid to Third-Part Payors						Mean/Average Response ^a
	Never	Seldom	Sometimes	Usually	Always	TOTAL	
Urban-Downstate Departments	-	2 50.0%	1 25.0%	-	1 25.0%	4 100.0%	3.0
Urban-Upstate Departments	-	-	1 33.3%	1 33.3%	1 33.3%	3 100.0%	4.0
Urban/Rural Departments	-	2 18.2%	2 18.2%	3 27.3%	4 36.4%	11 100.0%	3.8
Rural Departments	8 21.1%	3 7.9%	5 13.2%	18 47.4%	4 10.5%	38 100.0%	3.2
TOTAL	8 14.3%	7 12.5%	9 16.1%	22 39.3%	10 17.9%	56 ^b 100.0%	3.3

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Two probation departments responded "not known."

One possible explanation for the failure of departments to always recommend that restitution be paid to third-party payors may be rooted in the lack of clear statutory directives for determining who is eligible to request restitution from offenders. This issue is addressed by the American Bar Association's (ABA) November 1987 proposal for "Guidelines Governing Restitution to Victims of Criminal Conduct."²⁷

This provision is designed to avoid double recovery by victims and to encourage victim assistance programs to come forward expeditiously... [and] also allows for recovery by insurers who have subrogation rights in regard to the incident which gave rise to the criminal prosecution.

The sentencing court may order the defendant to make restitution to any of the following:

1. the victim;
2. a state crime victim compensation program or other governmental agency which has provided financial assistance or compensation to the victim as a result of the crime;
3. a third party which has provided financial assistance or compensation to the victim as a result of the crime; or
4. an insurer or surety with a right of subrogation, to the extent that the insurer or surety has reimbursed the victim for actual damages resulting from the crime.

New York State case law supports the eligibility of third-party payors to receive restitution from offenders. In a recent decision, the New York State Court of Appeals in People v. Hall-Wilson, 69 N.Y.2d 154, 513 N.Y.S.2d 73 (1987) ruled that it was permissible for the court to order a security guard convicted of attempted arson and criminal mischief to pay restitution to her

²⁷ These proposed guidelines are under review by the Prison and Jail Problems Committee of the ABA's Criminal Justice Section. Earliest possible consideration of these guidelines by the ABA House of Delegates would be in August 1988.

employer who had reimbursed the customer for the damages resulting from the employee's criminal behavior. In People v. Turco, 130 A.D.2d 785, 515 N.Y.S. 2d 853 (2nd Dept. 1987) the court ruled that defendants could be required to pay restitution to insurance companies. More recently, the New York State Supreme Court, in People v. Lopez N.Y.S.2d (1988 WL 39951) Indict. No. 6141/85 addressed the question of whether Section 60.27 of the Penal Law, "requiring the making of restitution, is applicable to drug dealers, since in those cases a specific victim is not readily identifiable." In this case, the court directed the defendant, a major drug distributor, to make restitution of \$2,155,200 to be used to fund drug rehabilitation programs. The precedent for this decision was based on U.S. v. Gaetano Badalamenti, 663 F. Supp. 1539 (S.D.N.Y. 1987), where the Federal Court imposed restitution against several drug dealers to establish a "... fund of restitution which would be devoted to providing rehabilitation and care for persons injured by addiction to narcotics."

It is recommended that Section 60.27 of the Penal Law be amended with a subdivision that specifies third parties eligible to receive restitution from offenders. These third parties should include those specified in the ABA's proposed guidelines for restitution: the victim; a state crime victim compensation program or other governmental agency which has provided financial assistance or compensation to the victim as a result of the crime; a third party which has provided financial assistance or compensation to the victim as a result of the crime; or an insurer or surety with a right of subrogation, to the extent that the insurer or surety has reimbursed the victim for actual damages resulting from the crime. It is also recommended that DPCA monitor developments regarding the legality of ordering restitution in cases where there are no direct victims (e.g., drug distributors) be monitored to determine the feasibility of establishing special funds through restitution orders to provide services for indirect victims (e.g., rehabilitation of drug abusers).

Summary

When pre-plea or pre-sentence reports are requested by the courts, local probation departments must if possible, advise the courts of victims' views

regarding the disposition of cases, including the amount of restitution sought by victims. While the Criminal Procedure Law requires the inclusion of these statements in pre-sentence reports only, the rules and regulations promulgated by the Division of Probation and Correctional Alternatives (DPCA) require the inclusion of victim information in pre-plea reports, as well as pre-sentence reports. Because pre-plea reports often take the place of pre-sentence reports, it is recommended that the Criminal Procedure Law be amended to require the inclusion of victim impact statements in pre-plea reports as well.

The availability of victim impact information for either of these reports, however, hinges on two factors: the ability of probation departments to locate and contact victims and the willingness of victims to provide this information. Locating victims to request victim impact information did not appear to be a problem for most probation departments. When the names and addresses of victims were not included in the case files provided by the courts, the police or the district attorneys were usually able to provide departments with this information.

All probation departments have adopted, to some degree, DPCA guidelines that recommend contacting victims by letter for victim impact information. A majority of the departments reported that some victims were also contacted by telephone or in-person. While DPCA recommends that victims of serious or violent crimes be contacted by telephone prior to sending the letter, it was not possible to determine if these telephone or in-person contacts were always made in these cases. It is recommended that DPCA promulgate rules and regulations requiring departments to provide victim impact statement forms accompanied by cover letters to victims. Furthermore, it is recommended that DPCA promulgate rules and regulations that require departments to contact victims of serious or violent crimes prior to providing victim impact statement forms, except in those cases where victims have stated they do not wish to be contacted regarding the crime. These procedures are intended to convey to victims the departments' professional sensitivity to and interest in victims' rights as well as make more efficient use of staff resources.

While victims are not required by law to provide victim impact information, the majority of victims appear willing to do so. Based on the victim impact statement data received by the Crime Victims Board (CVB) and the survey data, roughly two-thirds of the victims in New York State responded positively to requests for this information. There was still, however, a sizable portion of victims that did not respond to these requests. In addition, departments' responses suggested that victims eligible to receive restitution did not provide victim impact statements any more frequently than victims who were not eligible. Departments reported that in most instances victims did not give reasons for declining to seek restitution, while a variety of reasons for not requesting restitution were given by the remainder of victims. Among the reasons given most frequently for not seeking restitution were "small monetary losses" and "monetary compensation received from third-party payors."

Because victim service programs could provide an alternative way to acquire victim impact information, departments were asked if such programs were located in the counties they serve and whether or not they sought their assistance to prepare victim impact statements. Twenty of the 58 probation departments were unaware that victim service programs were located in the counties they serve, and only 23 departments reported that they had sought the assistance of the programs to secure victim impact information. This assistance was usually sought when victims were reluctant to provide information. Victim service programs could play an important role in helping departments secure victim impact information and, in turn, making victims' views known to the courts. Recommendations were made encouraging (1) closer working relationships between victim services programs and probation departments; (2) the use of programs to collect victim impact information; and (3) the evaluation of victim services programs operated by two probation departments to determine the impact of the programs on the collection of victim impact information as it relates to restitution.

In instances where the criminal courts do not request the preparation of reports by probation departments, victim services programs can play a central role in ensuring that victims, when appropriate, are informed of their right to

restitution. For example, in New York City, the Victim Services Agency (VSA) plays a central role in informing victims of their rights in the criminal justice system, including their right to request restitution, when appropriate. In addition to VSA, there were only seven programs statewide that received funding from the State specifically for the provision of court-related services to victims during FY 1986-87. The usefulness of these programs in reaching victims that are outside the jurisdiction of probation departments should not be ignored.

Third-party payors, such as the Crime Victims Board (CVB) or insurance companies, often compensate crime victims for personal injury, death, and property loss or damage. In many instances, these third parties have the legal right of subrogation to any money to be received by victims or victims' families through restitution orders. While New York State case law supports the eligibility of third parties to receive restitution from offenders, neither the Penal Law nor Division of Probation and Correctional Alternatives (DPCA) rules and regulations or guidelines provide (1) direction for determining whether or not victims requesting restitution have received or will be receiving compensation from third-party payors or (2) define third parties eligible to receive restitution. Several recommendations were made to help ensure that the subrogation rights of third-party payors are upheld when restitution is ordered by the courts and that victims do not receive more compensation than that to which they are legally entitled.

SECTION 3
ABILITY OF OFFENDERS TO PAY RESTITUTION

Chapter 965, Section 1 of the Laws of 1984 states that the ability of offenders to pay restitution must be considered when restitution is used by the courts as a criminal sanction at the time of sentencing:

... it is the policy of this State to encourage restitution by a person convicted of a criminal offense to the victims of his or her criminal activities in appropriate cases and to the extent that the defendant is reasonably able to do so. This act shall be interpreted and administered to effectuate this policy.

While the State's policy regarding "ability to pay" is explicitly stated in Chapter 965, Section 60.27 of the Penal Law, which was amended by Chapter 965 and contains the statutes governing restitution, does not include similar language. However, Section 65.10 of the Penal Law, which specifies conditions that may be imposed by the courts with sentences of probation or conditional discharge, does state in subdivision (2)(g) that an offender can be required to make restitution "... in an amount he can afford to pay." Furthermore, the State has not specified in law at what point "ability to pay" should be taken into consideration by the courts when restitution is used as a criminal sanction. That is, should the courts consider "ability to pay" when determining the amounts of restitution offenders will be ordered to pay, or should the full amounts of restitution that victims are legally entitled to receive always be ordered by the courts with "ability to pay" taken into consideration only when determining the manner in which it is to be paid. While New York State case law requires the courts to consider "ability to pay" when ordering restitution,²⁸ more recent case law in other states does not require courts to consider "ability to pay" when determining the amounts of

²⁸People v. Lofton, 78 Misc.2d 202, 356 N.Y.S.2d 791 (N.Y.C. Crim. Ct. 1974): People v. Marx, 19 A.D.2d 577, 240 N.Y.S.2d 232 (4th Dept. 1963).

orders.²⁹ Other case law states that "ability to pay" should be considered only when determining the manner of payment.³⁰

The role that probation departments must play in assisting the courts in evaluating "ability to pay" is equally unclear. Article 390 of the Criminal Procedure Law, which deals with the preparation of pre-sentence reports, does not require that probation departments evaluate offenders' ability to pay restitution in these reports. However, rules and regulations promulgated by the Division of Probation and Correctional Alternatives (DPCA) clearly state that pre-plea, pre-sentence, and pre-disposition reports must contain, when appropriate, information regarding offenders' financial resources, including "ability to pay" (9 NYCRR Section 350.7(b)(4)(v)(c)):³¹

When appropriate, the report shall contain a concise description of the defendant's/respondent's:

- (a) current employment including training and job skills. Prior employment within the last three years should be specified;
- (b) current economic status;
- (c) ability to make restitution.

These rules and regulations also state that departments may make restitution recommendations to the courts, but do not require them to do so (9 NYCRR Sections 350.7(b)(6)(ii)(b) and Section 350.8(b)(6)(ii)(b)).

²⁹ Pratt v. State, 486 A.2d 1154 (Del. Super. 1983); People v. Glenn, 164 Cal. App. 3d 736, 211 Cal. Rptr. 547 (1985).

³⁰ Ariz. Rev. Stat. Ann. 13-804(B) (Supp. 1987); People v. White, 90 Ill. Dec. 427, 135 Ill. App. 3d 563, 482 N.E.2d 134 (1985).

³¹ This Section contains the rules and regulations for the preparation of the long-form report. Rules and regulations for the preparation of the short-term report are the same except for "(a)" which is limited to "current employment." (9 NYCRR Section 350.8(b)(4)(i)).

Given the importance of "ability to pay" and the lack of statutory directives, it was necessary to determine how the courts and the probation departments complied with this directive.³² This Section first examines how the ability of offenders to pay restitution was evaluated. Second, departments' compliance with DPCA rules and regulations regarding the evaluation of "ability to pay" is examined. Third, the types of restitution recommendations departments made to the courts when offenders had the ability to pay only a portion of the restitution is explored. Fourth, this Section examines how often the courts ordered offenders to pay full restitution even though departments had determined they did not have the financial resources to pay the full amounts. The possible impact of court policies regarding "ability to pay" on departments' restitution recommendations to the courts is also explored. Finally, the conflict between the right of victims to be compensated, as determined by the courts, for losses resulting from a crime versus consideration of offenders' "ability to pay" is discussed.

Evaluation and Recommendation of Offenders' "Ability to Pay" by Departments

When probation departments were asked how often offenders had the ability to pay at least some of the restitution that victims had requested and were legally entitled to receive, 92.6 percent of the 54 probation departments that were able to respond to this question reported that offenders "usually" (81.5 percent) or "always" (13.0 percent) had the financial resources to pay at least some of this restitution. The three remaining departments, one urban-upstate department and two rural departments, reported that offenders only "sometimes" had the financial resources to pay this restitution. While the variation in responses may reflect the differing socioeconomic conditions that exist in the counties served by probation departments, these responses may also reflect the disparity in procedures used to evaluate "ability to pay."

³² It was beyond the scope of this survey to determine how the courts evaluate "ability to pay" when they do not request pre-plea or pre-sentence reports.

Neither rules and regulations promulgated by DPCA or their guidelines, nor, for that matter, the Penal Law or the Criminal Procedure Law, specify criteria for evaluating "ability to pay." Departments were asked in an open-ended question what procedures and formulas they used to evaluate the ability of offenders to pay restitution. The criteria reported varied dramatically across departments. At one extreme was the department that relied solely on offenders' pay stubs to evaluate "ability to pay." At the other extreme was the department that considers offenders' income (e.g., wages, interest, dividends), assets (e.g., real estate, stocks, bonds, automobiles, or any other tangible property), and debts. Some departments considered household size and income, and some required offenders who were welfare recipients to pay restitution.³³ None of the departments reported that they used a specific formula for determining the amounts of periodic restitution payments. Only one department reported using what can be loosely described as a formula: "If they qualify for legal aid, restitution is not always our recommendation. Otherwise all able-bodied defendants are expected to pay monetary restitution." Even this "formula", however, does not include criteria for evaluating how much these able-bodied offenders should pay in periodic payments.

The lack of standard criteria for evaluating "ability to pay" permits broad discretion on the part of both the probation departments and the courts when determining the extent to which offenders have the ability to pay restitution. It is recommended that Section 60.27 of the Penal Law be amended to require that the courts use a standard statewide formula for evaluating the amount of restitution offenders have the ability to pay. It is also recommended that DPCA develop a standard statewide formula for evaluating the amount of restitution offenders have the ability to pay and to promulgate this formula in their rules and regulations. This formula should address two levels of evaluation: (1) the types of income, assets, and debts to be considered and, based on this information, (2) how the amounts of restitution to be paid by offenders will be calculated for payment schedules.

³³ Officials from the states of California, Connecticut, Florida, Minnesota, North Carolina, and Texas reported in telephone interviews that the courts can order welfare recipients in these states to pay restitution.

Compliance With DPCA Rules and Regulations

Article 390 of the Criminal Procedure Law does not require probation departments to provide evaluations of offenders' ability to pay restitution in pre-plea, pre-sentence, and pre-disposition reports prepared for the courts. As mentioned earlier, rules and regulations promulgated by the Division of Probation and Correctional Alternatives (DPCA) do require probation departments to evaluate offenders' "ability to pay" in order to assist the courts in preparing restitution orders. However, eight departments explicitly stated that they did not provide evaluations of offenders' ability to pay restitution in reports to the court. In such instances, courts that do consider "ability to pay" base their evaluations on the employment and economic information presented in pre-plea and pre-sentence reports. It is recommended that Section 390 of the Criminal Procedure Law be amended to require probation departments to assist the courts in evaluating offenders' "ability to pay" by including an assessment of this information in pre-plea and pre-sentence reports requested by the courts. It is also recommended that this Section of law be amended to require that departments include recommendations in these reports that specify the amounts of restitution to be paid and the manner of payments.

Departments' Recommendations When Offenders Had the "Ability to Pay" Only Partial Restitution

A majority of the probation departments reported that there were instances when they had recommended that offenders pay the full amounts of restitution even though these offenders did not have the "ability to pay" the full amounts victims had requested and were legally entitled to receive (see Table 22). Most departments also recommended partial restitution or victim/community³⁴ service or both. The mean response scores in Table 22 indicate, however, that the full payment of restitution (3.5 mean response) was the recommendation made most often followed by both "partial restitution and victim/community service"

³⁴ While victim/community service is a criminal sanction that is used as an alternative to incarceration, it has often been viewed as a symbolic form of restitution (N.Y.S. Division of Criminal Justice Services, 1985).

(2.7 mean response), "partial restitution" only (2.3 mean response), and "victim/community service" only (2.1 mean response). Departments that reported they "never" or "seldom" made these last three recommendations to the courts were generally the departments that "usually" or "always" recommended that offenders pay the full amounts of restitution. The mean response scores presented in Table 23 show that as the frequency with which departments recommended full restitution increased, the frequency with which they recommended partial restitution, victim/community service, or both decreased. "Other" recommendations reported by some departments and presented in Table 22 included "confessions of judgment."³⁵

The mean response scores for the urbanization index are displayed in Table 24. With the exception of urban-upstate departments, full restitution was the recommendation made most often by other urban groups. Urban-upstate departments recommended "partial restitution and victim/community service" most frequently. This was the second most common recommendation made by urban/rural departments and rural departments, but the least frequently made by urban-downstate departments. The responses of urban-downstate departments suggested that they tended to restrict their recommendations to full or partial restitution and only seldom made recommendations that included victim/community service--a pattern not seen in the other index categories.

These responses indicate that a significant proportion of probation departments recommended, to varying degrees, full restitution regardless of offenders' "ability to pay." While it is possible that this practice was based

³⁵ A confession of judgment is a civil procedure in which a debtor permits "... judgment to be entered against him by his creditor, for a stipulated sum, by a written statement to that effect or by warrant of attorney, without the institution of legal proceedings of any kind." (Black, 1979) Some of these departments reported that this type of recommendation was usually made in instances when departments had determined that offenders would probably not have the ability to pay restitution within the time frame of the sentence. Please see pp. 140-146 for further discussion on the appropriateness of using confessions of judgment.

TABLE 22

Types of Restitution Recommendations Made to the Courts by Departments
When Offenders Had the Financial Resources
to Pay Only a Portion of the Restitution Requested by Victims

Recommendations	How Often Departments Made Recommendations (Number and Percent of Departments)					TOTAL ^a	Mean/ Average Response ^b
	Never	Seldom	Sometimes	Usually	Always		
Full Amount of Restitution	2 3.7%	8 14.8%	11 20.4%	26 48.1%	7 13.0%	54 100.0%	3.5
Partial Restitution and Victim/Community Service	11 20.4%	9 16.7%	22 40.7%	11 20.4%	1 1.9%	54 100.0%	2.7
Partial Restitution Only	11 20.4%	19 35.2%	20 37.0%	3 5.6%	1 1.9%	54 100.0%	2.3
Victim/Community Service Only	14 25.9%	20 37.0%	20 37.0%	-	-	54 100.0%	2.1
Other Recommendations ^c	-	1 25.0%	2 50.0%	1 25.0%	-	4 100.0%	NA

^a Four departments stated that they did not make restitution recommendations to the courts.

^b Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^c "Other" recommendations included confessions of judgment.

TABLE 23

**When Offenders Had Financial Resources to Pay Only Partial Restitution:
How Often Departments Recommended Full Restitution
By How Often Departments Recommended Partial Restitution and/or
Victim/Community Service**

How Often Departments Recommended Full Restitution	How Often Departments Recommended: (Mean/Average Responses) ^a		
	Both Victim/Community Service and Partial Restitution	Partial Restitution Only	Victim/Community Service Only
Never (N=2)	4.0	3.0	3.0
Seldom (N=8)	3.3	3.0	2.4
Sometimes (N=11)	3.0	2.8	2.2
Usually (N=26)	2.4	2.2	2.1
Always ^b (N=7)	2.0	1.1	1.4
TOTAL (N=54)	2.7	2.3	2.1

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b A distinction was not always made by some departments between "usually" and "always." Some of the departments that reported they "always" recommended full restitution also reported that they "seldom" recommended that the courts order alternative types of restitution.

on departmental policies that assumed offenders might acquire the financial resources to pay the full amounts at some point in the future, it is also possible that these recommendations were influenced by the policies of the courts and/or the district attorneys in the counties where the departments are located. This possibility will be examined in the next portion of this Section.

"Ability to Pay" Policies of the Courts and Their Impact on Restitution Recommendations of Probation Departments

Some probation departments reported that the courts they serve had established policies that demanded full payment of restitution regardless of offenders' "ability to pay." This type of policy may be based on the belief that offenders may, at some point in the future, acquire the financial resources needed to pay the full amounts of restitution victims requested and were legally entitled to receive. Departments were asked how often the courts they serve ordered offenders to pay the full amounts of restitution in instances where departments had determined that offenders had the ability to pay only a portion of the restitution requested. As Table 25 shows, 43.4 percent of the 53 departments that responded to this question reported that the courts "usually" (30.2 percent) or "always" (13.2 percent) ordered the full amounts of restitution in such instances. Fourteen (14), or 26.4 percent, of the 26.4 percent of the departments reported that the courts "sometimes" ordered full restitution, 20.8 percent (11) "seldom" ordered it, and only 9.4 percent (5) "never" ordered the full amounts of restitution in such instances. Courts served by urban-downstate departments were the least likely to order the full amounts of restitution for these offenders. These urban-downstate departments reported the courts they serve only "seldom" or "sometimes" ordered the full amounts of restitution in these instances, while urban-upstate departments reported that the courts "usually" ordered full restitution. A similar proportion of urban/rural departments (41.7 percent) and rural departments (44.5 percent) reported that the courts "usually" or "always" ordered full restitution.

TABLE 24

Types of Restitution Recommendations Made to the Courts by Departments When Offenders Had the Financial Resources to Pay Only a Portion of the Restitution Requested by Victims by Urbanization Index

Probation Department Urbanization Index	Average/Mean Response ^a (Number of Probation Departments)			
	Full Amount of Restitution	Partial Restitution and Victim/Community Service	Partial Restitution Only	Victim/Community Service Only
Urban-Downstate Departments	3.3 (3)	1.7 (3)	2.7 (3)	1.3 (3)
Urban-Upstate Departments	2.7 (3)	3.3 (3)	3.0 (3)	2.7 (3)
Urban/Rural Departments	3.5 (11)	3.2 (11)	2.8 (11)	2.3 (11)
Rural Departments	3.6 (37)	2.5 (37)	2.1 (37)	2.1 (37)
TOTAL ^b	3.5 (54)	2.7 (54)	2.3 (54)	2.1 (54)

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Four departments stated that they did not make restitution recommendations to the court.

TABLE 25

**How Often Courts Ordered Full Restitution for Offenders Who Had the
Financial Means to Pay Only Partial Restitution by Urbanization Index**

Probation Department Urbanization Index	Number and Percent of Probation Departments Who Reported That the Courts They Serve Ordered the Full Amount of Restitution					TOTAL	Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always		
Urban-Downstate Departments	-	2 66.7%	1 33.3%	-	-	3 100.0%	2.3
Urban-Upstate Departments	-	-	-	2 100.0%	-	2 100.0%	4.0
Urban/Rural Departments	-	1 8.3%	6 50.0%	3 25.0%	2 16.7%	12 100.0%	3.5
Rural Departments	5 13.9%	8 22.2%	7 19.4%	11 30.6%	5 13.9%	36 100.0%	3.1
TOTAL	5 9.4%	11 20.8%	14 26.4%	16 30.2%	5 13.2%	53 ^b 100.0%	3.2

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Three departments did not evaluate offenders' ability to pay restitution and two departments responded "not known."

Because it was possible that such policies might have affected recommendations made to the courts by probation departments, the similarity between how often the courts ordered and probation departments recommended full payment of restitution in these instances was measured. Responses show that probation departments recommended and the courts ordered the full payment of restitution with similar frequency.³⁶ In fact, 53.8 percent (28) of the 52 departments that made recommendations to the courts reported that they recommended and the courts ordered the full payment of restitution with the same frequency (see Table 26, diagram A). These results suggest that the courts did influence the "ability to pay" recommendation policies of probation departments.

Responses also confirmed that probation departments, as well as courts, have established "full payment" policies. Twenty-three of these 52 departments reported that the courts they serve "usually" or "always" ordered the full amounts of restitution. Of these 23 departments, 20 reported that they also "usually" or "always" recommended the full amounts of restitution for offenders (Table 26, diagram B). Conversely, there were 12 departments that reported that they "usually" or "always" recommended the full amounts of restitution, while the courts they serve "never" or only "seldom" or "sometimes" ordered full restitution (see Table 26, diagram C). It was not possible to determine from these data, however, whether the "full payment" policies of these 12 departments were based on the belief that offenders might someday acquire the "ability to pay." Altogether, thirty-five, or 67.3 percent, of these 52 probation departments reported that the full amounts of restitution were "usually" or "always" ordered by the court and/or recommended by the departments (see Table 26, diagram D).

In those instances where the probation departments and the courts did not recommend the full amounts of restitution with similar frequency, it was not possible to determine whether this occurred because they held different

³⁶ Kendall's Tau C coefficient of .35 was significant at .0005.

TABLE 26

When Offenders Had Financial Resources to Pay Only Partial Restitution:
 How Often Courts Ordered Full Restitution By
 How Often Probation Departments Recommended Full Restitution

Court Ordered the Full Amount Of Restitution	Number and Percent of Probation Departments That Recommended the Full Amount of Restitution					TOTAL
	Never	Seldom	Sometimes	Usually	Always	
Never	1 20.0%	1 20.0%	1 20.0%	1 20.0%	1 20.0%	5 100.0%
Seldom	1 9.1%	3 27.3%	1 9.1%	5 45.5%	1 9.1%	11 100.0%
Sometimes	-	2 15.4%	7 53.8%	4 30.8%	-	13 100.0%
Usually	-	1 6.3%	1 6.3%	13 81.3%	1 6.3%	16 100.0%
Always	-	-	1 14.3%	2 28.6%	4 57.1%	7 100.0%
TOTAL	2 3.8%	7 13.5%	11 21.2%	25 48.1%	7 13.5%	52 ^a 100.0%

^a Four departments did not make recommendations to the court and two departments responded "not known."

philosophical beliefs about the goals of restitution or because they used different criteria to evaluate "ability to pay."

Clarification of New York State's "Ability to Pay" Policy

"Ability to pay" is an important concept in the State's restitution policy. The failure of Section 60.27 of the Penal Law to expressly state that the courts must consider "ability to pay" when restitution is used as a criminal sanction, would appear to be a technical oversight which should be corrected. It is recommended that Section 60.27 of the Penal Law be amended to specify that the State's restitution policy require the courts to consider offenders' ability to pay restitution.

It is also important for the State to clarify current policy by specifying whether "ability to pay" is to be considered when determining the amounts of restitution ordered or when determining manner of payments. The two strategies currently used by the courts and probation departments to comply with the State's policy regarding "ability to pay" demonstrate the lack of a clear directive. One strategy is to recommend or order the full amounts of restitution. If offenders are financially unable to pay these amounts before the completion of sentences, the courts will vacate orders when sentences are completed. When the second strategy is used, probation departments and the courts, ideally, determine whether or not the periodic payments (e.g., weekly, monthly) offenders are able to make, given their current financial resources, will allow them to pay full restitution before the completion of their sentences. When full restitution is not possible based on these schedules, the amounts of restitution ordered are reduced. When victims' losses exceed the amounts of restitution ordered by the courts or paid by offenders, victims retain the right to pursue the losses, in excess of the amounts ordered or paid, through civil actions. This latter approach does not take into consideration the possibility of significant increases in offenders' future income that might enable them to pay full restitution.

While New York State case law directs the courts to consider "ability to pay" when determining the amounts of restitution to be ordered, it is argued

that in light of more current court decisions which more accurately reflect changing attitudes toward the use of restitution, "ability to pay" should be considered only when determining manner of payments. While it is important that the State's restitution policy address the rights of victims, it is equally important that it not cause unnecessary hardship to offenders. Victims of crime have the legal right to petition the courts for the full compensation of losses, property damages, and injuries resulting from crimes. At the same time, however, it is unreasonable to order offenders to pay full restitution when their financial resources are inadequate to fulfill this obligation. At the time of sentencing, offenders' current financial resources should determine their "ability to pay" and the manner of these payments. However, if offenders' financial resources increase significantly during the period of time that sentences are being served, enabling them to pay full restitution, offenders' payments to victims should be adjusted by the courts to reflect these changes in financial status. Therefore, it is recommended that the Penal Law be amended to require the courts to direct offenders, in all cases involving restitution, to pay the full amounts of restitution that the courts determine victims are legally entitled to receive. It is also recommended that manner of payments for restitution ordered by the courts be based on offenders' "ability to pay." This would not preclude the courts from ordering partial restitution with the agreement of victims; if victims choose not to participate, the courts, at their discretion, could reduce the amounts of restitution that the victims would have been legally entitled to receive. Any portions of the restitution that offenders are financially unable to pay before the conclusion of their sentences would be vacated by the courts.³⁷ Furthermore, it is recommended that DPCA develop a schedule for the periodic re-evaluation of offenders' ability to pay restitution to allow the courts to adjust offenders' restitution payments when there are significant changes in offenders' financial status.

³⁷ Judgments filed by district attorneys with county clerks would remain in force to allow victims to pursue the unpaid portions of restitution through civil actions. (See Section 4, pp. 140-141 for a discussion of civil enforcement mechanisms available to victims through a judgment.)

Extension of Sentences

In telephone interviews, officials in Minnesota, North Carolina, and Texas reported that in their states probation sentences can be extended to provide offenders with additional time to pay restitution. At the present time, a conditional discharge is the only sentence that can be extended by the courts in New York State. Section 65.05(3) of the Penal Law states:

Where the court has required, as a condition of the sentence, that the defendant make restitution of the fruits of his offense or make reparation for the loss or damage caused thereby and such condition has not been satisfied, the court, at any time prior to the expiration or termination of the period of conditional discharge, may impose an additional period. The length of the additional period shall be fixed by the court at the time it is imposed and shall not be more than two years.

It is recommended that Section 65.00 of the Penal Law be amended to permit the courts to convert probation sentences to conditional discharges in instances where offenders have been financially unable to pay the amounts of restitution ordered by the courts in order to provide these offenders with additional time to complete payments. By removing the responsibility for monitoring compliance with orders from probation officers, offenders' compliance with restitution orders would continue to be monitored by the designated collection agencies, but would not place an additional burden on probation officers with already heavy caseloads. It is further recommended that Section 170.55 of the Criminal Procedure Law be amended to permit the courts to extend adjournments in contemplation of dismissal for one year in those instances when it is necessary to provide defendants with additional time to complete restitution payments.

Multiple Offender Crimes: Joint and Several Liability

New York State case law directs the courts to order the full amount of restitution for each offender involved in a multiple-offender crime. In People v. Turco, 130 A.D.2d 785, 515 N.Y.S.2d 853 (2nd Dept. 1987), the court

found that each offender convicted for a multiple-offender crime could be ordered to pay the full amount of restitution that both the victim and the insurance company were legally entitled to receive. The offender had argued that she should be ordered to pay only her proportional share of the loss resulting from the crime. The court disagreed stating:³⁸

The legislative intent of the New York State restitution statutes is to make the victim whole and serve the rehabilitative purpose of requiring the defendant to appreciate the economic consequences of his or her crime. This legislative intent would be fostered by requiring each defendant to be jointly and severally responsible for the entire amount of the damage caused. Courts in other states have made similar determinations.

The intent of this decision was not to compensate the victim in excess of actual loss, but to promote accountability and aid in the rehabilitation of the offender. Therefore, when the victim has been fully compensated, restitution order will be modified or vacated.

By this method of restitution, the victim will not receive a windfall in that it will be compensated only to the extent of its actual loss (see, Penal Law 60.27[5][b]). In the event of any payment to the designated official on behalf of the victims in excess of the amount of the monetary loss made by the defendant or Torres [co-defendant], the designated official can then petition the

³⁸ The court's decision was based on the following cases: (see, People v. Peterson, 62 Mich.App. 258, 233 N.W.2d 250 [joint and several liability for restitution upheld]; People v. Flores, 197 Cal.App.2d 611, 616, 17 Cal. Rptr. 382, 385 ["Prosser on Torts (2d ed. 1955) sec. 45 p. 225, holds: 'Where two or more persons act in concert, it is well settled both in criminal and in civil cases that each will be liable for the entire result'"]; see, also, State of New Jersey in the interest of D.G.W., 70 N.J. 488, 361 A.2d 513 [the court intimated that joint and several liability may be permissible]; but see, People v. Kay, 36 Cal.App.3d 759, 111 Cal. Rptr. 894 [where the five defendants had participated in a mob disturbance involving over 123 demonstrators and which resulted in over \$40,000 in damages, the court held that the five should only be responsible for their proportionate share]).

court to resentence the defendant or modify the sentence to permit a pro rata return of excess restitution funds (see, 1983 Att. Gen. [Inf. Opns] 5; see, also, CPL 420.10, 420.30).

It is recommended that Section 60.27(5) of the Penal Law be amended to require the courts to order each convicted offender of a multiple-offender crime to pay the full amount of restitution the victim(s) is legally entitled to receive, allowing for the modification or vacation of these orders once the victim is fully compensated to ensure that the victim(s) does not receive more restitution than is legally permissible. This will also help to ensure that offenders, when possible, do not pay more than their proportional share of the restitution ordered; this may not be possible, however, when one or more of the multiple offenders lacks sufficient "ability to pay" his proportional share of the restitution.

Summary

Chapter 965, Section 1 of the Laws of 1984 explicitly states that offenders' "ability to pay" must be taken into consideration by the courts when determining the amounts of restitution to be ordered. However, the State's policy regarding "ability to pay" does not specify whether it should be taken into consideration when determining the amount of restitution to be ordered or when determining the manner of payments. The role that probation departments must play in assisting the courts in evaluating "ability to pay" is equally unclear. Article 390 of the Criminal Procedure Law, which deals with the preparation of pre-sentence reports, does not require that probation departments evaluate offenders' ability to pay restitution in these reports. However, rules and regulations promulgated by the Division of Probation and Correctional Alternatives (DPCA) clearly state that pre-plea, pre-sentence, and pre-disposition reports must contain, when appropriate, information regarding offenders' financial resources, including "ability to pay." These rules and regulations also state that departments may make restitution recommendations to the courts, but do not require them to do so. Given the importance of "ability to pay" and the lack of statutory directives, it was necessary to determine how the courts and the probation departments complied with this directive.

The majority of departments, 92.6 percent, reported that offenders usually have the ability to pay at least a portion of the restitution victims requested and were legally entitled to receive. However, the criteria used by probation departments to measure "ability to pay" varied dramatically across departments. The lack of standard criteria permits broad discretion on the part of both probation departments and courts when determining whether or not offenders have the ability to pay restitution. In addition, eight departments stated that they do not evaluate "ability to pay" in pre-plea or pre-sentence reports. Recommendations were made that address the need for (1) a standard statewide formula for evaluating ability to pay and (2) amending the Criminal Procedure Law to require departments to evaluate offenders' "ability to pay" restitution in pre-plea and pre-sentence reports and to include recommendations regarding the amounts of restitution to be paid and the manner of payment.

A majority of the probation departments reported that they usually recommended and that the courts usually ordered offenders to pay the full amounts of restitution despite offenders' ability to pay only a portion of the amounts victims were legally entitled to receive. Because departments reported that they recommended and the courts ordered restitution with similar frequency, it appears that the courts' policies regarding "ability to pay" may have influenced the recommendation policies of probation departments.

"Ability to pay" is an important concept in the State's restitution policy although this is not explicitly reflected in existing statutes. The failure of Section 60.27 of the Penal Law to specify that the courts must consider "ability to pay" when restitution is used as a criminal sanction would appear to be a technical oversight. It is important, that this policy be clearly stated in Section 60.27 and that it specify whether "ability to pay" is considered when determining the amounts of restitution ordered or when determining manner of payments. While New York State case law directs the courts to consider "ability to pay" when determining the amounts of restitution to be ordered, it is argued that in light of more current court decisions which more accurately reflect changing attitudes toward the use of restitution, "ability to pay" should be considered only when determining manner of payments.

It is important that the State's restitution policy address the rights of victims, and it is equally important that it not cause unnecessary hardship to offenders. Therefore, it is recommended that the Penal Law be amended to require the courts to direct offenders, in all cases involving restitution, to pay the full amounts of restitution that the courts determine victims are legally entitled to receive. It is also recommended that manner of payments for restitution ordered by the courts be based on offenders' "ability to pay." This would not preclude the courts from ordering partial restitution with the agreement of victims; if victims choose not to participate, the courts, at their discretion, could reduce the amounts restitution that the victims would have been legally entitled to receive. Any portions of the restitution that offenders are financially unable to pay before the conclusion of their sentences could be vacated by the courts when offenders have made "good faith" efforts to comply with orders. It is also recommended that DPCA develop a schedule for the periodic re-evaluation of offenders' "ability to pay" to allow the courts to adjust offenders' restitution payments when there are significant changes in offenders' financial status.

At the present time, a conditional discharge is the only sentence that can be extended by the courts in New York State. In order to provide offenders with additional time to complete restitution payments it is recommended that the courts convert probation sentences to conditional discharges and to extend adjournments in contemplation of dismissal for one year in instances where offenders have been financially unable to pay the amounts of restitution ordered by the courts.

Finally, New York State case law directs the courts to order the full amount of restitution for each offender involved in a multiple-offender crime. In People v. Turco, 130 A.D.2d 785 515 N.Y.S.2d 853 (2nd Dept. 1987) the court found that each offender convicted for a multiple-offender crime could be ordered to pay the full amount of restitution that both the victim and the insurance company were legally entitled to receive. The intent of this

decision was not to compensate victims in excess of actual losses but to aid in the rehabilitation of offenders. Therefore, when the victims have been fully compensated, restitution orders will be modified or vacated. It is recommended that the Penal Law be amended to reflect this decision in case law.

SECTION 4

ADMINISTRATION OF RESTITUTION

The administration of restitution is a complex task that is governed primarily by the statutory directives contained in Article 420 of the Criminal Procedure Law which became effective on November 1, 1984. The Division of Probation and Correctional Alternatives (DPCA) has also issued guidelines to local probation departments to assist them in the performance of this task (Probation Directors' Memorandum, No. 25). These guidelines, however, have not yet been incorporated into the rules and regulations promulgated by DPCA.³⁹ Executive Law empowers the State Director of DPCA to adopt general rules concerning the administration of probation services and correctional alternatives.

Variations in practices identified by the survey point to the need for standardization and enhancement of the administration of restitution by designated collection agencies. It is recommended that DPCA promulgate rules and regulations for the administration of restitution to ensure standardization in practices across the State. In addition, it is recommended that the Criminal Procedure Law be amended to specify DPCA as the State agency responsible for the oversight and enhancement of restitution administration in all designated collection agencies. In doing so, the rules and regulations promulgated by DPCA would also be applicable to designated collection agencies not under the purview of DPCA.⁴⁰ Furthermore, it is recommended that appropriate resources be allocated to DPCA for the performance of these functions.

³⁹ Rules and regulations have the full force and effect of law and allow DPCA to take enforcement measures in instances of non-compliance. Guidelines, on the other hand, are recommendations that are not legally enforceable.

⁴⁰ At present, there are two designated collection agencies outside the purview of DPCA: the Victim Services Agency in New York City and the Hamilton County Sheriffs' Department.

This section will examine the various tasks associated with the administration of restitution in New York State, as well as the statutory mandates and DPCA guidelines that affect them. In addition, the types of staff involved in the administration of restitution will be explored, as well as budget issues associated with the administration of restitution in the State. For the purposes of this study, the administration of restitution has been divided into seven components:

- o Notifying the victim of the conditions of the orders and the availability of civil proceedings for collection.
- o Collection of restitution and the designated surcharge.
- o Monitoring and enforcement of restitution.
- o Disbursement of collected restitution to victims.
- o Fiscal account management.
- o Record keeping.
- o Reporting of statutorily specified data to the State.

Notifying Victims of the Conditions of Orders

Section 420.10(1)(d) of the Criminal Procedure Law instructs the courts to direct that notice be given to victims regarding the amounts of restitution ordered, the conditions of remittance, the name and address of the designated collection agency to whom restitution will be remitted, and the availability of civil proceedings for collection under subdivision six of this Section. While this Section specifies that the courts must direct that notice be given to victims, it does not specify who is to give this notice. To ensure that all victims are notified, Division of Probation and Correctional Alternatives (DPCA) guidelines recommend that probation departments provide written notification to victims of this information (Probation Directors' Memorandum No. 25). Included in these guidelines is a sample form letter that could be mailed to victims (see Appendix O).

Fifty-five of the 58 departments reported that they provided this information to victims. The survey, however, did not explore if victims are given written notification or if all victims were notified. To ensure that victims are notified, DPCA should promulgate rules and regulations requiring departments to provide written notification of the conditions of restitution orders to all victims. In order to provide further clarity, it is recommended that Section 420.10(6) of the Criminal Procedure Law be amended to specify that the courts direct designated collection agencies to provide written notification of this information to victims. It is also recommended that a standard "court order" form specifically for restitution orders be developed by DPCA and used by the courts when ordering restitution. This form would explicitly state the courts' directives to probation departments and any other parties involved in the administration of restitution (e.g., directives requiring district attorneys to file restitution orders with county clerks).

Collection of Restitution and the Designated Surcharge from Convicted Offenders

The only point in the criminal justice process where the courts have statutory authority to order offenders to pay both restitution and a five percent designated surcharge is at the time of sentencing. Section 60.27(1) of the Penal Law states that:

... the court shall consider restitution to the victim of the crime and may require restitution as part of the sentence imposed upon a person convicted of an offense and ... require the defendant to make restitution of the fruits of his offense or reparation for the loss or damage caused thereby.

Section 420.10(1) of the Criminal Procedure Law stipulates that the courts must direct offenders to remit payments for restitution orders imposed by them to "designated collection agencies." In addition, Section 60.27(8) of the Penal Law stipulates that offenders must also pay a five percent surcharge to these agencies:

The court shall in all cases where restitution or reparation is imposed direct as part of the disposition that the defendant pay a designated surcharge of five percent of the entire amount of a restitution or reparation payment to the official or organization designated pursuant to subdivision eight of Section 420.10 of the criminal procedure law.

This designated surcharge is intended to cover the costs incurred by designated collection agencies in association with the administration of restitution.

The degree to which courts have complied with the statutory directives in Section 420.10(1) of the Criminal Procedure Law and Section 60.27(8) of the Penal Law is explored. Probation departments were asked if the courts were directing convicted offenders to make restitution ordered by the courts to agencies or persons other than the designated collection agencies. They were also asked how often the courts instructed offenders to pay the five percent surcharge when these payments were directed by the courts to these agencies.

Collecting restitution from convicted offenders. Traditionally, local probation departments have collected restitution from offenders sentenced to probation. However, with the passage of Chapter 965 of the Laws of 1984 and probation departments' subsequent designation as restitution collection agencies, this role was formalized and broadened. Except for the New York City Probation Department,⁴¹ the remaining departments were given the added responsibility for collection of restitution from offenders who received sentences that did not include probation.

Probation departments were asked who, to their knowledge, was collecting restitution ordered by the courts in conjunction with non-probation sentences such as fines or conditional discharges. As Table 27 shows, almost all of the departments reported that they collected on at least some portion of the restitution associated with conditional discharge (94.8 percent) and jail (87.0

⁴¹ The NYC Probation Department collects restitution from probationers only; the Victim Services Agency, a not-for-profit organization, collects restitution from non-probationers.

TABLE 27
Agencies/Persons That Collect Restitution
Ordered With Non-Probation Sentences
As Reported by Probation Departments^a

Agencies/Persons That Collect Restitution Ordered with Non-Probation Sentences					
Sentences	Probation Departments	Courts	District Attorneys	Victim Services Agencies	Other ^b
Fines (n = 55)	34 61.8%	40 72.7%	2 3.6%	-	3 5.5%
Unconditional Discharges (n = 47)	34 72.3%	21 44.7%	3 6.4%	2 4.3%	1 2.1%
Conditional Discharges (n = 58)	55 94.8%	23 39.7%	2 3.4%	-	3 5.2%
Jail (without probation) (n = 54)	47 87.0%	17 31.5%	2 3.7%	1 1.9%	1 1.9%
Prison (Parole & Conditional Release) (n = 47)	35 74.5%	9 19.1%	-	1 2.1%	8 17.0%

^aBecause departments responded either "yes" or "no" to each item (agency/person) the row counts will not sum to the "n" shown for each sentence. Percentages presented in this table are based on the "n" of a given sentence category.

^b"Other" agencies or persons include victims, county clerks, defense attorneys, county departments of social services, and parole officers.

percent) sentences. Somewhat fewer departments reported that they collected restitution from offenders who were paroled or conditionally released from prison (74.5 percent), who received unconditional discharges (72.3 percent),⁴² or who were sentenced to pay fines (61.8 percent).

Departments also reported that some courts were collecting restitution directly from sentenced offenders. Forty, or 72.7 percent, of the departments reported that the courts also collected restitution that was ordered with fines (see Table 27). Fewer departments reported that the courts collected restitution ordered with unconditional discharges (44.7 percent), conditional discharges (39.7 percent), jail sentences (31.5 percent), or from offenders who have been conditionally released or paroled from prison (19.1 percent). Relatively few departments reported that district attorneys or victim services agencies also collected restitution from sentenced offenders. "Other" agencies or persons that departments reported were involved with the collection of restitution from sentenced offenders included victims, county clerks, defense attorneys, and county departments of social services. Parole officers were also identified as persons who collect restitution from offenders conditionally released or paroled from prison.

It is not possible to determine from the survey how often the courts directed offenders whose sentences did not include probation to remit restitution payments to agencies or persons other than the designated collection agencies. However, responses indicated that some courts have not fully complied with the statutory mandate which requires the courts to direct such offenders to remit payments to designated collection agencies. It was

⁴² While one would logically reason that the courts could not impose any conditions of release upon offenders who receive an unconditional discharge, Section 65.20 of the Penal Law does not explicitly state that offenders who receive unconditional discharges cannot be ordered to pay restitution by the courts. However, an unconditional discharge is a final judgment of conviction; if offenders default on restitution payments, the courts cannot resentence or imprison offenders. The only legal recourse left to the courts in such instances is the enforcement of orders through civil actions taken by district attorneys as specified in Section 420.10(6) of the Criminal Procedure Law.

also not possible to determine from the survey whether the lack of compliance with this statutory mandate reflects the courts' lack of familiarity with or willful disregard of the statute. The problem of non-compliance with this statutory mandate is discussed later in this section.

Collecting the designated surcharge. The five percent designated surcharge is intended to cover the cost of administering restitution.⁴³ This surcharge was never intended to be an additional penalty to offenders. Comments made by departments, however, indicated that the surcharge was inadequate given the actual costs of administering restitution. In addition, it appears that many courts did not always direct offenders to pay the surcharge. Probation departments were asked how often the courts did not direct offenders to pay the designated surcharge of five percent on the amount of restitution ordered by the courts. Forty, or 71.4 percent of the 56 departments that responded to this question reported that the courts they serve have at times disregarded the designated surcharge (see Table 28). Only one department reported that the designated surcharge was "always" disregarded by the courts they served, two departments reported that it was "usually" disregarded, 15 of the departments (26.8 percent) reported that the courts "sometimes" ignored the surcharge, and 22 of the departments (39.3 percent) reported that it was "seldom" disregarded. Lack of court compliance with this statute was somewhat more of a problem for urban-upstate departments (2.7 response score) than it was for urban-downstate departments (2.3 response score), urban/rural departments (2.1 response score) and rural departments (2.1 response score).

These responses suggest that the courts in a large number of counties were not fully complying with the current statute which requires them to direct offenders to pay a five percent surcharge on the amount of restitution ordered.

⁴³ "To cover the administrative costs... this section [CPL Section 420.10] was amended to require the court to direct the defendant to pay to the designated official or organization an amount equal to five percent of the entire amount of restitution or reparation ordered." (N.Y. Criminal Procedure Law Section 420.10, commentary at 113 (McKinney's, Cum. Supp., 1988.)

TABLE 28

How Often Courts Did Not Direct Offenders to Pay
the Five Percent Designated Surcharge by Urbanization Index

Probation Department Urbanization Index	How Often Courts Did Not Direct Offenders to Pay the Five Percent Designated Surcharge					TOTAL	Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always		
Urban-Downstate Departments	2 50.0%	-	1 25.0%	1 25.0%	-	4 100.0%	2.3
Urban-Upstate Departments	-	1 33.3%	2 66.7%	-	-	3 100.0%	2.7
Urban/Rural Departments	5 41.7%	4 33.3%	1 8.3%	1 8.3%	1 8.3%	12 100.0%	2.1
Rural Departments	9 24.3%	17 45.9%	11 29.7%	-	-	37 100.0%	2.1
TOTAL	16 28.6%	22 39.3%	15 26.8%	2 3.6%	1 1.8%	56 ^b 100.0%	2.1

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Two departments responded "not known."

However, these responses must be interpreted with caution. It is possible that the probation departments, as well as the courts, were not accurately interpreting the statutory conditions that must be met in order for the court to impose this surcharge.⁴⁴ Once again, it is not possible to determine from the survey whether the lack of compliance to this statutory mandate reflects the courts' lack of familiarity with or willful disregard of this statute.

Non-compliance with statutory mandates. If the courts do choose to disregard this statutory mandate, their reasons may be both honorable and practical. It is possible that some courts may be reluctant to direct offenders with limited financial resources to pay the designated surcharge, so they handle the collection and disbursement of restitution themselves, thereby obviating the surcharge requirement. In instances where offenders are prepared to pay the full amounts of restitution at the time of sentencing, it may seem administratively impractical to the courts not to collect the restitution at that time since monitoring and enforcement of the orders by the designated collection agencies will not be necessary. Also, some courts may prefer to be personally involved in the collection and disbursement of restitution. Finally, some courts may be reluctant to disregard procedures that they used for collecting and disbursing restitution prior to the establishment of the designated collection agencies.

As discussed earlier in this report, the primary objectives of New York's restitution statutes are to promote and encourage the use of restitution and to ensure that the rights of both victims and offenders are upheld. However, the sensitivity of the courts to offenders' financial difficulties, the desire to reduce "red tape," the need for personal involvement, and tradition, all undermine the State's ability to monitor the extent to which restitution is used.

⁴⁴ The courts do not have the authority to direct offenders who have been granted an adjournment in contemplation of dismissal or who pay restitution prior to sentencing to pay the five percent surcharge when these restitution payments are made to designated collection agencies.

In addition, it could be argued that the failure of the courts to direct all offenders for whom restitution has been ordered to pay the designated surcharge creates a disparity in the administration of justice. This disparity can be evidenced across counties where there are courts that direct surcharges to be paid regardless of offenders' limited financial resources, while other courts, in similar cases, fail to direct these payments altogether. This disparity also exists when courts fail to order the surcharge because offenders are able to pay the courts the full amounts of restitution at the time of sentencing, as opposed to those offenders who are unable to do this because of limited financial resources.

Regardless of whether the courts were not complying because of a lack of familiarity with or willful disregard to these statutes, measures must be taken to ensure that the judicial branch of government is fully aware of the State's restitution policies. It is recommended that DPCA contact the Office of Court Administration (OCA) to determine the feasibility of developing a restitution component for inclusion in OCA training programs in order to disseminate information regarding the State's restitution policies.

Collection of Restitution From Non-Convicted Offenders

While there are no legal provisions governing the collection of restitution from offenders who pay restitution at points in the criminal justice process prior to sentencing, there is no law that prohibits designated collection agencies from collecting this restitution. It should be noted that Section 420.10 of the Criminal Procedure Law does not mandate the collection of the five percent surcharge in these instances. The statutory authority of the courts to direct payment of the designated surcharge to designated collection agencies is limited to convicted offenders on whom the courts have imposed restitution orders.

Restitution paid prior to sentencing. The payment of restitution by offenders prior to sentencing occurs as a result of informal agreements among the parties involved, i.e., victims, offenders, attorneys, and courts. These agreements may be made when restitution is used as a plea-bargaining tool. A

designated collection agency reported that one of the courts it serves will adjourn cases to allow offenders to pay restitution, promising offenders adjournments in contemplation of dismissal (ACDs) if the restitution was paid before the end of the adjournment. Another agency reported that in instances where both victims and offenders were in the same courtrooms at the time of sentencing or lived in small towns where most people knew each other, the courts allowed offenders to pay the restitution directly to the victims to avoid the "red tape" of formally ordering restitution.

The underreporting of restitution is clearly illustrated by departments' discretionary reporting of ACD restitution. Forty-eight, or 82.8 percent, of the 58 probation departments reported that they collected at least some portion of the restitution paid by offenders granted ACDs (see Table 29). Slightly less than half of the departments, 46.6 percent, reported that the courts collected ACD restitution. Only two departments reported that district attorneys collected ACD restitution and, similarly, only two departments reported that victim services agencies collected this type of restitution. Finally, the "other" collectors of ACD restitution reported by two departments included victims and defense attorneys. A larger proportion of urban/rural departments (83.3 percent) and rural departments (89.7 percent) reported that they collected ACD restitution than urban-downstate departments (50.0 percent) and urban-upstate departments (33.3 percent). Urban-upstate departments reported that the courts were the more common collectors of ACD restitution.

While 48, or 82.8 percent, of the 58 probation departments reported that they collected restitution paid by offenders granted ACDs, only eight departments reported collecting ACD restitution during 1986 to the Division of Probation and Correctional Alternatives (see Appendix G). The underreporting of ACD activity may have occurred because the departments are required to report only on restitution orders imposed by the courts on convicted offenders. As a result, it appears that known ACD restitution activity in the State was underreported for 1986 by many probation departments.

TABLE 29

Agencies/Persons That Collect ACD Restitution
As Reported by Probation Departments
by Urbanization Index^a

Probation Department Urbanization Index	Agencies/Persons That Collect ACD Restitution				
	Probation Departments	Courts	District Attorneys	Victim Services Agencies	Other
Urban-Downstate Departments (n = 4)	2 50.0%	2 50.0%	-	1 25.0%	1 25.0%
Urban Upstate Departments (n = 3)	1 33.3%	3 66.7%	1 33.3%	-	-
Urban/Rural Departments (n = 12)	10 83.3%	5 41.7%	1 8.3%	1 8.3%	1 8.3%
Rural Departments (n = 35)	35 89.7%	18 46.2%	-	-	-
TOTAL (n = 58)	48 82.8%	27 46.6%	2 3.4%	2 3.4%	2 3.4%

^aBecause departments responded either "yes" or "no" to each item (agency/person) the row counts will not sum to the "n" shown for each urbanization category. Percentages presented in this table are based on the "n" of a given urbanization category, so while column counts sum to the "total" count the column percentages will not sum to the "total" percent.

Although it is highly probable that a substantial number of the offenders who are granted ACDs do pay restitution, no research has been conducted to support this supposition. However, data reported by the designated collection agency in New York City, where the reporting of ACD restitution appears to be the most complete, shows that 28.5 percent (1338) of the restitution orders reported issued by the New York City courts in 1986, involved offenders who had been granted ACDs (see Appendix F). If ACDs involving restitution occur with similar frequency in other counties, the degree to which restitution activity was underreported was significant.

Because of the informal nature of ACD and other pre-sentence restitution agreements, there are no statutes that currently govern the conditions of payment. While it was not possible to determine how frequently these type of agreements were made, it is important that the interpretation of restitution data be tempered with the knowledge that there is restitution activity that may be impossible to capture in reporting systems. In order to reduce the degree of underreporting that currently exists, the courts must begin to direct the payment of restitution from non-convicted offenders to designated collection agencies. Therefore, it is recommended that Section 60.27 of the Penal Law be amended to require that all restitution, regardless of type of disposition, be directed to designated collection agencies.

Adjournments in contemplation of dismissal. An adjournment in contemplation of dismissal (ACD) is a procedure that is frequently used by the courts and the district attorneys to dispose of less serious offenses by diverting offenders out of the criminal justice system to participate in dispute resolution. Only offenders charged with misdemeanors or selected felonies can be granted ACDs. When offenders are charged with misdemeanors, Section 170.55(1) of the Criminal Procedure Law stipulates that:

The court may grant an adjournment in contemplation of dismissal on the condition that the defendant participate in dispute resolution and comply with any award or settlement resulting therefrom.

In instances where offenders are charged with selected felonies, Section 215.10(1) of the Criminal Procedure Law states that:

... the court ... may order that the action be adjourned in contemplation of dismissal, for the purpose of referring the action to a community dispute center established pursuant to article twenty-one-A of the judiciary law.

Section 215.30 further stipulates that:

...if defendant has agreed to pay a fine, restitution or reparation, the district attorney must be advised every thirty days as to the status of such fine, restitution or reparation.

There are no statutes, however, that require community dispute resolution centers to report or direct the payment of restitution to "designated collection agencies."⁴⁵

The courts lack the authority to impose conditions such as the payment of restitution upon ACDs⁴⁶ except in cases where the sole remaining charges against offenders are misdemeanor marijuana offenses (PL 170.56). In those instances where defendants who agree to pay restitution as part of an ACD dispute resolution agreement fail to do so, the courts cannot revoke ACDs and restore cases to court calendars.

⁴⁵Community dispute resolution centers are under the supervision of the State Office of Court Administration (OCA) which funds, monitors and evaluates individual programs. Currently, there are centers in 56 of the 62 counties. It is anticipated that this program will be operational in all 62 counties by the end of 1988. The purpose of these programs is to resolve criminal and civil conflicts without court intervention through conciliation, mediation and arbitration. Individuals are referred to the program by the courts, walk-ins, law enforcement personnel and district attorneys. Chapter 837 of the Laws of 1986 permits the courts to refer non-violent felons to dispute resolution as part of ACDs. Program staff collected and disbursed \$569,768 in restitution in 1986-87, primarily as a condition of ACD cases ordered by the courts. Restitution is reported to OCA on a weekly basis.

⁴⁶ N.Y. Penal Law Section 170.55, commentary at 91 (McKinney's, 1987).

While the courts have not been granted the statutory authority to order offenders to pay restitution as a condition of ACDs, it should be noted that Section 170.55(5) of the Criminal Procedure Law was amended in 1982 to allow the courts to require that offenders, as a condition of ACD orders, "... perform services for a public or not-for-profit corporation, association, institution or agency. Such condition may only be imposed where the defendant has consented to the amount and conditions of service." It is recommended that Section 170.55 of the Criminal Procedure Law be similarly amended to also allow the courts when granting ACDs to require offenders, with their consent, to make restitution to the victims of their crimes. Without this statutory authority, the courts cannot revoke ACDs and restore cases to court calendars when defendants fail to pay restitution specified as part of an ACD. With the adoption of this recommendation, it would no longer be necessary for dispute resolution centers to inform district attorneys as to the status of restitution agreements. It would, therefore, be necessary to amend Section 215.30 of the Criminal Procedure Law to remove this reporting responsibility in light of the recommendation made previously that the payment of all restitution, regardless of disposition type, be directed to designated collection agencies.

Collection of Restitution Through Restitution/Employment Programs

Several states have established restitution/employment programs. These programs are designed to enable offenders who might not normally have the ability to compensate victims of their crimes to do so. Programs can generally be classified under one of two models: (1) those whose primary objectives are both the diversion of offenders from incarceration and the payment of restitution, and (2) programs whose primary objective is the payment of restitution. Some examples of these programs are presented below.

Diversion/Employment model. This first program model diverts offenders, who would have otherwise been incarcerated, into community-based facilities. The typical length of stay for offenders placed in the Texas Community Rehabilitation Centers, formerly called Restitution Centers, is up to one year (Texas Adult Probation Commission, 1983).

While in the center, the resident is required to be employed, with his wages being given to the center's director for payment of: the cost to the center for food, housing, and supervision; restitution to the victim of the offense; support of the probationer's dependents; and, travel expenses to and from work for the probationer.

To be eligible for this program these offenders must have committed non-violent felony offenses, must not have an extensive history of drug or alcohol abuse, and must be employable.

In Georgia, the typical length of stay for offenders placed in the Diversion/Restitution Centers is four to five months (Georgia Department of Corrections).

Criteria used to determine which offenders are eligible for the program are as follows: (1) offender would otherwise be incarcerated, (2) offender has committed a property crime not involving the use of a weapon or any act of violence, (3) offender is not regarded as a habitual criminal, (4) offender must be in suitable health capable of maintaining employment, (5) offender is willing to enter into a contract with the center establishing objectives which must be achieved before release. ...

A weekly paycheck is turned into the center's business manager. The money is then distributed to several categories.

- o Rent (\$6.50 per day, or \$45.50 per week)
- o Savings
- o Restitution and/or fines
- o \$15.00 per week for personal items
- o Family support
- o Medical/dental

Finally, the California Department of Corrections is establishing a pilot Restitution Center for first time offenders sentenced to three years of imprisonment or less and whose conviction charges do not include violent or sex offenses. These offenders will be required to pay one-third of their wages toward restitution, one-third to the State, and one-third to their family and/or savings account (California Department of Correction).

Employment model. The second program model, which focuses solely on the payment of restitution, provides offenders with assistance in obtaining temporary employment to enable them to comply with restitution orders. In his analysis of approaches to crime victim restitution, Daniel McGillis (1986, pp. 14-16) reports that one such program, the Earn-It Program of the Quincy, Massachusetts District Court handles approximately 1600 cases per year.

This program has been in existence since 1975 when it was implemented by Judge Albert Kramer in an effort to support the successful use of the restitution sanction. Cooperation of local employers is central to this program model, according to McGillis, and is dependent upon the following factors: adequate staff resources, commitment and leadership of a respected local official, and a favorable local economy. Certain businesses in this jurisdiction agreed to pay offenders at the minimum wage rate for up to 100 hours of unskilled work. Offenders involved in the Earn-It Program are required to provide two-thirds of their earnings to their victims and may keep the remaining one-third.

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... 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.

McGillis notes that the one shortcoming of this model is the effort needed to develop and maintain an adequate supply of jobs.

It is recommended that DPCA plan and develop restitution/employment programs to assist offenders in securing employment to facilitate compliance with restitution orders.

Forms of Payment Accepted From Offenders

Division of Probation and Correctional Alternatives (DPCA) guidelines state that both cash and some types of checks are acceptable forms of payment (Probation Directors' Memorandum, No. 25):

Cash payments, if allowed, should be made in person, preferably by the defendant. ... Accepting personal checks involves risk. Therefore, caution is advised if this form of payment is found acceptable. It is recommended that other payment methods be considered. Teller's checks entail no additional expense on the part of a defendant who has a bank account and guarantees payment to the crime victim. Money orders, which cost very little, would also insure payment. Certified checks are more costly than the other above mentioned payment methods and should be considered as a last resort. Third party checks can present a high risk and should be avoided. There is excessive uncertainty as to the validity of the check and far too much time and effort required to right the situation once such a check does not clear the bank.

All of the 58 probation departments reported that money orders were an accepted form of payment from offenders (see Table 30). Cash was the next most widely accepted form of payment (89.7 percent), followed by certified checks (77.6 percent), bank drafts (63.8 percent), personal checks (50.0 percent), and third party checks (12.1 percent). "Other" forms of payment accepted by a few agencies included checks from defendants' attorneys. There was relatively little variation across the urbanization index in the proportion of departments that accepted each form of payment. While all of the urban-downstate departments accept money orders, certified checks, and bank drafts, only 75.0 percent of these departments accepted cash and personal checks and only 25.0 percent accepted third party checks. Similarly, all of the urban-upstate departments also accepted money orders, certified checks, and bank drafts along with cash, but only 33.3 percent reported accepting personal or third

TABLE 30

Forms of Offender Payment Accepted by Probation Departments^a
By Urbanization Index

Probation Department Urbanization Index	Forms of Payment Accepted by Departments						
	Money Orders	Cash	Certified Check	Bank Draft	Personal Check	Third Party Check	Other
Urban-Downstate (n = 4)	4 100.0%	3 75.0%	4 100.0%	4 100.0%	3 75.0%	1 25.0%	1 NA
Urban-Upstate (n = 3)	3 100.0%	3 100.0%	3 100.0%	3 100.0%	1 33.3%	1 33.3%	-
Urban/Rural (n = 12)	12 100.0%	10 83.3%	9 75.0%	8 66.7%	5 41.7%	-	1 NA
Rural (n = 39)	39 100.0%	36 92.3%	29 74.4%	22 56.4%	20 51.3%	5 12.8%	3 NA
TOTAL (n = 58)	58 100.0%	52 89.7%	45 77.6%	37 63.8%	29 50.0%	7 12.1%	5 NA

^a Because departments responded either "yes" or "no" to each method of payment, the row counts will not sum to the "n" shown for each urbanization category. Percentages presented in this table are based on the "n" of a given urbanization category, so while column counts sum to the "total" counts the column percents will not sum to the "total" percentage.

party checks. The proportions of both urban/rural departments and rural departments that accepted each form of payment mirror the overall statewide pattern.

None of the designated collection agencies reported that credit cards were used for the payment of restitution. Because the use of credit cards could facilitate payment, it is recommended that DPCA take appropriate measures to institute the use of credit cards for the payment of restitution orders.

The 52 departments that accepted cash as a form of payment were asked to estimate what percentage of the restitution they collected during the month preceding the survey was cash. Estimates ranged from 5.0 percent to 98.0 percent. Only 6, or 11.5 percent, of the departments reported that cash comprised "81% to 100%" of the amount of restitution they collected during that month (see Table 31). Cash comprised "61% to 80%" of the restitution collected for 40.4 percent of the departments, followed by "41% to 60%" cash restitution for 26.9 percent of the departments, "21% to 40%" for 11.5 percent of the departments, and "1% to 20%" for 9.6 percent of the departments. When the average percent of restitution collected in cash was examined across the urbanization index, Table 30 shows that cash comprised only a small amount, (16.7 percent), of the restitution collected by urban-downstate departments. Conversely, cash comprised 79.3 percent of the restitution collected by urban-upstate departments, 64.5 percent of the restitution collected in urban/rural departments, and 60.3 percent of the restitution collected by rural departments.

Monitoring Offenders' Compliance With Restitution Orders

The only statute that specifically addresses the monitoring of offenders' compliance with restitution orders can be found in Section 420.10(1)(d) of the Criminal Procedure Law:

An official or organization designated to receive payment... must report to the court any failure to comply with the order.

TABLE 31

Percentage of Restitution Paid in Cash by Offenders

Probation Department Urbanization Index	Percentage of Restitution Paid in Cash					TOTAL	Mean/ Average Percent
	1%-20%	21%-40%	41%-60%	61%-80%	81%-100%		
Urban-Downstate Departments	2 66.7%	1 33.3%	-	-	-	3 100.0%	16.7%
Urban-Upstate Departments	-	-	-	1 33.3%	2 66.7%	3 100.0%	79.3%
Urban/Rural Departments	-	1 10.0%	4 40.0%	4 40.0%	1 10.0%	10 100.0%	64.5%
Rural Departments	3 8.3%	4 11.1%	10 27.8%	16 44.4%	3 8.3%	36 100.0%	60.3%
TOTAL	5 9.6%	6 11.5%	14 26.9%	21 40.4%	6 11.5%	52 ^a 100.0%	59.8%

^a Six of the 58 departments reported that they do not accept cash as a form of payment from offenders.

The only further guidance for monitoring compliance with restitution orders is provided to probation departments in guidelines prepared by the Division of Probation and Correctional Alternatives (Probation Directors' Memorandum, No. 25):

A designated probation department must notify the court whenever a defendant fails to comply with an order to make restitution/reparation and designated surcharge. This responsibility should be communicated to the defendant so that he/she will be on notice that failure to make payments may result in revocation of the sentence imposed or imprisonment, and in court proceedings to collect outstanding moneys.

A designated probation department should inform a defendant to notify the department if the agreed upon payment cannot be made at the expected time. Every defendant should be given the telephone number and name of a staff person to contact if payment will be late and instructed to give the reason for lateness or inability to pay. In this way, the probation department, when notifying the court of a default, will be able to convey this information for the court's consideration.

Both the statute and the guidelines imply that the courts should be notified by designated collection agencies whenever offenders fail to make scheduled payments. Payment schedules, therefore, play an integral role in monitoring compliance to restitution orders. The establishment of these schedules is the responsibility of the courts. Section 420.10(1) of the Criminal Procedure Law encourages the courts to specify a schedule of payment for the offender:

The court may direct:

- (i) That the defendant pay the entire amount at the time sentence is pronounced;
- (ii) That the defendant pay the entire amount at some later date; or
- (iii) That the defendant pay a specific portion at designated periodic intervals.

While this Section leaves decisions of whether or not to include schedules in orders to the discretion of the courts, the New York State Court of Appeals in People v. Fuller, 57 N.Y.2d 152 455 N.Y.S.2d 253 (1982) ruled that the responsibility for establishing these schedules could not be delegated to probation departments by the courts (Probation Directors' Memorandum No. 25). In addition, Section 65.10(2)(g) of the Penal Law stipulates that when restitution orders accompany sentences of probation and states that offenders will pay the entire amounts of restitution ordered at some later date:

...the court shall specifically state the date when restitution is to be paid in full prior to the expiration of sentence of probation.

A discussion of the current policies and practices of probation departments and the courts (1) in establishing restitution payment schedules which enable departments to effectively monitor compliance to orders; (2) for dealing with changes in offenders' "ability to pay"; and (3) for notifying the courts of delinquent payments follows.

Restitution payment schedules. Because of the critical role restitution payment schedules play in monitoring compliance to restitution orders, it was important to examine factors that might affect whether or not schedules were included in restitution orders by the courts. First, probation departments were asked who, to their knowledge, recommended payment schedules to the courts when the courts had not requested pre-plea and pre-sentence reports. Second, departments were asked how often payment schedules were recommended to the courts in pre-plea and pre-sentence reports when appropriate. Third, they were asked how often the courts included payment schedules in restitution orders and, finally, how often departments established payment schedules when they were not included in restitution orders by the courts.

o Establishing payment schedules without the assistance of probation departments. When pre-plea and pre-sentence reports are not requested from probation departments, the courts must rely on other sources of information to assist them in setting payment schedules. While it was beyond the scope of this survey to determine what types of information the courts rely on to establish these schedules, probation departments were asked what agencies or persons, to their knowledge, assisted the courts in establishing restitution payment schedules when reports were not requested. As Table 32 shows, 85.0 percent of the 40 departments that responded to this question reported that district attorneys assisted the courts. Relatively few of the departments reported that the courts relied on either the departments (22.5 percent) or victim services programs (7.5 percent) to set schedules. "Other" agencies or persons on whom the courts also relied included the police or defense attorneys. Eight departments reported that the courts independently set payment schedules. When responses were examined across the urbanization index, the proportional distribution of responses did not vary to any great extent.

o Percentage of restitution orders with payment schedules. While probation departments are not required to include restitution recommendations in pre-plea and pre-sentence reports, Department of Probation and Correctional Alternatives (DPCA) rules and regulations that address the preparation of these reports state that when restitution recommendations are included, they "... shall at minimum include the specific amount of restitution and manner of payment" (9 NYCRR Section 350.7(b)(6)(ii)(b) and Section 350.8(b)(6)(ii)(b)). In instances where recommendations are included in reports, the courts can use these recommendations to assist them in establishing payment schedules for convicted offenders.

Whether or not departments included payment schedules in recommendations was important to know because of the impact these recommendations might have had on how often the courts included payment schedules in restitution orders. Departments were asked to estimate what percentage of the restitution orders directed by the courts to them for collection included payment schedules. These estimates, which ranged from "never" to "100%," were examined by the frequency with which departments reported recommending restitution payment schedules to the courts (see Table 33). There was a positive correlation between the frequency with which payment schedules were included in recommendations made by departments and the percentage of restitution orders imposed by the courts that included schedules.⁴⁷ This relationship was clearly reflected in the average percentages shown in Table 23. The one department that reported that it "never" recommended payment schedules, estimated that only 20.0 percent of the orders they received included schedules, while departments that reported that payment schedules were "always" recommended, estimated that 88.9 percent of the orders they received included payment schedules.

⁴⁷ Kendall's Tau C coefficient of .44239 was significant at .0000.

TABLE 32

Agencies/Persons That Recommend Restitution Payment Schedules to the Courts
When Pre-Plea or Pre-Sentence Reports Were Not Requested
As Reported by Probation Departments
by Urbanization Index^a

Agencies/Persons That Recommend Restitution Payment As Reported by Departments				
Probation Department Urbanization Index	Probation Departments	District Attorneys	Victim Services Agencies	Other
Urban-Downstate Departments (n = 3)	-	100.0% (3)	-	-
Urban-Upstate Departments (n = 3)	-	100.0% (3)	33.3% (1)	66.7% (2)
Urban/Rural Departments (n = 10)	30.0% (3)	100.0% (10)	10.0% (1)	10.0% (1)
Rural Departments (n = 24)	25.0% (6)	75.0% (18)	4.2% (1)	20.8% (5)
TOTAL ^b (n = 40)	22.5% (9)	85.0% (34)	7.5% (3)	20.0% (8)

^a Because departments responded either "yes" or "no" to each item (agency/person) the row counts will not sum to the "n" shown for each urbanization category. Percentages presented in this table are based on the "n" of a given urbanization category, so while column counts sum to the "total" counts the column percentages will not sum of the "total" percentage.

^b Eighteen of the departments responded "not known."

TABLE 33

How Often Departments Recommended Specific Schedules to the Courts
for the Payment of Restitution by How Often the Courts
Included Offender Payment Schedules in Restitution Orders

How Often Departments Recommended Schedules	Percentage of Orders That Included Payment Schedules					TOTAL	Mean/ Average Percent ^a
	0%-20%	21%-40%	41%-60%	61%-80%	81%-100%		
Never	1 100.0%	-	-	-	-	1 100.0%	20.0%
Seldom	-	2 50.0%	1 25.0%	-	1 25.0%	4 100.0%	51.3%
Sometimes	-	2 28.6%	3 42.9%	1 14.3%	1 14.3%	7 100.0%	57.9%
Usually	2 8.3%	-	4 16.7%	10 41.7%	8 33.3%	24 100.0%	72.6%
Always	-	-	1 5.6%	3 16.7%	14 77.8%	18 100.0%	88.9%
TOTAL	3 5.6%	4 7.4%	9 16.7%	14 25.9%	24 44.4	54 ^b 100.0%	73.6%

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Four of the 58 departments reported that they do not make restitution recommendations to the courts.

While it appears that the inclusion of recommendations for restitution payment schedules had a significant impact on whether or not the courts included payment schedules in restitution orders,⁴⁸ policies of the courts may have affected whether or not departments included payment schedules in recommendations to the courts.

o Establishment of payment schedules by probation departments. While case law clearly states that the responsibility for establishing payment schedules cannot be delegated to probation departments by the courts,⁴⁹ many of the departments reported that they established these schedules for offenders when the courts failed to do so. Altogether, 49 departments reported that payment schedules were not always included in the orders directed to them by the courts for collection (see Table 34). Of these 49 departments, 63.3 percent (31) reported that they "usually" or "always" establish specific payment schedules for these orders.

These responses suggest that most probation departments were able to rely on payment schedules to assist them in monitoring offenders' compliance to restitution orders. In many instances, however, these schedules were developed by the departments when the courts failed to include them in restitution orders. If offenders fail to comply with schedules established by probation departments, enforcement might be hindered because they were not included in the original court orders. As case law has established that the courts cannot delegate this responsibility to probation departments, it is recommended that Section 60.27 of the Penal Law be amended to require courts to include payment schedules in all restitution orders to enhance the enforcement of restitution and conform statutory law to case law.

⁴⁸ While it was not possible to control for orders that were imposed on offenders for whom the courts did not request pre-plea or pre-sentence reports, for the purpose of this analysis the assumption was made that the proportion of such orders was similar across departments.

⁴⁹ People v. Fuller, 57 N.Y.2d 152 455 N.Y.S.2d 253 (1982).

TABLE 34

How Often Departments Established Specific Payment Schedules for Offenders When Schedules Were Not Included in Orders by the Percentage of Orders Issued by the Courts That Did Not Include Payment Schedules

Percentage of Orders That Did Not Include Payment Schedules	How Often Departments Established Specific Payment Schedules					TOTAL
	Never	Seldom	Sometimes	Usually	Always	
0% to 20%	2 11.1%	3 16.7%	-	4 22.2%	9 50.0%	18 100.0%
21% to 40%	-	2 14.3%	3 21.4%	7 50.0%	2 14.3%	14 100.0%
41% to 60%	-	1 11.1%	3 33.3%	2 22.2%	3 33.3%	9 100.0%
61% to 80%	-	-	3 75.0%	1 25.0%	-	4 100.0%
81% to 99%	-	-	1 25.0%	1 25.0%	2 50.0%	4 100.0%
TOTAL	2 4.1%	6 12.2%	10 20.4%	15 30.6%	16 32.7%	49 ^a 100.0%

^a Nine of the 58 departments reported that orders "always" include payment schedules.

Changes in "ability to pay." Because restitution schedules are supposed to be based on offenders' "ability to pay," increases or decreases in the financial resources of offenders can affect their ability to pay restitution. Under Section 420.10(5) of the Criminal Procedure Law, offenders may petition the courts to modify or vacate restitution orders originally imposed if their "ability to pay" has decreased or the amounts of restitution ordered were unreasonable given their earning capacity and financial resources. There are

no statutory provisions, however, for increasing the amounts of restitution that offenders must pay if their income increases significantly. Because of this statutory constraint, many courts prefer to order offenders to pay the full amounts of restitution regardless of whether or not they have the financial resources to do so.

If offenders believe that they lack adequate financial resources to pay restitution ordered by the courts, they can apply to the courts for a resentence to modify or vacate orders. Section 420.10(5) of the Criminal Procedure law states:

In any case where the defendant is unable to pay a fine, restitution or reparation imposed by the court, he may at any time apply to the court for resentence. In such case, if the court is satisfied that the defendant is unable to pay the fine, restitution or reparation it must:

- (a) Adjust the terms of payment; or
- (b) Lower the amount of the fine, restitution or reparation; or
- (c) Where the sentence consists of probation or imprisonment and a fine, restitution or reparation, revoke the portion of the sentence imposing the fine, restitution or reparation; or
- (d) Revoke the entire sentence imposed and resentence the defendant."

When probation departments were asked how often restitution orders were modified or vacated by the courts, 51.8 percent (29) of the 56 probation departments that responded to this question reported that the courts "seldom" modified or vacated these orders, while 46.4 percent (26) reported that the courts "sometimes" modified or vacated orders (see Table 35). Only one agency reported that they were "never" modified or vacated. When the responses were examined across urbanization levels, the proportion of urban-upstate departments (100.0 percent) that reported the courts "sometimes" vacated or modified orders was considerably greater than the proportion of

TABLE 35

How Often the Courts Modified or Vacated Restitution Orders as Reported by Probation Departments by Urbanization Index

Probation Department Urbanization Index	How Often the Courts Modified or Vacated Restitution Orders					TOTAL	Mean/Average Response ^a
	Never	Seldom	Sometimes	Usually	Always		
Urban-Downstate Departments	-	2 50.0%	2 50.0%	-	-	4 100.0%	2.5
Urban-Upstate Departments	-	-	3 100.0%	-	-	3 100.0%	3.0
Urban/Rural Departments	-	6 50.0%	6 50.0%	-	-	12 100.0%	2.5
Rural Departments	1 2.7%	21 56.8%	15 40.5%	-	-	37 100.0%	2.4
TOTAL	1 1.8%	29 51.8%	26 46.4%	-	-	56 ^b 100.0%	2.4

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Two of the 58 departments responded "not known."

urban-downstate (50.0 percent), urban/rural (50.0 percent), and rural (40.5 percent) departments who also responded that this "sometimes" happened.

Table 36 shows that the frequency with which orders were vacated or modified because of decreases in offenders' financial resources was greater for urban-downstate departments and urban-upstate departments (mean responses of 3.0 and 3.3, respectively), than it was for urban/rural departments and rural departments (mean responses of 2.4 and 2.2, respectively).

One question that logically comes to mind is whether there was any relationship between the frequency with which orders were vacated or modified because of decreases in offenders' financial resources and the frequency with which the courts ordered the full amounts of restitution for offenders who had the financial resources to pay only a portion of it (see Table 25). As Table 37 shows, probation departments that reported the courts they serve "never" ordered the full amounts of restitution in such instances, also reported that

TABLE 36

How Often the Courts Modified or Vacated Restitution Orders Because of a Decrease in Offenders' Financial Resources as Reported by Probation Departments by Urbanization Index

Probation Department Urbanization Index	How Often the Courts Modified or Vacated Restitution Orders Because of a Decrease in Offenders' Financial Resources					TOTAL	Mean/Average Response ^a
	Never	Seldom	Sometimes	Usually	Always		
Urban-Downstate Departments	-	-	4 100.0%	-	-	4 100.0%	3.0
Urban-Upstate Departments	-	-	2 66.7%	1 33.3%	-	3 100.0%	3.3
Urban/Rural Departments	-	7 58.3%	5 41.7%	-	-	12 100.0%	2.4
Rural Departments	8 22.9%	16 45.7%	8 22.9%	3 8.6%	-	35 100.0%	2.2
TOTAL	8 14.8%	23 42.6%	19 35.2%	4 7.4%	-	54 ^b 100.0%	2.4

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Three of the 58 departments responded "not known" and one response was missing.

restitution orders were vacated or modified less frequently (1.8 mean response) than other department groupings. The department groupings that reported the courts they served "sometimes," "usually," or "always" ordered the full amounts of restitution when offenders did not have the ability to pay these amounts, reported that restitution orders were vacated or modified more frequently (mean responses of 2.4, 2.4, and 2.4, respectively).

Notifying the courts of non-compliance. Section 420.10(1)(d) of the Criminal Procedure Law and DPCA guidelines states that the courts should be notified whenever payments are not made on schedule. Notification of the court does not necessarily mean the case is returned to court. It may simply be a mechanism for keeping the courts informed.

Probation departments' responses indicated that there was wide variation in practices regarding the number of restitution payments that were usually delinquent before the courts were notified that offenders were in default. Three, or 5.8 percent, of the 52 probation departments that responded to this question reported that the courts were usually notified that offenders were in default after one delinquent payment (see Table 38). At the other extreme was the one department that reported it notified the courts only after eight payments were delinquent. Notification of the courts after two delinquent payments was the policy reported most often by departments (38.5 percent), followed closely in frequency by three payments (32.7 percent). When responses were examined across the urbanization index, a subtle relationship emerged involving offender default policies. The average number of delinquent payments tolerated by urban-downstate departments and urban-upstate departments prior to court notification were 3.8 and 3.7, respectively. Urban/rural departments tolerated 3.3 delinquent payments, while rural departments notified the courts after 2.7 delinquent payments.

While the current statute states that the courts should be informed about all delinquent payments, the vast majority of probation departments did not always comply with this directive. This lack of compliance may have occurred because neither Section 420.10(1)(d) of the Criminal Procedure Law, nor DPCA

TABLE 37

**How Often the Courts Ordered Full Restitution for Offenders
Able to Pay Only Partial Restitution by How Often the Courts
Modified or Vacated Restitution Orders as Reported by Probation Departments**

How Often Courts Ordered Full Restitution	How Often the Courts Modified or Vacated Restitution Orders					TOTAL	Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always		
Never	2 40.0%	2 40.0%	1 20.0%	-	-	5 100.0%	1.8
Seldom	2 20.0%	4 40.0	3 30.0%	1 10.0%	-	10 100.0%	2.3
Sometimes	-	9 64.3%	5 35.7%	-	-	14 100.0%	2.4
Usually	3 18.8%	5 31.3%	7 43.8%	1 6.3%	-	16 100.0%	2.4
Always	1 14.3%	3 42.9%	2 28.6%	1 14.3%	-	7 100.0%	2.4
TOTAL	8 15.4%	23 44.2%	18 34.6%	3 5.8%	-	52 ^b 100.0%	2.3

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b Six of the 58 departments responded "not known."

TABLE 38

The Number of Restitution Payments That Were Usually Delinquent Before the Courts Were Notified That Offenders Were in Default by Urbanization Index

Probation Department Urbanization Index	The Number of Restitution Payments That Were Usually Delinquent					TOTAL	Mean/ Average Number of Payments
	One	Two	Three	Four	Five or More		
Urban-Downstate Departments	-	1 25.0%	1 25.0%	1 25.0%	1 25.0%	4 100.0%	3.8
Urban-Upstate Departments	-	1 33.3%	-	1 33.3%	1 33.3%	3 100.0%	3.7
Urban/Rural Departments	-	4 44.4%	3 33.3%	-	2 22.2%	9 100.0%	3.3
Rural Departments	3 8.3%	14 38.9%	13 36.1%	4 11.1%	2 5.6%	36 100.0%	2.7
TOTAL	3 5.8%	20 38.5%	17 32.7%	6 11.5%	6 11.5%	52 ^a 100.0%	2.9

^a Six of the 58 departments responded "not known."

guidelines explicitly state what constitutes default, i.e., how many days late can payments be and how many payments must be delinquent. It is recommended that DPCA develop and promulgate rules and regulations that provide uniform and detailed procedures governing non-compliance with restitution orders, including what constitutes default.

Furthermore, it is recommended that DPCA develop and promulgate rules and regulations to specify procedures that should be followed to secure delinquent payments from offenders before they are returned to the courts because of their

failure to pay restitution. These procedures will be discussed in detail in the next portion of this Section. For example, in the State of Florida, where it was reported that \$11.4 million was collected in restitution during FY 1986-87, guidelines developed for the Florida Department of Probation and Parole Services specify procedures to be followed by probation officers when restitution payments are delinquent. If payments are 30 days late, letters must be sent to offenders reminding them that payments are overdue. If after 60 days payments remain overdue, probation officers must contact offenders either in-person or by telephone to inform them that payments are still overdue and to determine whether or not there are any impediments to compliance with the orders. If after 90 days scheduled payments are still unpaid, delinquencies are reported to the courts. Disciplinary measures can be taken against probation officers if they allow offenders under their supervision to terminate their sentences without payment of the restitution ordered by the courts.⁵⁰

Enforcement of Restitution Orders

If either probationers or non-probationers fail to comply with restitution orders, only the courts or district attorneys have the statutory authority to invoke enforcement mechanisms. The role of the designated collection agencies in administering restitution is limited to fiscal monitoring of orders. Probation departments can attempt to enforce probationer restitution orders by filing violation reports which petition the courts to revoke the probation sentences of probationers who fail to fulfill the restitution conditions of their sentences. Filing of violation reports is not an actual enforcement mechanism but, rather, is a means of facilitating enforcement action by the courts.

⁵⁰ Probation officers' failure to comply with these procedures may be recorded in performance evaluations and can result in dismissal.

Current Mechanisms for the Enforcement of Restitution Orders. At present, there are few measures available to the courts and district attorneys for the enforcement of restitution orders.

o Jail. Section 420.10(3) of the Criminal Procedure Law states that when offenders fail to pay the restitution amounts ordered, the courts may issue warrants for the arrest of these offenders. When offenders are brought before the courts they must be advised of their right to be resentenced if they lack the financial resources to comply with the restitution orders. If the courts are not satisfied that offenders are unable to pay the restitution ordered, the courts may direct that offenders be imprisoned until restitution or reparation is paid or for a maximum of one year for felonies, one-third of the maximum authorized term of imprisonment for misdemeanors, or for a maximum of 15 days for petty offenses, whichever is less.

o Judgment. A judgment is an order issued by the court that stipulates the amount of money that one party is legally entitled to receive from another. Section 420.10(6) of the Criminal Procedure Law, states that restitution orders issued by the courts shall direct district attorneys to file certified copies of these orders with county clerks. This statute instructs county clerks to enter the orders as they would judgments in civil actions. The filing of restitution orders as judgments allows civil enforcement actions to be undertaken and obviates the need of going to trial to re-establish the right of victims to the unpaid restitution if offenders default on restitution payments. These civil actions include the placement of liens on property and the attachment of property.

- o A lien is "a charge, hold or claim upon the property of another as security for some debt of charge." (Gifts, 1975)
- o An attachment is a "proceeding in law by which one's property is seized; a proceeding to take a defendant's property into legal custody to satisfy plaintiff's demand. The object of the proceeding is to hold property so taken for the payment of a judgment in the event plaintiff's demand is established and judgment rendered therefore in his favor." (Gifts, 1975)

Current statutory language implies that district attorneys, alone, have the authority to institute civil actions and that these actions can be undertaken at their discretion or must be undertaken at the direction of the courts. However, conversations with probation practitioners suggest that the role of district attorneys in the enforcement of restitution is unclear. Therefore it is recommended that DCJS develop a restitution component for inclusion in the district attorney training program in order to disseminate information regarding the State's restitution policies.

Applicability of Child Support Enforcement Mechanisms for the Enforcement of Restitution Orders. The civil measures currently provided for in statute for the enforcement of restitution are less extensive than those provided in statute for the enforcement of child support orders. In addition to the filing of judgments, Section 454 of the Family Court Act also provides for income execution (e.g., garnishment of wages), and income tax (federal and state) interception as enforcement mechanisms (Reichler, Fendell & McLaurin, 1987).

- o An income execution is a notice requiring an employer of a person who has been ordered by the court to make payment to another party, or someone who pays the individual a regular income, to take future payments and past due payments from that individual's income to pay what is owed. As established for use in the enforcement of child support orders, this method can also be used to obtain payment from dividends, interest accounts, unemployment insurance, social security retirement and disability benefits, private disability benefits, veteran's benefits, worker's compensation benefits, or pension payments.
- o Income tax interception can be used to receive the Federal and/or State income tax checks of the party who has been ordered by the court to make payment. When used for child support enforcement, the total amount owed must be \$1,000.00 or more before the Federal income tax interception method can be used.

This latter mechanism is currently available to enforce restitution in California where State tax refunds can be intercepted.

Under the Family Court Act, child support collection agencies have the statutory authority to institute civil actions on behalf of aggrieved parties to enforce support orders. At present, district attorneys are the only

government officials who have statutory authority to institute civil actions to enforce restitution. Because the involvement of the courts or district attorneys is not always necessary to institute these civil actions, it would seem reasonable to extend the authority of designated collection agencies, thereby streamlining the process for the enforcement of the restitution orders. For example in the case of liens, the designated collection agencies could, with the approval of the courts, inform county clerks to place liens on the property of offenders who have defaulted on restitution payments. To attach property, the designated collection agencies would direct sheriffs to attach and sell the personal property of offenders in default. In both situations, the judgments filed by district attorneys at time of sentencing serve as the basis for such enforcement actions. In the case of income execution, the designated collection agencies, as enforcement agencies, would have the authority to act as agents for victims and direct employers to deduct income from offenders' salaries to fulfill restitution obligations. The need to develop criteria for determining when enforcement mechanisms should be instituted was discussed previously (pp. 136-138).

It is recommended that appropriate measures currently specified in Section 454 of the Family Court Act for the enforcement of child support orders be adapted for use in the enforcement of restitution, e.g., income execution and income tax interception. It is further recommended that Section 420.10(6) of the Criminal Procedure Law be amended to also allow designated collection agencies, upon approval from the courts, to institute civil actions to enforce restitution orders. Finally, it is recommended that Section 420.10(6) of the Criminal Procedure Law be strengthened to require district attorneys and designated collection agencies to institute civil proceedings when offenders have defaulted on restitution orders.⁵¹ To address these latter two recommendations, Section 420.10(6) of the Criminal Procedure Law should be amended as follows: "The district attorney [may, in his discretion, and must,

⁵¹Note discussion and recommendation on pages 136-139 for the development and promulgation of rules and regulations that provide uniform and detailed procedures governing non-compliance with restitution, including what constitutes default.

upon order of the court] or designated collection agency shall, when appropriate, and with the approval of the court, institute proceedings to collect such fine, restitution or reparation."⁵²

Enforcement of probationer restitution orders. As previously discussed, probation departments can attempt to enforce probationer restitution orders by filing violation reports. However, filing of violation reports is not an actual enforcement mechanism but, rather, is a means of facilitating enforcement action by the courts. Because probation departments are not involved in the enforcement of restitution orders for non-probationers, it was not possible to examine the types of enforcement measures taken by the courts to deal with these offenders. However, the survey did explore how often probation departments attempted to file violation of probation reports when restitution was the only condition of probation that was not met and the subsequent actions taken by the courts when these violations of probation were sustained.

Probation departments were asked how often they attempted to file violation of probation reports when restitution was the only condition of probation not met prior to the conclusion of sentence. Forty-two, or 73.7 percent, of the 57 probation departments that responded to this question reported that they "usually" (29.8 percent) or "always" (43.9 percent) attempted to file such reports in these instances (see Table 39). Ten departments, or 17.5 percent, reported that they "sometimes" filed violation of probation reports in these situations, while only one department reported that it "seldom" did, and four reported that they "never" did. Urban-downstate departments attempted to file these violation of probation reports somewhat more often (4.7 mean response) than urban-upstate departments (4.0 mean response) and rural departments (4.1 mean response). Urban/rural departments filed violation of probation reports in these situations the least often (3.7 mean response).

⁵²The portion of this cite that is contained in brackets is recommended for deletion and the portion that is underlined is a recommended amendment.

The rules and regulations promulgated by DPCA state that (9 NYCRR Section 352.3(b)(2)):

It is the Probation Department's responsibility to see that the conditions of probation are properly enforced and to inform the court of any significant deviation.

It is possible that some departments may not have taken this action because the amounts of restitution still owed were negligible or because they knew that offenders did not have the "ability to pay." It is not possible to determine from responses whether or not probationers were given opportunities to apply to the courts for resentencing to modify or vacate orders before violations of probation were filed. If this is not a standard procedure in departments, it should be. It is senseless to violate probationers when they truly do not have the ability to pay restitution.

The vast majority, 94.4 percent, of the 53 departments that did attempt to file violation of probation reports when restitution was the only condition of probation not met prior to the conclusion of sentence, reported that the courts "always" (62.3 percent) or "usually" (32.1 percent) allowed these reports to be filed (see Table 40). Courts served by urban-upstate departments allowed these reports to be filed the most frequently (5.0 mean response), followed by urban-downstate courts (4.6 mean response), rural courts (4.6 mean response), and urban/rural courts (4.3 mean response). Once again, it is possible that some departments or courts may not have taken this action because the amounts of restitution still owed were negligible or because they knew that offenders did not have the "ability to pay." In such instances, they may have chosen to allow offenders to apply for resentencing in order to modify or vacate orders.

When these violations of probation were sustained by the courts (see Table 41), departments reported that the action taken most often was the return of the offenders to probation (3.3 mean response), rather than incarceration (2.5 mean response). There was little variation in these responses across the urbanization index. "Other" actions taken by the court included the extension

TABLE 39

**How Often Departments Attempted to File Violation of Probation Reports
When Restitution Was the Only Condition of Probation Not Met
Prior to the Conclusion of Sentences by Urbanization Index**

Probation Department Urbanization Index	How Often Departments Attempted to File Violation of Probation Reports When Restitution Was the Only Condition of Probation Not Met						Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always	TOTAL	
Urban-Downstate Departments	-	-	-	1 33.3%	2 66.7%	3 100.0%	4.7
Urban-Upstate Departments	-	-	1 33.3%	1 33.3%	1 33.3%	3 100.0%	4.0
Urban/Rural Departments	-	1 8.3%	5 41.7%	3 25.0%	3 25.0%	12 100.0%	3.7
Rural Departments	4 10.3%	-	4 10.3%	12 30.8%	19 48.7%	39 100.0%	4.1
TOTAL	4 7.0%	1 1.8%	10 17.5%	17 29.8%	25 43.9%	57 ^b 100.0%	4.0

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b One of the 58 departments responded "not known."

of the time allowed for restitution payments or offenders were asked to sign "confessions of judgment" to allow the unpaid portion of the restitution to be collected through civil proceedings. As was mentioned previously, Section 420.10(6) of the Criminal Procedure Law requires that the courts direct district attorneys to file certified copies of the orders with county clerks

and instruct the county clerks to enter the orders as they would judgments in a civil action. If the courts were complying with this statutory mandate, it should not have been necessary for offenders to sign confessions of judgment. The filing of these orders serves the same purpose as a confession of judgment--they both allow civil actions to be taken against offenders without first going to trial to establish the amounts of restitution victims are entitled to receive.

TABLE 40

How Often the Courts Allowed Violation of Probation Reports to be Filed When the Payment of Restitution Was the Only Condition of Sentence Not Met by Urbanization Index

Probation Department Urbanization Index	How Often the Courts Allowed Violation of Probation Reports to be Filed When Restitution Was the Only Condition of Sentence Not Met						Mean/Average Response ^a
	Never	Seldom	Sometimes	Usually	Always	TOTAL	
Urban-Downstate Departments	-	-	-	1 33.3%	2 66.7%	3 100.0%	4.6
Urban-Upstate Departments	-	-	-	-	3 100.0%	3 100.0%	5.0
Urban/Rural Departments	-	-	2 16.7%	5 41.7%	5 41.7%	12 100.0%	4.3
Rural Departments	-	-	1 2.9%	11 31.4%	23 65.7%	35 100.0%	4.6
TOTAL	-	-	3 5.7%	17 32.1%	33 62.3%	53 ^b 100.0%	4.6

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

^b One of the 58 departments responded "not known" and four departments "never" filed violations of probation under these circumstances.

TABLE 41

**How Often Offenders Were Returned to Probation, Incarcerated,
or Had Other Actions Taken by the Courts
When Violations of Probation Were Sustained**

Actions Taken by The Court	How Often Offenders Were Returned to Probation, Incarcerated, or Had Other Actions Taken Against Them by The Courts					TOTAL	Mean/ Average Response ^a
	Never	Seldom	Sometimes	Usually	Always		
Returned to Probation	1 1.9%	4 7.7%	25 48.1%	21 40.4%	1 1.9%	52 100.0%	3.3
Incarcerated	3 5.8%	21 40.4%	27 51.9%	1 1.9%	-	52 100.0%	2.5
Other Actions	-	2 8.7%	15 65.2%	6 26.1%	-	23 100.0%	NA

^a Response scores: 1-Never, 2-Seldom, 3-Sometimes, 4-Usually, 5-Always.

Disbursement of Restitution

Relatively few statutes and guidelines provide direction to local probation departments for the disbursement of restitution to victims in New York State. In this section, the existing statutes and the guidelines developed by the Division of Probation and Correctional Alternatives (DPCA) are discussed, as well as the current practices of probation departments for disbursing restitution. First, methods for disbursing restitution to victims are examined, along with how frequently these disbursements are made. Second, procedures for disbursing restitution, collected on a single order, to more than one victim are also explored. Third, the extent to which the courts order restitution to be disbursed to third-party payors is examined. Fourth, policies for handling the collected restitution in situations where victims

cannot be located are explored. Finally, the statute which designates "interest accrued and undisbursed restitution" for the payment of restitution orders that have gone unsatisfied for the longest period of time is also discussed.

Methods for disbursing restitution to victims. Guidelines prepared by DPCA recommend that restitution checks be mailed to victims by the departments and that checks not be delivered by probation officers. This last recommendation is important, because probation department staff are not usually bonded. If checks are stolen and cashed, departments would be liable for these losses.

When departments were asked how they transmit restitution disbursements to victims, 74.1 percent of the departments reported that checks were "always" mailed, with the remaining departments reporting that checks were "usually" mailed to victims. On those occasions when checks were not mailed, the checks were normally picked up by victims. Four departments reported that on rare occasions they hand-delivered checks to victims.

It appears that a majority of the departments are following DPCA guidelines. Those departments that hand-delivered checks to victims should be encouraged to discontinue this practice because of the possibility of incurring financial losses if checks are stolen from staff persons. In addition, hand-delivery of checks uses staff resources inefficiently.

Schedules for disbursing restitution. No statutes or guidelines specify how often restitution should be disbursed to victims. Approximately 91 percent of the 58 departments reported that they had specific schedules for disbursing restitution to victims. Only one urban/rural department and four rural departments reported that they did not have specific schedules for the disbursement of these monies. When departments were asked how often they disbursed restitution, 24, or 46.2 percent, of the 52 departments that responded to this question reported that restitution was disbursed to victims on a monthly basis (see Table 42). Ten departments (19.2 percent) disbursed these moneys bi-weekly/semi-monthly, two departments disbursed moneys weekly,

and five departments disbursed moneys as soon as possible. "Other" schedules for the disbursement of restitution to victims were based on the amounts of restitution collected. Departments that reported using "other" schedules disbursed monies to victims (1) when the total amount of restitution ordered was paid by the offender, (2) when substantial amounts of restitution were collected or accumulated, or (3) semi-monthly or monthly--depending on the amount collected per case.

TABLE 42
Departments' Schedules for Restitution Disbursement

Probation Department Urbanization Index	Schedules for the Disbursement of Restitution					TOTAL
	As Soon As Received	Weekly	Bi-Monthly	Monthly	Other	
Urban-Downstate Departments	2 50.0%	2 50.0%	-	-	-	4 100.0%
Urban-Upstate Departments	-	-	1 33.3%	1 33.3%	1 33.3%	3 100.0%
Urban/Rural Departments	2 18.2%	-	3 27.3%	3 27.3%	3 27.3%	11 21.2%
Rural Departments	2 5.9%	2 5.9%	6 17.6%	17 50.0%	7 20.6%	34 100.0%
TOTAL	5 9.6%	2 3.8%	10 19.2%	24 46.2%	11 21.2%	52 ^a 100.0%

^a Six of the 58 departments reported that they do not accept cash as a form of payment from offenders.

While the practice of disbursing restitution more frequently than once a month might seem unnecessary, it may be more practical for some departments because of existing accounting practices. However, policies that require orders to be satisfied before disbursement are unsatisfactory because victims are entitled to receive any restitution paid by offenders within a reasonable period of time. Victims should not have to wait two years to receive payments made periodically over that same period of time. Similarly, policies that require substantial amounts of money to be collected before restitution can be disbursed to victims may be unfair. While it is not practical to issue checks for small sums of money (e.g., less than \$5), it is also unreasonable to withhold collected restitution from victims because substantial amounts (e.g., \$50) have not been collected. Departments should be discouraged from retaining restitution payments until large sums of money are collected or until orders are satisfied. It is recommended that DPCA promulgate rules and regulations specifying procedures for the disbursement of restitution to victims.

Disbursement of restitution to third-party payors. The extent to which courts order restitution to be disbursed to third-party payors in New York State has never been explored. In an attempt to measure the degree to which third-party payors were compensated through court-ordered restitution, probation departments were asked to estimate the percentage of restitution orders administered by them that included directives from the courts to disburse restitution to third-party payors.

Probation departments estimates indicated that, statewide, 11.5 percent of the restitution orders they received directed payment of restitution to third-party payors such as the Crime Victims Board or insurance companies (see Table 43). A majority of the departments, 57.1 percent, estimated that "1% to 10%" of the orders contained this directive. Nine of the departments (16.1 percent) estimated that "11% to 20%" of the orders they received contained this directive, and seven departments estimated receiving this directive in "21% to 30%" of the orders. Only two of the departments (3.6 percent) estimated receiving this directive in "31% to 40%" of the orders they received. When average percentages were examined across the urbanization

index, Table 44 shows that urban/rural departments and urban-downstate departments reported receiving a slightly larger percentage of these orders (14.4 percent and 12.8 percent, respectively) than rural departments and urban-upstate departments (10.5 percent and 10.0 percent, respectively).

It is important that the departments and the courts consider third-party payors as victims entitled to receive restitution. Responses suggest that their acceptance or recognition as victims varies across counties. As previously recommended in Chapter 3, Section 2, Section 60.27 of the Penal Law should be amended to stipulate that third-party payors receive this recognition.

TABLE 43

How Often Courts Directed Restitution to be Disbursed to Third Party Payors

Probation Department Urbanization Index	Percentage of Orders Directing Disbursement of Restitution to Third Party Payors					TOTAL	Mean/ Average Percent ^a
	0%	1%-10%	11%-20%	21%-30%	31%-40%		
Urban-Downstate Departments	-	3 75.0%	-	1 25.0%	-	4 100.0%	12.8%
Urban-Upstate Departments	-	1 100.0%	-	-	-	1 100.0%	10.0%
Urban/Rural Departments	-	8 66.7%	-	3 25.0%	1 8.3%	12 100.0%	14.4%
Rural Departments	6 15.4%	20 51.3%	9 23.1%	3 7.7%	1 2.6%	39 100.0%	10.5%
TOTAL	6 10.7%	32 57.1%	9 16.1%	7 12.5%	2 3.6%	56 100.0%	11.5%

^a Two departments did not respond to this question.

In many instances, third parties have the legal right of subrogation to restitution for compensation paid to victims or victims' families. As defined earlier in this report (p. 31) subrogation is "the lawful substitution of a third party in place of a party having a claim against another party." Therefore, when restitution is ordered for victims who have received compensation from third parties with subrogation rights, the courts must direct that the payment of restitution be made to these third parties. This contractual right of subrogation may not be diminished by the courts or designated collection agencies absent the consent of third parties with this right.

In instances where these third parties have not fully compensated victims for their losses, both victims and third parties should receive their proportional share of each restitution payment. For example, a victim suffered a 1,000 loss as a result of a crime and was compensated by the Crime Victims Board for only the loss of eye glasses valued at \$100.00. In this case, the Crime Victims Board's subrogation right was only applicable to \$100.00 of the \$1,000.00 in restitution ordered by the court. When monies were disbursed, the victim and CVB each received their proportional shares (90 percent and 10 percent, respectively) of each scheduled restitution payment.

Some criminal justice practitioners believe that victims should receive their proportional share of the full amounts of restitution ordered by the courts before any restitution is disbursed to any third party, including those with subrogation rights. This perspective is grounded in the belief that one of the primary objectives of restitution is to "make victims whole." However, the subrogation rights of third parties to restitution cannot be circumvented by the courts absent clear statutory authority to the contrary or the consent of these third parties.

Disbursing restitution to multiple victims. Restitution orders issued by the courts can direct offenders to pay restitution to more than one victim. At the present time, there are no statutes or guidelines that deal with the disbursement of restitution to multiple victims.

Probation departments were asked what procedures they usually used to disburse restitution to multiple victims when the courts did not provide directives in restitution orders. Table 44 shows that 19, or 32.8 percent, of the 58 departments reported that in such instances each of the victims received their proportional share of each payment made by the offender, while 15, or

TABLE 44
Departments' Procedures for Disbursing Restitution
to Multiple Victims of a Crime

Procedures for the Disbursement of Restitution to Multiple Victims of a Crime						
Probation Department Urbanization Index	After Each Payment	Criteria Determine Order	After the Order was Satisfied	Rotating Basis	No Standard Procedure	TOTAL
Urban-Downstate Departments	4 100.0%	-	-	-	-	4 100.0%
Urban-Upstate Departments	-	3 100.0%	-	-	-	3 100.0%
Urban/Rural Departments	6 50.0%	4 33.3	-	-	2 16.7%	12 100.0%
Rural Departments	9 23.1%	8 20.5%	7 17.9%	2 5.1%	13 33.3%	39 100.0%
TOTAL	19 32.8%	15 25.9%	7 12.1%	2 3.4%	15 25.9%	52 100.0%

^a rotating basis (e.g., if there were two victims, the first payment went to one victim and the second payment to the other victim, etc.). The remaining 15 departments, two urban/rural departments and 13 rural departments, reported that they did not use any standard procedure for disbursing restitution in these

25.9 percent of the departments reported that criteria had been established to determine the order in which victims were paid (i.e., individuals receive their full share of the restitution before businesses). Seven, or 12.1 percent, of the departments reported that restitution was disbursed to victims only after the order was satisfied, and two departments reported that victims were paid on

As these responses indicate, there are a number of procedures used by departments across the State to disburse restitution to multiple victims. It is recommended that Section 420.10 of the Criminal Procedure Law be amended, along with DPCA rules and regulations, to specify that each of the victims receive their proportional share of each restitution payment made by offenders. Any third party with the right to subrogation would be entitled to the proportional amount the compensated victim would have otherwise received if compensation had not been provided by this third party.

This procedure, however, could be problematic in instances where the amounts of restitution received by victims would be very small. For example, if an offender's monthly restitution payment is \$10 and the payment must be distributed to four victims, the administrative cost of disbursing this restitution would be unreasonable given the small amount involved. In instances where small payments must be disbursed to multiple victims, it might be more cost effective to distribute restitution only after a sufficient amount had been collected for disbursement to each of the victims (e.g., \$10). Departments' disbursement policies or directives from the courts that arbitrarily establish the order in which victims are paid do not treat victims equitably, and policies that withhold restitution from victims until an order is satisfied, unnecessarily deprive victims of restitution they are entitled to receive within a reasonable period of time. Finally, policies that disburse restitution on a rotating basis to victims may deprive some victims of their share of restitution if offenders fail to pay the full amounts ordered by the courts. Both the departments and the courts, therefore, should be discouraged from using these latter three procedures.

Inability to disburse collected restitution. Probation departments may not always be able to disburse restitution that has been collected. This situation occurs when victims do not inform departments of changes of address. When probation departments are unable to locate the victims for whom they have collected restitution, Section 420.10(7) of the Criminal Procedure Law states that:

... the term "undisbursed restitution payments" shall mean those payments which have been remitted by a defendant but not disbursed to the intended beneficiary and such payments has gone unclaimed for a period of one year and the location of the intended beneficiary cannot be ascertained ... after using reasonable efforts.

The majority of the 58 departments do not appear to have trouble locating victims for the disbursement of restitution. Twelve of the departments (20.7 percent) reported that they are always able to locate victims, 20 of the departments (34.5 percent) reported that they were unable to locate "0.01% to 1.0%" of victims, and 17 of the departments reported that this was a problem with only "2% to 5%" of victims (see Table 45). Only 6 of the departments reported that this was a problem with "6% to 10%" of the victims, with 3 of the departments reporting that they were unable to locate "11% to 15%" of the victims to whom they were disbursing restitution.

When the average percent of victims that departments reported could not be located is examined across the urbanization index, Table 45 shows that the level of urbanization is strongly correlated with the percent of victims that could not be located. Urban-downstate departments reported that they were unable to locate 7.5 percent of the victims to whom they were obligated to disburse restitution, and urban-upstate departments were unable to locate 5.3 percent of these victims. Urban/rural departments were unable to locate 3.6 percent of the victims, and rural counties encountered this problem with only 2.3 percent of the victims.

TABLE 45

How Often Victims Could Not be Located for the Disbursement of Restitution

Probation Department Urbanization Index	Percentage of Victims That Could Not be Located						Mean/ Average Percent ^a
	0%	.01%-1%	2%-5%	6%-10%	11%-15%	TOTAL	
Urban-Downstate Departments	-	1 25.0%	1 25.0%	1 25.0%	1 25.0%	4 100.0%	7.5%
Urban-Upstate Departments	-	1 33.3%	1 33.3%	-	1 33.3%	3 100.0%	5.3%
Urban/Rural Departments	-	7 58.3%	2 16.7%	2 16.7%	1 8.3%	12 100.0%	3.6%
Rural Departments	12 30.8%	11 28.2%	13 33.3%	3 7.7%	-	39 100.0%	2.3%
TOTAL	12 20.7%	20 34.5%	17 29.3%	6 10.3%	3 5.2%	58 100.0%	3.1%

Departments, overall, estimated that 3.1 percent of the victims could not be located. There is little departments can do to rectify this problem other than notifying victims to inform them of any changes of address.

Unsatisfied orders and disbursement of restitution.⁵³ Section 420.10(7) of the Criminal Procedure Law states:

⁵³ Unsatisfied orders do not include orders that have been vacated by the courts because offenders lacked the "ability to pay."

The interest accrued [from restitution bank accounts] and any undisbursed [restitution] payments shall be designated for the payment of restitution orders that have remained unsatisfied for the longest period of time.

DPCA guidelines (Probation Directors' Memorandum No. 25) state that the interest accrued and the undisbursed restitution must be deposited in an "Interest and Undisbursed Payment" (IUP) account⁵⁴ and recommends that:

... unsatisfied restitution/reparation orders be defined to mean that the last scheduled payment is at least sixty (60) days overdue. A probation department should maintain a current listing ... in order to determine which order has gone unsatisfied for the longest period of time.

Neither the statute nor the guidelines specify how often these payments should be disbursed from IUP accounts (e.g., monthly, semi-annually, annually). In addition, limits are not placed on the amounts of restitution that can be disbursed to satisfy orders during a given period. As a result, the entire amount of the interest and undisbursed funds that accumulate in an IUP account during the year, technically, could be paid toward the satisfaction of one order. It would be more reasonable to establish a limit on the amount of interest and undisbursed restitution that would be paid toward the satisfaction of any order during a given year. For example, it is very likely that some counties deposit small amounts of interest and undisbursed restitution into IUP accounts each year. If the order that has remained unsatisfied the longest in one of these smaller counties has several hundred dollars of restitution that is still unpaid, the entire sum of money in the IUP account would be paid to one victim if money from the IUP account is disbursed annually. If a limit were established on the amount of money that

⁵⁴ The DPCA guidelines (Probation Directors' Memorandum No. 25) state: "If a restitution/reparation payment is received after the applicable 'unsatisfied' account has already received payment from the IUP account, the late restitution/reparation payment must be credited to the IUP account."

could be disbursed to any one victim during a given year, several other victims would also be recipients of at least some of the restitution to which they are entitled.

The Victim Services Agency in New York City has already established a ceiling of \$250 or 25 percent of the total amount of restitution ordered-whichever comes first. It is recommended that Section 420.10(7) of the Criminal Procedure Law be amended to specify how often payments should be made to victims from IUP accounts. It is further recommended that Section 420.10(7) of the Criminal Procedure Law be amended to establish a ceiling on the amounts that would be paid from IUP accounts toward the satisfaction of any single order during a given year.

Fiscal Management and Record Keeping

The fiscal management and record keeping tasks associated with the administration of restitution are complex. Payments and surcharges must be collected and recorded. Checks must be issued for disbursement to victims and also recorded. Accounts must also be monitored for delinquent payments. When victims cannot be located, steps must be taken to find them before the undisbursed restitution can be distributed to other victims. Reporting requirements mandated by the State require that data on the number of orders issued and satisfied, amounts of restitution and surcharge collected, and types of offenses for which restitution has been ordered be reported to the State on a monthly basis.

Only 12 of the probation departments reported that they used computerized fiscal accounting systems for the administration of restitution. Two of the four urban-downstate departments reported having computerized systems, while all three of the urban-upstate departments reported having these systems. Only 16.7 percent (2) of the urban/rural departments and 12.8 percent (5) of the rural departments reported that they used computerized systems.

It is recommended that the Division of Probation and Correctional Alternatives (DPCA), with technical assistance from the Systems Improvements

for Enhanced Community Safety (SIF ECS) Task Force, develop a standardized case-based automated restitution accounting/reporting system with the goal of statewide implementation that addresses the needs of both local probation departments and the State. This systems development effort should build upon the foundation established by those local probation departments with existing automated restitution systems.

The recommended system would allow local probation departments to monitor compliance with restitution ordered by the courts or established through informed pre-sentence agreements, including ACDs. An automated restitution accounting/reporting system would allow many of the tasks associated with the administration of restitution to be handled more efficiently. For example, the system would write checks that include remittance advice statements, enhance fiscal monitoring of restitution payments, and replace the monthly preparation of the DP30-A with the automated transmission of case level data to the State. In turn, the case level data provided by the recommended system would significantly enhance the ability of the State to make meaningful policy recommendations regarding restitution and would greatly facilitate the implementation of recommendations made elsewhere in this report. For example, this system would address the identified data limitations discussed in Chapter 2 of this report and allow the Division of Criminal Justice Services (DCJS) and the Crime Victims Board (CVB) to meet their legislatively mandated responsibilities regarding restitution.

Victim impact data currently provided through the aggregate reporting system are not sufficient for the CVB to meet its legislatively mandated responsibility to report on the effect that victim impact statements have on restitution conditions imposed by the courts at the time of sentencing. Furthermore, it is impossible to accurately determine what percentage of victims responded to requests for victim impact information or to accurately measure what percentage of the statements provided by victims were included in reports to the courts. Similarly, DCJS's aggregate reporting system limits the ability of DCJS to meet its mandated responsibility to make recommendations to promote the use of restitution and encourage its enforcement.

Successful implementation of a restitution accounting/reporting system would require the support of local probation departments. Any system developed must address not only the reporting requirements of DCJS and CVB, but the accounting and record keeping complexities experienced by probation departments in administering restitution as well. The major phases in the development of the recommended case-based restitution accounting/reporting system are as follows:

- o Needs assessment
- o Systems analysis
- o System design
- o Programming
- o Testing system software
- o Development of user manual/system documentation
- o Prototype installations
- o Evaluation of prototype
- o Statewide implementation
 - hardware acquisition
 - training
 - evaluation

Staff Involved in the Administration of Restitution

When probation departments were asked to estimate what proportion of their departments' time was devoted to the administration of restitution, the average estimate was 12.0 percent. As Table 46 shows, urban-downstate departments and urban-upstate departments estimated devoting slightly less time to this task (10.3 percent and 10.0 percent, respectively) than urban/rural departments and rural departments (12.6 percent and 12.1 percent, respectively).

As restitution is currently administered in most probation departments, it was highly unlikely that the departments could provide anything more than an "estimate" of the amount of time devoted by the department to this task. This

was largely due to the fact that most departments had not established programs that dealt solely with the administration of restitution. Instead, restitution has been subsumed under more general activities such as probation supervision and accounting. A restitution program case-study conducted by Daniel McGillis (1986, p. 18) found that this approach is fairly common among probation departments that are responsible for the administration of restitution.⁵⁵

TABLE 46

Percentage of Total Staff Time Devoted to the Administration of Restitution by Urbanization Index

Probation Department Urbanization Index	Percentage of Total Staff Time					TOTAL	Mean/Average Percent
	1%-5%	6%-10%	11%-15%	16%-20%	21% +		
Urban-Downstate Departments	3 75.0%	-	-	-	1 25.0%	4 100.0%	10.3%
Urban-Upstate Departments	1 33.3%	1 33.3%	-	1 33.3%	-	3 100.0%	10.0%
Urban/Rural Departments	3 27.3%	4 36.4%	1 9.1	2 18.2%	1 9.1	11 100.0%	12.6%
Rural Departments	14 36.8%	10 26.3%	5 13.2%	5 13.2%	4 10.5	38 100.0%	12.1%
TOTAL	21 37.5%	15 26.8%	6 10.7%	8 14.3%	6 10.7%	56 ^a 100.0%	12.0%

^a Two departments did not respond.

⁵⁵ McGillis (1986, p.2) states: "A preliminary 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.

No specific staff members are assigned to coordinate restitution casework... Instead, restitution is simply one aspect of the activities of probation personnel. ...the nine probation departments contacted as part of our survey found it very difficult or impossible to specify the proportion 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 desegregated from other activities within the department.

Departments in New York State were also asked to estimate what percentage of the work involved in the administration of restitution was handled by management (e.g., directors, probation officer supervisors), probation officers (including assistants), and support staff (e.g., accountants, programmers, secretaries, clerical, etc.). As Table 47 shows, departments estimated that an

TABLE 47

Percentage of Work Done by Management, Probation Officers, and Support Staff in the Administration of Restitution

Staff	Percentage of Work Done					TOTAL	Mean/ Average Percent
	20% or Less	21%-40%	41%-60%	61%-80%	81% or More		
Management	53 91.4%	3 5.2%	1 1.7%	1 1.7%	-	58 100.0%	13.6%
Probation Officers	28 48.3%	17 29.3%	8 13.8%	2 3.4%	3 5.2%	58 100.0%	29.5%
Support Staff	7 12.1%	8 13.8%	18 31.0%	14 24.1%	11 19.0%	58 100.0%	56.9%

average of 13.6 percent of the work was done by management, 29.5 percent was handled by probation officers, and 56.9 percent was handled by support staff. There was an extremely significant relationship between the percentage of work done by management or probation officers and support staff. As the amount of work done by support staff increased, the amount of work done by probation officers⁵⁶ or management⁵⁷ decreased and vice versa. When the percentage of work done by each group was examined across the department urbanization index, Table 48 shows urban-downstate support staff were responsible for a larger percentage of the work (72.8 percent) than the support staff of the other urban groups (53.3 to 56.2 percent).

Finally, departments were asked which staff--management, probation officers, and/or support staff--were involved in each of the tasks associated with the administration of restitution (see Table 49). It is important to note that the assignment of staff to tasks may be largely dependent on the size of departments.

Notifying victims of the conditions of orders and the availability of civil proceedings for collection. DPCA guidelines recommend that all victims receive written notification of the amount of restitution ordered and the conditions of the order. This would appear to be a clerical task for appropriate support staff. However, 69.1 percent of the departments reported that probation officers were involved in this task, while only 52.7 percent reported the involvement of support staff. The involvement of management was reported by 25.5 percent of the departments.

Collecting restitution. Offenders should be able to make payments by mail or in-person. Ideally, the collection of restitution should be handled by support staff who are bonded. These collections must also be posted in an accounts receivable ledger. One department also stated that it does not allow

⁵⁶ Pearsons R of $-.87$ with two-tailed significance of 0.000.

⁵⁷ Pearsons R of $-.37$ with two-tailed significance of 0.004.

offenders into its accounting area for security reasons, making it necessary for probation officers to collect restitution from offenders in their offices. Three-quarters, 75.9 percent, of the departments reported that support staff are involved in the collection of restitution, and 67.2 percent reported the involvement of probation officers. Less than one-third of the departments, 32.0 percent, reported the involvement of management. These responses indicate that it is common practice among departments to involve probation officers in the collection of restitution.

TABLE 48

Percentage of Work Done by Management, Probation Officers, and Support Staff in the Administration of Restitution by Urbanization Index

Probation Department Urbanization Index	Percent of Work Done			
	Management	Probation Officers	Support	TOTAL
Urban-Downstate Departments (n = 4)	7.5%	19.8%	72.8%	100.0%
Urban-Upstate Departments (n = 3)	15.0%	31.7%	53.3%	100.0%
Urban/Rural Departments (n = 12)	19.9%	23.9%	56.2%	100.0%
Rural Departments (n = 39)	12.1%	32.1%	55.8%	100.0%
TOTAL (N = 58)	13.6%	29.5%	56.9%	100.0%

TABLE 49
Staff Involved in the Administration of Restitution^a

Areas of Restitution Administration	Percent of Department with Staff Involved in the Administration of Restitution		
	Management	Probation Officers	Support Staff
Notifying the victim of the condition of the order and the availability of civil proceedings for collection (n = 55)	25.5% (14)	69.1% (38)	52.7% (29)
Collecting restitution (n = 58)	32.0% (19)	67.2% (39)	75.9% (44)
Monitoring and enforcing probationer restitution orders (n = 57)	59.6% (34)	89.5% (51)	43.9% (25)
Monitoring and enforcing non-probationer restitution orders (n = 56)	62.5% (35)	33.9% (19)	71.4% (40)
Disbursing collected restitution to victims (n = 58)	31.0% (18)	34.5% (20)	91.4% (53)
Fiscal account management (n = 58)	46.6% (27)	10.3% (6)	86.2% (50)
Record keeping (n = 58)	32.8% (19)	24.1% (14)	93.1% (54)
Reporting to the State (n = 56)	56.9% (33)	8.6% (5)	89.7% (52)

^a Because departments responded either "yes" or "no" to each staff category, the row counts will not sum to the "n" shown for each area of restitution administration.

Monitoring and enforcing "probationer" restitution orders. The primary responsibility for the fiscal monitoring of restitution payments should belong to support staff who collect these payments and post them in accounts receivable ledgers. When probationers fail to make scheduled payments, support staff should be responsible for informing appropriate probation officers that payments are delinquent. At this point, probation officers should assume responsibility for monitoring and, when necessary, facilitating the enforcement of restitution orders (i.e., filing violations of probation). The vast majority of probation departments, 89.5 percent, reported that probation officers were involved with this task. Considerably fewer departments reported that management or support staff were involved with monitoring or enforcing restitution (59.6 percent and 43.9 percent of the departments, respectively). These results suggest that a large portion of the departments did not involve support staff in this task. It is possible that smaller departments may not have had support staff qualified to handle the fiscal monitoring of orders. Departments that do have support staff qualified to handle the fiscal monitoring of cases are encouraged to use these personnel rather than probation officers, to make the most efficient use of staff resources.

Monitoring "non-probationer" restitution orders. Departments' responsibility for non-probationer restitution orders is limited to the fiscal monitoring of these orders. The primary responsibility for this task should belong to support staff who should also be responsible for informing the courts when offenders are in default. A large proportion of departments, 62.5 percent, reported that management was involved in this task. A somewhat larger proportion of departments, 71.4 percent, reported the involvement of support staff. Only 33.9 percent of the departments reported that probation staff were involved in this task. It appears that a majority of the departments did not involve probation officers in this task, however, this might not have been possible for smaller agencies who lacked support staff that were qualified to perform this task. It is recommended that departments limit the involvement of probation officers in this task given the departments inability to enforce these orders.

Disbursing collected restitution to victims. The disbursement of restitution involves posting information to an accounts payable ledger, preparing checks, and mailing these checks to victims. This task should be the primary responsibility of support staff with supervision of management and no involvement of probation officers. Almost all of the departments, 91.4 percent, reported that support staff were involved with this task. Only 34.5 percent of the departments reported the involvement of probation officers, while slightly fewer departments, 31.0 percent, reported the involvement of management.

Fiscal account management. This task overlaps somewhat with those previously discussed. Accounts receivable and accounts payable ledgers must be posted, accounts must be monitored for delinquent payments, and probation officers or the courts, when appropriate, must be notified when offenders are in default. This is primarily a task for support staff, with some management support. The vast majority of probation departments, 86.2 percent, reported the involvement of support staff, while only 46.6 percent reported the involvement of management, and 10.3 percent reported the involvement of probation officers.

Record keeping. Once again, this task should be primarily the responsibility of support staff and is closely associated with fiscal account management. It involves recording information on the number of orders issued and satisfied during a given period, the amount of restitution ordered and collected, the amount of surcharge collected, and the types of offenses for which restitution was ordered. The vast majority of probation departments (93.1 percent) reported that support staff were involved, while only 32.8 percent reported the involvement of management and 24.1 percent reported the involvement of probationer officers.

Reporting data to the State. Again, this appears to be primarily a task for support staff with management supervision that involves the compilation of data collected during the record keeping process. These data must be transmitted to the Division of Probation and Correctional Alternatives or, in the case of New York City, to the Division of Criminal Justice Services. The

vast majority of departments, 89.7 percent, reported the involvement of support staff. Only 56.9 percent of the probation departments reported the involvement of management and 8.6 percent reported the involvement of probation officers. The involvement of these latter two groups was most likely limited to review of the data before it is forwarded to the State.

It is important that probation departments take steps to ensure that staff are used as efficiently as possible to administer restitution. It is recognized, however, that the assignment of staff to this task is largely dependent on the size of departments and the level of the staffs' professional skills. Departments, when feasible, should consider establishing the administration of restitution as a separate program within the agency. When the task of administering restitution is subsumed under larger tasks, the priority given this task may vary considerably among both staff and departments. As Daniel McGillis (1986) states:

... the priority accorded the task may be necessarily minimal. Probation ... personnel typically have large caseloads, diverse responsibilities, and little time for auxiliary tasks. As a result, ...monitor[ing] offenders' compliance and ...efforts to encourage offenders to fulfill restitution orders may not rank high among the supervisory priorities of probation officers. (p. 18)

Costs of Administering Restitution

When the Legislature enacted the Laws of 1984, no monies were appropriated in the State budget to help defray the costs incurred by designated collection agencies for administering restitution. Instead, the Legislature enacted the mandate that instructs the courts to direct convicted offenders to pay a five percent surcharge on the amounts of restitution ordered to the agencies designated to collect the restitution. This surcharge was intended to cover the costs of administering restitution, however, it has proven to be inadequate for two reasons.

First, the courts are not fully complying with the statutory mandate. Based on the \$4,212,613 collected in restitution in New York State during 1986, a total of \$210,631 should have been collected in designated surcharges. However, only \$169,758⁵⁸ in surcharges was actually collected, suggesting that some courts failed to direct offenders to pay the designated surcharge. However, even if the full amount of the surcharge had been collected, it would have had little impact on the actual costs incurred by agencies in administering restitution. For example, Erie County, which had 661 active cases during 1986, collected \$81,108 in restitution and should have collected \$4,055 in surcharges. This surcharge was not enough to pay the salary of even one part-time staff person in an agency that administers a high volume of restitution orders.

Second, the collected surcharge is not used to administer restitution. DPCA guidelines (Probation Directors' Memorandum No. 25) state that:

The five percent designated surcharge must be transmitted monthly to the County Treasurer's Office, using an account number to be provided by the Office of the State Comptroller. The funds become general revenue for the county; any probation requests for appropriation of such funds must follow the standard budgeting process.

Because the administration of restitution is not usually classified as a separate program, but as one aspect of larger probation activities, specific appropriations are typically not requested for the purpose of administering restitution. Furthermore, the surcharges become general revenue, so the counties are not obligated to include these monies in probation departments' budgets.

If the State's restitution policy is to be effectively implemented, the cost of administering restitution must be addressed. It is recommended that

⁵⁸ Probation departments reported on the DP30-R the collection of \$169,758 in surcharges during 1986.

the collected surcharges no longer be classified as general revenue for counties, and that Section 420.10 of the Criminal Procedure Law be amended to stipulate that the five percent surcharge be used specifically for the administration of restitution in the county in which it is collected. It is further recommended that departments, when feasible, establish the administration of restitution as a separate program within their agencies to allow them to request the appropriation of the funding needed for this program. Budgets would then reflect this activity as a discrete program within departments, requiring the allocation of funds specifically for this activity. In doing so, the cost of supporting restitution administration would no longer be subsumed under other line items in department budgets.

Summary

The administration of restitution is a complex task that is governed primarily by the statutory directives contained in Article 420 of the Criminal Procedure Law which became effective on November 1, 1984. The Division of Probation and Correctional Alternatives has issued guidelines to local probation departments to assist them in the performance of this task. These guidelines, however, have not yet been incorporated into the rules and regulations promulgated by DPCA. It is recommended that DPCA promulgate rules and regulations for the administration of restitution to ensure standardization in practices across the State. In addition, it is recommended that the Criminal Procedure Law be amended to specify DPCA as the State agency responsible for the oversight and enhancement of restitution administration in all designated collection agencies. In doing so, the rules and regulations promulgated by DPCA would also be applicable to designated collection agencies not under the purview of DPCA. Finally, it is recommended that appropriate resources be allocated to DPCA for the performance of these functions.

Notifying victims of the conditions of orders. Section 420.10(1)(d) of the Criminal Procedure Law instructs the courts to direct that notice be given to victims regarding the conditions of orders, the name and address of the designated collection agency, and the availability of civil proceedings for

collection. It does not, however, specify who will actually give this notice. Recommendations have been made to help ensure that victims are notified.

Collection of restitution and the designated surcharge from convicted offenders. The only point in the criminal justice process where the courts have the statutory authority to order offenders to pay both restitution and the five percent designated surcharge is at the time of sentencing. The courts must direct offenders to pay this restitution and surcharge to designated collection agencies. Survey responses indicated, however, that some courts did not fully comply with either of these directives. Some of the possible reasons for this non-compliance included: sensitivity to offenders' financial difficulties, the desire to reduce "red tape," the need for personal involvement, and tradition.

It was not possible to determine from the survey whether this lack of compliance with statutory mandates reflected the courts' lack of familiarity with or willful disregard of these statutes. Regardless of the reasons why the courts did not fully comply with these mandates, this lack of full compliance to the statutes undermined the State's ability to monitor the extent to which restitution was used and created a disparity in the administration of justice. Recommendations have been made for the dissemination of information on the State's restitution policy to the courts.

Collection of restitution from non-convicted offenders. While there are no legal provisions governing the collection of restitution from offenders who pay restitution at some point in the criminal justice process prior to sentencing, there is no law that prohibits designated collection agencies from collecting this restitution. However, Section 420.10 of the Criminal Procedure Law does not give the courts statutory authority to direct offenders who have not been convicted to pay the five percent surcharge.

The problem of the underreporting of restitution was clearly illustrated by departments' discretionary reporting of ACD restitution. While 48, or 82.8 percent, of the 58 probation departments reported that they collected restitution paid by at least some of the offenders granted ACDs, only eight of

these departments reported ACD restitution collected during 1986 to the State. The underreporting of ACD restitution may have occurred because departments are required to report only on restitution imposed by the court on convicted offenders. As a result, known restitution activity in the State was underreported for 1986 by many departments. Furthermore, it is very likely that a substantial portion of ACD restitution was not administered by designated collection agencies. It is recommended that Section 60.27 of the Penal Law be amended to require that all restitution, regardless of type of disposition, be directed to designated collection agencies.

In those instances where defendants who agree to pay restitution as part of an ACD dispute resolution agreement fail to do so, the courts cannot revoke ACDs and restore cases to court calendars. It has been recommended that the Criminal Procedure Law be amended to allow courts to require offenders, with their consent, to pay restitution to the victims of their crimes, which, in turn, will allow the courts to enforce restitution agreements. The courts currently lack the statutory authority to impose conditions such as the payment of restitution upon ACD's except in cases where the sole remaining charges against offenders are misdemeanor marijuana offenses.

Collection of restitution through restitution/employment programs. Several states have established restitution/employment programs. These programs are designed to enable offenders who might not normally have the ability to compensate victims of their crimes to do so. Programs can generally be classified under one of two programs models: (1) those whose primary objectives are both the diversion of offenders from incarceration and the payment of restitution, and (2) programs whose primary objective is the payment of restitution. It is recommended that DPCA plan and develop these types of programs to assist offenders in securing employment to facilitate compliance with restitution orders.

Forms of payment accepted from offenders. The Division of Probation and Correctional Alternatives' (DPCA) guidelines state that both cash and some types of checks are acceptable forms of payment (Probation Directors' Memorandum, No. 25). They discourage departments from accepting personal and

third-party checks because of the risk and uncertainty involved with accepting these types of checks. Departments' estimates indicated that during the month prior to the survey, roughly 60.0 percent of the restitution collected statewide was paid in cash. None of these departments reported that credit cards were used for the payment of restitution. It is recommended that DPCA take appropriate measures to institute the use of credit cards for payment of restitution to facilitate fulfillment of these orders.

Monitoring offenders' compliance with restitution orders. Both the statutes and guidelines imply that the courts should be notified by designated collection agencies whenever offenders fail to make scheduled payments. Because payment schedules play an integral role in the monitoring of compliance to restitution orders it is critical that these schedules be included in restitution orders issued by the courts. While case law stipulates that the courts must include specific payment schedules in restitution orders, departments estimated that a substantial proportion of the orders, 73.6 percent, did not contain such schedules. It is recommended that Section 60.27 of the Penal Law be amended to require courts to include payment schedules in all restitution orders in order to enhance the enforcement of restitution and conform statutory law to case law.

If offenders believe that they lack adequate financial resources to pay restitution ordered by the courts, they can apply to the courts for a resentence to modify or vacate orders. The vast majority of departments reported that the courts only "seldom" or "sometimes" modified or vacated restitution orders.

While the current statute implies that the courts should be informed about all delinquent payments, the majority of probation departments failed to do so. This lack of compliance may have occurred because neither Section 420.10(1)(d) of the Criminal Procedure Law, nor DPCA guidelines explicitly state what constitutes default, i.e., how many days late can payments be and how many payments must be delinquent. It is recommended that DPCA develop and promulgate rules and regulations that (1) provide uniform and detailed procedures governing non-compliance with restitution orders, including what

constitutes default; and, (2) specify procedures that should be followed to secure delinquent payments from offenders before they are returned to court because of failure to pay restitution.

Current mechanisms for the enforcement of restitution orders. If either probationers or non-probationers fail to comply with restitution orders, only the courts or district attorneys have the statutory authority to invoke enforcement mechanisms. The role of the designated collection agencies in administering restitution is limited to fiscal monitoring of orders. Probation departments can attempt to enforce probationer restitution orders by filing violation reports which petition the courts to revoke the probation sentences of probationers who fail to fulfill the restitution conditions of their sentences. Filing of violation reports is not an actual enforcement mechanism but, rather, is a means of facilitating enforcement action by the courts. At present, the only measures available to the courts and district attorneys for the enforcement of restitution orders are incarceration and the filing of judgments with county clerks which allow civil actions to be taken such as liens or attachments.

Current statutory language implies that district attorneys, alone, have the authority to institute civil actions and that these actions can be undertaken at their discretion or must be undertaken at the direction of the courts. However, conversations with probation practitioners suggest that the role of district attorneys in the enforcement of restitution is unclear. Therefore it is recommended that DCJS develop a restitution component for inclusion in their district attorney training program in order to disseminate information regarding the State's restitution policies.

Applicability of child support enforcement mechanisms for the enforcement of restitution orders. The civil measures currently provided for in statute for the enforcement of restitution are less extensive than those provided in statute for the enforcement of child support orders. In addition to the filing of judgments, Section 454 of the Family Court Act also provides for income execution (e.g., garnishment of wages), and income tax (federal and state) interception as enforcement mechanisms. Furthermore, child support

collection agencies have the statutory authority to institute civil actions on behalf of aggrieved parties to enforce support orders. At present, district attorneys are the only government officials who have statutory authority to institute civil actions to enforce restitution. Because the involvement of the courts or district attorneys is not always necessary to institute these civil actions, it would seem reasonable to also extend this authority to designated collection agencies, thereby streamlining the process for the enforcement of the restitution orders. Recommendations have been made regarding the adoption of certain child support enforcement mechanisms and enforcement authority for designated collection agencies, to be utilized upon approval of the courts.

Enforcement of probationer restitution orders. Probation departments can attempt to enforce probationer restitution orders by filing violation reports. However, filing of violation reports is not an actual enforcement mechanism but, rather, is a means of facilitating enforcement action by the courts. When the courts sustained these violations of probation, departments reported that the action taken most often was the return of offender to probation rather than incarceration.

Disbursement of restitution. Relatively few statutes and guidelines provide direction to local probation departments for the disbursement of restitution to victims in New York State.

o Methods for disbursing restitution. It appears that the majority of departments were following DPCA guidelines which recommend that restitution checks be mailed to victims by departments and that checks not be delivered by probation officers. This guideline is important, because probation department staff are not usually bonded. If checks are stolen and cashed, departments should be liable for these losses.

o Schedules for disbursing restitution. There are no statutes or guidelines that specify how often restitution should be disbursed to victims. Fifty-three of the 58 departments reported that they have specific schedules for disbursing restitution that range from "as soon as possible" to "once a month," with some schedules dependent on the amount of money collected.

Policies that require orders to be satisfied before disbursement are unsatisfactory because victims are entitled to receive any restitution paid by offenders within a reasonable period of time. Victims should not have to wait two years to receive payments made periodically over that same period of time. Similarly, policies that require substantial amounts of money to be collected before restitution can be disbursed to victims may be unfair. It is recommended that DPCA promulgate rules and regulations specifying procedures for the disbursement of restitution to victims.

o Disbursement of restitution to third-party payors. Probation departments estimates indicated that, statewide, 11.5 percent of the restitution orders they received directed payment of restitution to third-party payors such as the Crime Victims Board or insurance companies. In many instances, third parties have the legal right of subrogation to restitution for compensation paid to victims or victims' families. Therefore, when restitution is ordered for victims who have received compensation from third parties with subrogation rights, the courts must direct that the payment of restitution be made to these third parties. This contractual right of subrogation may not be diminished by the courts or designated collection agencies absent the consent of third parties with this right.

o Disbursing restitution to multiple victims. Restitution orders issued by the courts can direct offenders to pay restitution to more than one victim. At the present time there are no statutes or guidelines that deal with the disbursement of restitution to multiple victims. Departments' disbursement policies or directives from the courts that arbitrarily establish the order in which victims are paid do not treat victims equitably, and policies that withhold restitution from victims until an order is satisfied, unnecessarily deprive victims of restitution they are entitled to receive within a reasonable period of time. Policies that disburse restitution on a rotating basis to victims may deprive some victims of their share of restitution if the offender fails to pay the full amount ordered by the court. Both the departments and the courts, therefore, should be discouraged from using these three procedures. In addition, any third party with the right to subrogation would be entitled to the proportional amount the compensated victim would have otherwise received if

compensation had not been provided by this third party.

o **Inability to disburse collected restitution.** Probation departments may not always be able to disburse restitution that has been collected. This situation occurs when victims do not inform departments of a change of address. Departments, overall, estimated that 3.1 percent of the victims could not be located. There is little departments can do to rectify this problem other than notifying victims to inform them of any changes of address.

o **Unsatisfied orders and disbursement of restitution.** Section 420.10(7) of the Criminal Procedure Law stipulates that: "interest accrued from restitution bank accounts and any undisbursed restitution payments shall be designated for the payment of restitution orders that have remained unsatisfied for the longest period of time." DPCA guidelines (Probation Directors' Memorandum No. 25) state that the interest accrued and the undisbursed restitution must be deposited in an "Interest and Undisbursed Payment" (IUP) account. However, neither the statute nor DPCA guidelines specify how often these payments should be disbursed from IUP accounts (e.g., monthly, semi-annually, annually). In addition, limits are not placed on the amount of restitution that can be disbursed to satisfy an order during a given period. It is recommended that Section 420.10 (7) of the Criminal Procedure Law be amended to specify (1) how often payments should be made from the IUP account and (2) limits on the amounts that would be paid toward the satisfaction of any single order during a given year.

Fiscal management and record keeping. The fiscal management and record keeping tasks associated with the administration of restitution are complex. Only 12 of the probation departments, however, reported that they used some form of computerized fiscal accounting system for the administration of restitution. An automated restitution accounting/reporting system would address fiscal management and record keeping needs of departments and reduce the costs of administering restitution as well. It is recommended that DPCA, with technical assistance from the Systems Improvements for Enhanced Community Safety (SIF ECS) Task Force, develop a case-based automated restitution accounting/reporting system with the goal of statewide implementation that

addresses the needs of both local probation departments and the State. This systems development effort should build upon the foundation established by those local probation departments with existing automated restitution systems. Successful implementation of a restitution accounting/reporting system would require the support of local probation departments.

Staff involved in the administration of restitution. When probation departments were asked to estimate what proportion of their departments' time was devoted to the administration of restitution, the average estimate was 12.0 percent. As restitution is currently administered in most probation departments, it was highly unlikely that the departments could provide anything more than an "estimate" of the amount of time devoted by the department to this task. This is largely due to the fact that most departments have not established programs that deal solely with the administration of restitution. Instead, restitution has been subsumed under more general activities such as probation supervision and accounting. Research has found that when the task of administering restitution is subsumed under larger tasks, the priority given this task may vary considerably among both the staff and departments. Departments, when feasible, should consider establishing the administration of restitution as a separate program within the agency.

Probation departments estimates statewide also indicate that support staff were responsible for 56.9 percent of the work involved in administering restitution, followed by probation officers who were responsible for 29.5 percent, and management which was responsible for 13.6 percent. There was a significant relationship between the amount of work done by either management or probation officers and the support staff. As the percentage of work handled by support staff increased, the percentage of work handled by management or probation officers decreased and vice versa. This relationship did not appear to be related to the size of agencies' staff.

Costs of Administering Restitution. When the Legislature enacted the Laws of 1984, no monies were appropriated in the State budget to help defray the costs incurred by designated collection agencies for administering restitution. Instead, the Legislature enacted the mandate that instructs the courts to

direct convicted offenders to pay a five percent surcharge on the amounts of restitution ordered to the agencies designated to collect the restitution. This surcharge was intended to cover the costs of administering restitution, however, it has proven to be inadequate for two reasons. First, the courts are not fully complying with the statutory mandate. Second, the collected surcharge is not used to administer restitution; the surcharge becomes general revenue, so the counties are not obligated to include these monies in probation departments' budgets. In addition, the administration of restitution is not usually classified as a separate program, but as one aspect of larger probation activities, therefore it is not possible to request appropriations specifically for the purpose of administering restitution.

If the State's restitution policy is to be effectively implemented, the cost of administering restitution must be addressed. It is recommended that the collected surcharges no longer be classified as general revenue for counties; a statutory ammendment should stipulate that the five percent surcharge be used specifically for the administration of restitution in the county in which it is collected. It is also recommended that departments, when feasible, establish the administration of restitution as a separate program. Budgets would then reflect this activity as a discrete function within departments, requiring the appropriation of funds specifically for this activity.

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APPENDIX A

DP-30R REPORTING FORM

RESTITUTION/ REPARATION REPORT	PROBATION DEPARTMENT	REPORTING MONTH	YEAR
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Conviction Crime		Number of Orders	
ART.	TITLE	ISSUED	SATISFIED
120	Assault		
125	Murder/ Manslaughter		
130	Sex Related		
135	Kidnap/Coercion		
140	Burglary/Trespass		
145	Criminal Mischief		
150	Arson		
155	Larceny		
160	Robbery		
165	Theft/CPS		
170	Forgery		
185	Fraud		
190	Bad chks/advtsg/ Imperson'n/usury		
180 200	Bribe (commer- cial & public)		
205	Escape (Contra- band)		
220	Controlled Substance		
221	Marijuana		
225	Gambling		
230	Prostitution		
240	Disorderly Conduct		
265	Weapons		
VTL 1192	DWI/DUI		
	OTHER		
TOTAL			

Monthly Total Dollar Amounts	ORDERED \$	COLLECTED \$	SURCHARGES \$
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APPENDIX B

RESTITUTION SUMMARY BY COUNTY: 1986

Appendix B

Restitution Summary, By County: 1986

County	Orders Issued	Orders Satisfied	Total ¹		Total ²		Average ³ Order
			Active Caseload	Amount Ordered	Amount Available to Collect in '86	Amount Collected	
Albany	306	243	556	280,670	513,724	138,521	917
Allegany	98	67	132	56,117	139,606	22,748	572
Broome	230	53	371	211,294	329,195	53,013	918
Cattaraugus	89	35	116	79,486	98,599	26,222	893
Cayuga	25	15	50	21,849	36,852	11,504	873
Chautauqua	204	93	274	146,571	223,113	24,178	718
Chemung	285	210	420	197,239	297,537	114,600	692
Chenango	108	94	175	66,991	136,959	35,552	620
Clinton	76	16	114	72,462	289,873	28,092	953
Columbia	94	72	134	40,866	51,479	21,256	434
Cortland	53	43	75	23,705	30,870	13,160	447
Delaware	39	52	87	12,257	21,055	20,605	314
Dutchess	215	114	394	229,207	442,085	73,542	1,066
Erie	429	239	661	296,057	595,860	81,108	690
Essex	58	33	80	59,051	75,554	12,635	1,018
Franklin	51	31	62	29,362	89,058	13,551	575
Fulton	82	70	121	58,720	104,585	26,443	716
Genesee	116	66	135	48,411	62,124	17,780	417
Greene	29	19	37	42,978	46,582	9,391	1,482
Hamilton	1	0	1	0.00	0.00	0.00	0.00
Herkimer	28	16	61	313,150	346,556	265,444	11,183
Jefferson	174	117	259	110,636	198,952	59,108	635
Lewis	34	14	42	26,383	27,109	7,934	775
Livingston	74	39	88	80,588	85,621	13,961	1,089
Madison	209	156	248	72,079	104,242	41,932	344
Monroe	411	99	470	251,690	324,991	373,225	612
Montgomery	18	6	31	13,962	22,991	4,967	775
Nassau	845	141	1,214	1,530,785	1,988,297	156,649	1,811
Niagara	126	55	189	170,742	269,953	39,609	1,355
Oneida	233	257	377	233,581	424,194	113,545	1,002
Onondaga	433	180	670	495,828	746,083	125,621	1,145
Ontario	51	31	94	43,831	62,461	15,654	859

NOTE: ¹Total Active Caseload = Orders Issued in 1986 + Pending Cases from 1985. ²Total Amount Available to Collect in 1986 = Total Amount Uncollected in 1985 + Amount Ordered in 1986. ³Average Ordered is a proportion of Orders Issued in 1986.

Appendix B

Restitution Summary, By County: 1986

County	Orders Issued	Orders Satisfied	Total Active Caseload	Amount Ordered	Total Amount Available to Collect in '86	Amount Collected	Average Order
Orange	138	49	172	138,907	209,056	57,837	1,006
Orleans	28	18	63	26,143	50,510	11,614	933
Oswego	143	72	179	139,028	155,971	27,773	972
Otsego	85	30	135	63,798	91,748	47,990	751
Putnam	12	6	39	9,987	15,066	6,389	832
Rensselaer	129	89	205	38,244	91,474	35,333	296
Rockland	144	22	261	203,266	317,952	53,698	1,411
St. Lawrence	195	112	265	89,815	130,056	37,914	460
Saratoga	125	0	193	112,011	135,587	18,398	896
Schenectady	131	45	189	364,680	420,380	34,803	2,783
Schoharie	31	15	49	38,312	43,896	9,016	1,235
Schuyler	24	17	42	22,017	27,786	7,253	917
Seneca	45	41	105	14,881	18,429	7,999	330
Steuben	140	96	181	100,040	140,307	20,249	714
Suffolk	926	591	987	1,057,555	1,176,046	382,579	1,142
Sullivan	69	5	124	67,381	128,814	17,783	976
Tioga	62	22	85	34,923	60,779	15,561	563
Tompkins	90	64	172	77,536	139,468	26,605	861
Ulster	149	64	217	185,333	286,614	62,475	1,243
Warren	85	60	106	62,796	86,288	32,798	738
Washington	87	63	105	53,904	97,834	21,824	619
Wayne	58	31	98	285,256	332,299	18,084	4,918
Westchester	307	58	430	625,175	971,600	106,591	2,036
Wyoming	30	24	43	21,805	34,672	19,151	726
Yates	44	25	68	20,204	73,261	10,804	459
Upstate Total	8,501	4,295	12,251	9,169,545	13,422,053	3,052,069	1,078
***	***	***	***	***	***	***	***
NYC Probation	813	284	1,296	4,548,447	8,949,649	221,206	5,594
NYC V.S.A.	3,876	2,420	5,131	2,030,368	2,735,541	939,338	523
NY City Total	4,689	2,704	6,427	6,578,815	11,685,190	1,160,543	1,403
***	***	***	***	***	***	***	***
NY State Total	13,190	6,999	18,678	15,748,360	25,107,243	4,212,613	1,193

NOTE: ¹Total Active Caseload = Orders Issued in 1986 + Pending Cases from 1985. ²Total Amount Available to Collect in 1986 = Total Amount Uncollected in 1985 + Amount Ordered in 1986. ³Average Ordered is a proportion of Orders Issued in 1986.

APPENDIX C

RESTITUTION SUMMARY BY COUNTY: 1985

Appendix C

Restitution Summary By County: 1985

County	Orders Issued	Orders Satisfied	Pending Cases	Amount Ordered	Amount Collected	Average Order
Albany	332	82	250	311,387	78,333	938
Allegany	59	25	34	92,007	8,518	1,559
Broome	156	15	141	48,402	30,501	951
Cattaraugus	37	10	27	25,631	6,518	693
Cayuga	35	10	25	21,574	6,571	616
Chautauqua	96	26	70	85,250	8,708	888
Chemung	253	118	135	151,609	51,311	599
Chenango	126	59	67	85,174	15,206	676
Clinton	59	21	38	225,335	7,924	3,819
Columbia	95	55	40	26,287	15,674	277
Cortland	53	31	22	17,838	10,673	337
Delaware	74	26	48	24,528	15,730	331
Dutchess	202	23	179	239,028	26,150	1,183
Erie	326	94	232	331,436	31,633	1,017
Essex	35	13	22	35,443	18,940	1,013
Franklin	38	27	11	67,416	7,720	1,774
Fulton	76	37	39	56,965	11,100	750
Genesee	34	15	19	23,573	9,860	693
Greene	18	10	8	14,557	10,953	809
Hamilton	1	1	0	85	85	85
Herkimer	46	13	33	39,184	5,778	852
Jefferson	161	76	85	116,147	27,831	721
Lewis	25	17	8	4,702	3,976	188
Livingston	30	16	14	16,766	11,733	559
Madison	143	104	39	52,156	19,993	365
Monroe	128	69	59	78,630	5,329	614
Montgomery	31	18	13	11,729	2,700	378
Nassau	397	28	369	477,585	20,073	1,203
Niagara	82	19	63	116,133	16,922	1,416
Oneida	253	109	144	224,789	34,176	888
Onondaga	310	73	237	299,573	49,318	966
Ontario	55	12	43	24,948	6,318	454

NOTE: Pending cases are orders issued in 1985, but, remained unsatisfied by the close of the calendar year.

Appendix C

Restitution Summary, By County: 1985

County	Orders Issued	Orders Satisfied	Pending Cases	Amount Ordered	Amount Collected	Average Order
Orange	48	14	34	90,935	20,786	1,894
Orleans	48	13	35	30,420	6,053	634
Oswego	57	21	36	23,174	6,231	407
Otsego	68	18	50	30,568	2,618	450
Putnam	30	3	27	10,709	5,630	357
Rensselaer	109	33	76	71,957	18,727	660
Rockland	146	29	117	147,582	32,896	1,011
St. Lawrence	124	54	70	61,896	21,655	499
Saratoga	73	5	68	41,101	17,525	563
Schenectady	79	21	58	69,604	13,904	881
Schoharie	25	7	18	9,417	3,833	377
Schuyler	32	14	18	9,103	3,334	284
Seneca	72	12	60	10,701	7,153	149
Steuben	128	87	41	50,833	10,566	397
Suffolk	61	0	61	141,368	22,877	2,318
Sullivan	56	1	55	69,768	8,335	1,246
Tioga	26	3	23	32,787	6,931	1,242
Tompkins	124	42	82	81,300	19,368	656
Ulster	86	18	68	133,245	31,964	1,555
Warren	54	33	21	39,159	15,667	725
Washington	44	26	18	95,278	51,348	2,165
Wayne	58	18	40	55,119	8,076	950
Westchester	157	34	123	485,130	138,705	3,090
Wyoming	18	5	13	19,325	6,458	1,074
Yates	34	10	24	55,397	2,340	1,629
Upstate Total	5,523	1,773	3,750	5,311,743	1,059,235	962
***	***	***	***	***	***	***
NYC Probation	785	302	483	4,629,404	228,202	5,897
NYC V.S.A.	3,501	2,246	1,255	1,504,406	799,233	430
NY City Total	4,286	2,548	1,738	6,133,810	1,027,435	1,431
***	***	***	***	***	***	***
NY State Total	9,809	4,321	5,488	11,445,553	2,086,670	1,167

NOTE: Pending cases are orders issued in 1985, but, remained unsatisfied by the close of the calendar year.

APPENDIX D

PERCENTAGE OF RESTITUTION SATISFIED BY COUNTY: 1986

Appendix D

Percentage of Restitution Activity Satisfied, By County: 1986

County	1986	1986 ¹	1986	1986 ²
	Orders Satisfied	Percentage Satisfied	Amount Collected	Percentage Collected
Albany	243	43.7%	138,521	27.0%
Allegany	67	50.8%	22,748	16.3%
Broome	53	14.3%	53,013	16.1%
Cattaraugus	35	30.2%	26,222	26.6%
Cayuga	15	30.0%	11,504	31.2%
Chautauqua	93	34.0%	24,178	10.8%
Chemung	210	50.0%	114,600	38.5%
Chenango	94	53.7%	35,552	26.0%
Clinton	16	14.0%	28,092	9.7%
Columbia	72	53.7%	21,256	41.3%
Cortland	43	57.3%	13,160	42.6%
Delaware	52	59.8%	20,605	97.9%
Dutchess	114	28.9%	73,542	16.6%
Erie	239	36.2%	81,108	13.6%
Essex	33	41.3%	12,635	16.7%
Franklin	31	50.0%	13,551	15.2%
Fulton	70	57.9%	26,443	25.3%
Genesee	66	48.9%	17,779	28.6%
Greene	19	51.4%	9,391	20.2%
Hamilton	0	0.0%	0.00	0.0%
Herkimer	16	26.2%	265,444	76.6%
Jefferson	117	45.2%	59,108	29.7%
Lewis	14	33.3%	7,934	29.4%
Livingston	39	44.3%	13,961	16.3%
Madison	156	62.9%	41,932	40.2%
Monroe	99	21.1%	373,225	114.8%
Montgomery	6	19.4%	4,967	21.6%
Nassau	141	11.6%	156,649	7.9%
Niagara	55	29.1%	39,609	14.7%
Oneida	257	68.2%	113,545	26.8%
Onondaga	180	26.9%	125,621	16.8%
Ontario	31	33.0%	15,654	25.1%

NOTE: ¹Percentage satisfied is a proportion of Total Active Caseload.

²Percentage collected is a proportion of Total Amount Available to Collect in 1986. See Table A.

Appendix D

Percentage of Restitution Activity Satisfied, By County: 1986

County	1986 Orders Satisfied	1986 Percentage Satisfied	1986 Amount Collected	1986 Percentage Collected
Orange	49	28.5%	57,837	27.8%
Orleans	18	28.6%	11,614	23.0%
Oswego	72	40.2%	27,773	17.8%
Otsego	30	22.2%	47,990	52.3%
Putnam	6	15.4%	6,389	42.4%
Rensselaer	89	43.4%	35,333	38.6%
Rockland	22	8.4%	53,698	16.9%
St. Lawrence	112	42.3%	37,914	29.2%
Saratoga	0	0.0%	18,398	13.6%
Schenectady	45	23.8%	34,803	8.3%
Schoharie	15	30.6%	9,016	20.5%
Schuyler	17	40.5%	7,253	26.1%
Seneca	41	39.1%	7,999	43.4%
Steuben	96	53.0%	20,249	14.4%
Suffolk	591	60.0%	382,579	32.5%
Sullivan	5	4.3%	17,783	13.8%
Tioga	22	25.9%	15,561	25.6%
Tompkins	64	37.2%	26,605	19.1%
Ulster	64	29.5%	62,475	21.8%
Warren	60	56.6%	32,798	38.0%
Washington	63	60.0%	21,824	22.3%
Wayne	31	31.6%	18,084	5.4%
Westchester	58	13.5%	106,591	11.0%
Wyoming	24	55.8%	19,151	55.2%
Yates	25	36.8%	10,804	14.7%
Upstate Total	4,295	35.1%	3,052,069	22.7%
***	***	***	***	***
NYC Probation	284	21.9%	221,205	2.5%
NYC V.S.A.	2,420	47.2%	939,337	34.3%
NY City Total	2,704	42.1%	1,160,543	9.9%
***	***	***	***	***
NY State Total	6,999	37.5%	4,212,613	16.8%

NOTE: ¹Percentage satisfied is a proportion of Total Active Caseload.
²Percentage collected is a proportion of Total Amount Available
to Collect in 1986. See Table A.

APPENDIX E

RANKING OF RESTITUTION OFFENSES: 1986

Appendix E

Ranking of Restitution Offenses: 1986

Crime/Violation	Orders Issued	Issued Ranking	Percent of Total	Orders Satisfied	Satisfied Ranking	Percent of Total
Conspiracy	10	(27)	0.08%	4	(32)	0.06%
Criminal Facilitation	8	(29)	0.06%	6	(30)	0.09%
Assault	726	(7)	5.50%	416	(7)	5.94%
Murder/ Manslaughter	9	(28)	0.07%	3	(34)	0.04%
Sex Related	34	(21)	0.26%	23	(17)	0.33%
Kidnap/ Coercion	2	(42)	0.02%	2	(39)	0.03%
Burglary/ Trespass	1,106	(5)	8.39%	570	(5)	8.14%
Criminal Mischief	1,150	(4)	8.72%	673	(4)	9.62%
Arson	42	(19)	0.32%	15	(23)	0.21%
Larceny	2,383	(2)	18.07%	964	(2)	13.77%
Robbery	203	(13)	1.54%	74	(12)	1.06%
Theft/ CPSP	682	(8)	5.17%	343	(8)	4.90%
Forgery	443	(10)	3.36%	181	(11)	2.59%
Offering False Instr.	56	(17)	0.42%	39	(16)	0.56%
Insurance Fraud	7	(30)	0.05%	6	(28)	0.09%
Bribery	2	(43)	0.02%	0	(52)	
Fraud	240	(12)	1.82%	48	(14)	0.69%
Bad chks/ etc.	736	(6)	5.58%	556	(6)	7.94%
Official Misconduct	5	(34)	0.04%	5	(31)	0.07%
Escape (Contraband)	23	(24)	0.17%	17	(22)	0.24%
False Statement	5	(36)	0.04%	2	(40)	0.03%
Criminal Contempt	6	(33)	0.05%	2	(35)	0.03%
Controlled Subs.	167	(14)	1.27%	64	(13)	0.91%
Marijuana	36	(20)	0.27%	21	(18)	0.30%
Gambling	1	(46)	0.01%	0	(45)	
Prostitution	2	(39)	0.02%	0	(50)	
Disorderly Conduct	2,449	(1)	18.57%	1,631	(1)	23.30%

Appendix E

Ranking of Restitution Offenses: 1986

Crime/Violation	Orders Issued	Issued Ranking	Percent of Total	Orders Satisfied	Satisfied Ranking	Percent of Total
Endang. Welfare	7	(31)	0.05%	9	(27)	0.13%
Weapons	32	(22)	0.24%	15	(24)	0.21%
Oper. w/o Insurance	2	(40)	0.02%	2	(38)	0.03%
Oper. w/o License	5	(35)	0.04%	3	(33)	0.04%
Leaving Scene	23	(25)	0.17%	17	(20)	0.24%
Failure Keep Rt.	0	(50)		2	(36)	0.03%
Speeding	0	(54)		0	(54)	
Reckless Driving	3	(37)	0.02%	2	(37)	0.03%
DWI / DUI	430	(11)	3.26%	181	(10)	2.59%
Unsafe Backing	0	(49)		0	(48)	
Y.O.	506	(9)	3.84%	198	(9)	2.83%
A.C.O.D.	1,369	(3)	10.38%	795	(3)	11.36%
J.D.	26	(23)	0.20%	17	(21)	0.24%
SS Law	77	(16)	0.58%	20	(19)	0.29%
Labor Law	43	(18)	0.33%	9	(26)	0.13%
Econ Con. Law	2	(38)	0.02%	0	(43)	
Judicial Law	0	(47)		1	(41)	0.01%
Time Served	0	(52)		0	(46)	
Assigned Counsel	0	(51)		0	(44)	
Missing Info (VSA)	1	(45)	0.01%	0	(49)	
Other Offense	104	(15)	0.79%	43	(15)	0.61%
Ag & Markets	1	(44)	0.01%	0	(53)	
Conditional Disch.	17	(26)	0.13%	13	(25)	0.19%
Dog Laws	0	(53)		0	(47)	
Dismissed	7	(32)	0.05%	6	(29)	0.09%
Court Ordered	0	(48)		0	(51)	
Pre-Plea	2	(41)	0.02%	1	(42)	0.01%
Total	13,190			6,999		

APPENDIX F

MAJOR OFFENSE CATEGORY FOR RESTITUTION ORDERS ISSUED BY COUNTY: 1986

Appendix F

MAJOR OFFENSE CATEGORY FOR RESTITUTION ORDERS ISSUED, BY COUNTY: 1986

County	DTS. COND.		LARCENY		ACCD		CRIM. MISC.		BURG/TRESS.		DWI/DUI		OTHER		Total Orders
	Orders Issued	% of Orders*	Orders	% of Orders	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	
Albany	48	15.69%	65	21.24%	10	3.27%	22	7.19%	24	7.84%	5	1.63%	132	43.14%	306
Allegany	2	2.04%	14	14.29%	0	0.00%	14	14.29%	20	20.41%	0	0.00%	48	48.98%	98
Broome	3	1.30%	28	12.17%	0	0.00%	19	8.26%	18	7.83%	1	0.43%	161	70.00%	230
Cattaraugus	0	0.00%	34	38.20%	0	0.00%	16	17.98%	13	14.61%	1	1.12%	25	28.09%	89
Cayuga	0	0.00%	9	36.00%	0	0.00%	1	4.00%	5	20.00%	0	0.00%	10	40.00%	25
Chautauqua	11	5.39%	37	18.14%	0	0.00%	28	13.73%	31	15.20%	3	1.47%	94	46.08%	204
Chemung	27	9.47%	67	23.51%	0	0.00%	27	9.47%	33	11.58%	7	2.46%	124	43.51%	285
Chenango	7	6.48%	25	23.15%	0	0.00%	12	11.11%	9	8.33%	2	1.85%	53	49.07%	108
Clinton	0	0.00%	31	40.79%	0	0.00%	9	11.84%	7	9.21%	1	1.32%	28	36.84%	76
Columbia	10	10.64%	26	27.66%	0	0.00%	15	15.96%	8	8.51%	0	0.00%	35	37.23%	94
Cortland	2	3.77%	14	26.42%	0	0.00%	12	22.64%	4	7.55%	0	0.00%	21	39.62%	53
Delaware	5	12.82%	10	25.64%	0	0.00%	5	12.82%	8	20.51%	0	0.00%	11	28.21%	39
Dutchess	3	1.40%	70	32.56%	1	0.47%	24	11.16%	38	17.67%	9	4.19%	70	32.56%	215
Erie	30	6.99%	97	22.61%	0	0.00%	50	11.66%	46	10.72%	8	1.86%	198	46.15%	429
Essex	4	6.90%	18	31.03%	0	0.00%	9	15.52%	8	13.79%	0	0.00%	19	32.76%	58
Franklin	0	0.00%	12	23.53%	0	0.00%	8	15.69%	3	5.88%	3	5.88%	25	49.02%	51
Fulton	10	12.20%	15	18.29%	0	0.00%	15	18.29%	12	14.63%	0	0.00%	30	36.59%	82
Genesee	15	12.93%	15	12.93%	2	1.72%	10	8.62%	10	8.62%	2	1.72%	62	53.45%	116
Greene	0	0.00%	12	41.38%	0	0.00%	2	6.90%	7	24.14%	0	0.00%	8	27.59%	29
Hamilton	0	0.00%	0	0.00%	0	0.00%	0	0.00%	1	100.00%	0	0.00%	0	0.00%	1
Herkimer	2	7.14%	9	32.14%	0	0.00%	3	10.71%	2	7.14%	0	0.00%	12	42.86%	28
Jefferson	26	14.94%	18	10.34%	0	0.00%	22	12.64%	33	18.97%	0	0.00%	75	43.10%	174
Lewis	1	2.94%	10	29.41%	0	0.00%	2	5.88%	5	14.71%	0	0.00%	16	47.06%	34
Livingston	2	2.70%	24	32.43%	0	0.00%	18	24.32%	7	9.46%	1	1.35%	22	29.73%	74
Madison	14	6.70%	33	15.79%	1	0.48%	21	10.05%	3	1.44%	5	2.39%	132	63.16%	209
Monroe	13	3.16%	49	11.92%	0	0.00%	51	12.41%	34	8.27%	28	6.81%	236	57.42%	411
Montgomery	0	0.00%	9	50.00%	0	0.00%	4	22.22%	4	22.22%	0	0.00%	1	5.56%	18
Nassau	6	0.71%	223	26.39%	8	0.95%	77	9.11%	62	7.34%	107	12.66%	362	42.84%	845
Niagara	2	1.59%	32	25.40%	0	0.00%	11	8.73%	13	10.32%	1	0.79%	67	53.17%	126
Oneida	23	9.87%	27	11.59%	0	0.00%	24	10.30%	54	23.18%	1	0.43%	104	44.64%	233

Appendix F

MAJOR OFFENSE CATEGORY FOR RESTITUTION ORDERS ISSUED, BY COUNTY: 1986

DIS. COND. County	LARCENY		ACCD		CRIM. MISC.		BURG/TRESS.		DWI/DUI		OTHER		Total Orders		
	Orders Issued	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*			
Onondaga	1	0.23%	76	17.55%	0	0.00%	22	5.08%	38	8.78%	15	3.46%	281	64.90%	433
Ontario	0	0.00%	12	23.53%	0	0.00%	2	3.92%	12	23.53%	0	0.00%	25	49.02%	51
Orange	4	2.90%	34	24.64%	0	0.00%	24	17.39%	31	22.46%	6	4.35%	39	28.26%	138
Orleans	0	0.00%	4	14.29%	0	0.00%	0	0.00%	6	21.43%	2	7.14%	16	57.14%	28
Oswego	8	5.59%	33	23.08%	0	0.00%	11	7.69%	22	15.38%	4	2.80%	65	45.45%	143
Otsego	18	21.18%	17	20.00%	0	0.00%	13	15.29%	4	4.71%	0	0.00%	33	38.82%	85
Putnam	0	0.00%	1	8.33%	0	0.00%	3	25.00%	6	50.00%	0	0.00%	2	16.67%	12
Rensselaer	29	22.48%	14	10.85%	0	0.00%	28	21.71%	5	3.88%	7	5.43%	46	35.66%	129
Rockland	13	9.03%	36	25.00%	0	0.00%	18	12.50%	10	6.94%	2	1.39%	65	45.14%	144
St. Lawrence	16	8.21%	49	25.13%	5	2.56%	16	8.21%	37	18.97%	1	0.51%	71	36.41%	195
Saratoga	22	17.60%	24	19.20%	2	1.60%	16	12.80%	24	19.20%	4	3.20%	33	26.40%	125
Schenectady	2	1.53%	22	16.79%	0	0.00%	18	13.74%	20	15.27%	2	1.53%	67	51.15%	131
Schoharie	1	3.23%	10	32.26%	0	0.00%	4	12.90%	4	12.90%	1	3.23%	11	35.48%	31
Schuyler	0	0.00%	10	41.67%	0	0.00%	2	8.33%	1	4.17%	0	0.00%	11	45.83%	24
Seneca	1	2.22%	6	13.33%	0	0.00%	5	11.11%	2	4.44%	2	4.44%	29	64.44%	45
Steuben	4	2.86%	33	23.57%	0	0.00%	14	10.00%	10	7.14%	0	0.00%	79	56.43%	140
Suffolk	396	42.76%	160	17.28%	0	0.00%	83	8.96%	91	9.83%	53	5.72%	143	15.44%	926
Sullivan	0	0.00%	24	34.78%	0	0.00%	5	7.25%	17	24.64%	0	0.00%	23	33.33%	69
Tioga	0	0.00%	11	17.74%	0	0.00%	10	16.13%	5	8.06%	1	1.61%	35	56.45%	62
Tompkins	3	3.33%	25	27.78%	0	0.00%	10	11.11%	23	25.56%	0	0.00%	29	32.22%	90
Ulster	0	0.00%	27	18.12%	0	0.00%	15	10.07%	22	14.77%	2	1.34%	83	55.70%	149
Warren	10	11.76%	21	24.71%	2	2.35%	6	7.06%	11	12.94%	1	1.18%	34	40.00%	85
Washington	11	12.64%	9	10.34%	0	0.00%	10	11.49%	14	16.09%	0	0.00%	43	49.43%	87
Wayne	3	5.17%	16	27.59%	0	0.00%	1	1.72%	14	24.14%	0	0.00%	24	41.38%	58
Westchester	6	1.95%	103	33.55%	0	0.00%	40	13.03%	29	9.45%	3	0.98%	126	41.04%	307
Wyoming	0	0.00%	4	13.33%	0	0.00%	8	26.67%	3	10.00%	1	3.33%	14	46.67%	30
Yates	0	0.00%	6	13.64%	0	0.00%	3	6.82%	2	4.55%	16	36.36%	17	38.64%	44
Upstate Total	814	9.58%	1,820	21.41%	31	0.36%	918	10.80%	985	11.59%	308	3.62%	3,625	42.64%	8,501
***	***	***	***	***	***	***	***	***	***	***	***	***	***	***	***
NYC Probation	1	0.12%	310	38.13%	0	0.00%	36	4.43%	56	6.89%	9	1.11%	401	49.32%	813
NYC V.S.A.	1,634	42.16%	253	6.53%	1,338	34.52%	196	5.06%	65	1.68%	101	2.61%	289	7.46%	3,876
NY City Total	1,635	34.87%	563	12.01%	1,338	28.53%	232	4.95%	121	2.58%	110	2.35%	690	14.72%	4,689
***	***	***	***	***	***	***	***	***	***	***	***	***	***	***	***
NY State Total	2,449	18.57%	2,383	18.07%	1,369	10.38%	1,150	8.72%	1,106	8.39%	418	3.17%	4,315	32.71%	13,190

APPENDIX G

MAJOR OFFENSES FOR RESTITUTION CASES SATISFIED BY COUNTY: 1986

Appendix G

MAJOR OFFENSE CATEGORY FOR RESTITUTION CASES SATISFIED, BY COUNTY: 1986

County	DIS. COND.		LARCENY		ACCD		CRIM. MISC.		BURG/TRESS.		DWI/DUI		OTHER		Total Orders
	Orders Satisfied	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	
Albany	34	13.99%	49	20.16%	12	4.94%	25	10.29%	13	5.35%	3	1.23%	107	44.03%	243
Allegany	2	2.99%	6	8.96%	0	0.00%	6	8.96%	12	17.91%	0	0.00%	41	61.19%	67
Broome	2	3.77%	7	13.21%	0	0.00%	8	15.09%	6	11.32%	0	0.00%	30	56.60%	53
Cattaraugus	0	0.00%	14	40.00%	0	0.00%	5	14.29%	4	11.43%	1	2.86%	11	31.43%	35
Cayuga	0	0.00%	6	40.00%	0	0.00%	0	0.00%	4	26.67%	0	0.00%	5	33.33%	15
Chautauqua	6	6.45%	18	19.35%	0	0.00%	10	10.75%	15	16.13%	2	2.15%	42	45.16%	93
Chemung	18	8.57%	47	22.38%	0	0.00%	25	11.90%	39	18.57%	9	4.29%	72	34.29%	210
Chenango	5	5.32%	18	19.15%	0	0.00%	16	17.02%	7	7.45%	0	0.00%	48	51.06%	94
Clinton	2	12.50%	7	43.75%	0	0.00%	4	25.00%	1	6.25%	0	0.00%	2	12.50%	16
Columbia	10	13.89%	9	12.50%	0	0.00%	15	20.83%	4	5.56%	0	0.00%	34	47.22%	72
Cortland	3	6.98%	8	18.60%	0	0.00%	8	18.60%	6	13.95%	0	0.00%	18	41.86%	43
Delaware	2	3.85%	7	13.46%	0	0.00%	6	11.54%	12	23.08%	0	0.00%	25	48.08%	52
Dutchess	4	3.51%	26	22.81%	2	1.75%	14	12.28%	10	8.77%	2	1.75%	56	49.12%	114
Erie	21	8.79%	31	12.97%	0	0.00%	49	20.50%	21	8.79%	6	2.51%	111	46.44%	239
Essex	3	9.09%	4	12.12%	0	0.00%	8	24.24%	6	18.18%	0	0.00%	12	36.36%	33
Franklin	0	0.00%	9	29.03%	0	0.00%	6	19.35%	1	3.23%	0	0.00%	15	48.39%	31
Fulton	8	11.43%	11	15.71%	0	0.00%	11	15.71%	7	10.00%	4	5.71%	29	41.43%	70
Genesee	16	24.24%	5	7.58%	3	4.55%	2	3.03%	6	9.09%	3	4.55%	31	46.97%	66
Greene	0	0.00%	8	42.11%	0	0.00%	2	10.53%	3	15.79%	0	0.00%	6	31.58%	19
Hamilton	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0
Herkimer	0	0.00%	6	37.50%	0	0.00%	1	6.25%	2	12.50%	0	0.00%	7	43.75%	16
Jefferson	27	23.08%	9	7.69%	0	0.00%	12	10.26%	18	15.38%	0	0.00%	51	43.59%	117
Lewis	1	7.14%	3	21.43%	0	0.00%	2	14.29%	4	28.57%	0	0.00%	4	28.57%	14
Livingston	2	5.13%	7	17.95%	0	0.00%	11	28.21%	4	10.26%	0	0.00%	15	38.46%	39
Madison	12	7.69%	21	13.46%	1	0.64%	21	13.46%	4	2.56%	2	1.28%	95	60.90%	156
Monroe	7	7.07%	9	9.09%	0	0.00%	8	8.08%	9	9.09%	0	0.00%	66	66.67%	99
Montgomery	0	0.00%	2	33.33%	0	0.00%	2	33.33%	0	0.00%	0	0.00%	2	33.33%	6
Nassau	1	0.71%	39	27.66%	1	0.71%	16	11.35%	13	9.22%	10	7.09%	61	43.26%	141
Niagara	2	3.64%	10	18.18%	0	0.00%	9	16.36%	2	3.64%	0	0.00%	32	58.18%	55
Oneida	29	11.28%	37	14.40%	0	0.00%	10	3.89%	65	25.29%	1	0.39%	115	44.75%	257

Appendix G

MAJOR OFFENSE CATEGORY FOR RESTITUTION CASES SATISFIED, BY COUNTY: 1986

DIS. COND.	LARCENY		ACCD		CRIM. MISC.		BURG/TRESS.		DWI/DUI		OTHER		Total Orders		
	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*	Orders	% of Orders*			
Onondaga	0	0.00%	18	10.00%	1	0.56%	13	7.22%	17	9.44%	5	2.78%	126	70.00%	180
Ontario	0	0.00%	5	16.13%	0	0.00%	1	3.23%	10	32.26%	1	3.23%	14	45.16%	31
Orange	1	2.04%	16	32.65%	0	0.00%	5	10.20%	10	20.41%	3	6.12%	14	28.57%	49
Orleans	1	5.56%	3	16.67%	0	0.00%	0	0.00%	7	38.89%	0	0.00%	7	38.89%	18
Oswego	5	6.94%	15	20.83%	0	0.00%	4	5.56%	13	18.06%	3	4.17%	32	44.44%	72
Otsego	11	36.67%	1	3.33%	0	0.00%	8	26.67%	1	3.33%	0	0.00%	9	30.00%	30
Putnam	0	0.00%	0	0.00%	0	0.00%	2	33.33%	1	16.67%	0	0.00%	3	50.00%	6
Rensselaer	19	21.35%	7	7.87%	0	0.00%	29	32.58%	6	6.74%	3	3.37%	25	28.09%	89
Rockland	3	13.64%	5	22.73%	0	0.00%	3	13.64%	0	0.00%	0	0.00%	11	50.00%	22
St. Lawrence	7	6.25%	29	25.89%	3	2.68%	8	7.14%	21	18.75%	0	0.00%	44	39.29%	112
Saratoga	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0	0.00%	0
Schenectady	1	2.22%	7	15.56%	0	0.00%	12	26.67%	7	15.56%	3	6.67%	15	33.33%	45
Schoharie	0	0.00%	2	13.33%	0	0.00%	7	46.67%	2	13.33%	0	0.00%	4	26.67%	15
Schuyler	0	0.00%	8	47.06%	0	0.00%	0	0.00%	2	11.76%	0	0.00%	7	41.18%	17
Seneca	0	0.00%	4	9.76%	0	0.00%	6	14.63%	2	4.88%	0	0.00%	29	70.73%	41
Steuben	4	4.17%	20	20.83%	0	0.00%	9	9.38%	7	7.29%	0	0.00%	56	58.33%	96
Suffolk	334	56.51%	63	10.66%	0	0.00%	50	8.46%	31	5.25%	33	5.58%	80	13.54%	591
Sullivan	0	0.00%	1	20.00%	0	0.00%	1	20.00%	0	0.00%	0	0.00%	3	60.00%	5
Tioga	0	0.00%	6	27.27%	0	0.00%	2	9.09%	2	9.09%	0	0.00%	12	54.55%	22
Tompkins	4	6.25%	14	21.88%	0	0.00%	5	7.81%	14	21.88%	1	1.56%	26	40.63%	64
Ulster	1	1.56%	8	12.50%	0	0.00%	5	7.81%	16	25.00%	1	1.56%	33	51.56%	64
Warren	7	11.67%	18	30.00%	2	3.33%	4	6.67%	7	11.67%	1	1.67%	21	35.00%	60
Washington	9	14.29%	4	6.35%	0	0.00%	9	14.29%	9	14.29%	0	0.00%	32	50.79%	63
Wayne	3	9.68%	6	19.35%	0	0.00%	2	6.45%	5	16.13%	0	0.00%	15	48.39%	31
Westchester	6	10.34%	7	12.07%	0	0.00%	10	17.24%	7	12.07%	2	3.45%	26	44.83%	58
Wyoming	0	0.00%	9	37.50%	0	0.00%	6	25.00%	3	12.50%	2	8.33%	4	16.67%	24
Yates	0	0.00%	3	12.00%	0	0.00%	3	12.00%	2	8.00%	10	40.00%	7	28.00%	25
Upstate Total	633	14.74%	712	16.58%	25	0.58%	516	12.01%	500	11.64%	111	2.58%	1,798	41.86%	4,295
***	***	***	***	***	***	***	***	***	***	***	***	***	***	***	***
NYC Probation	0	0.00%	101	35.56%	0	0.00%	11	3.87%	21	7.39%	3	1.06%	148	52.11%	284
NYC V.S.A.	998	41.24%	151	6.24%	770	31.82%	146	6.03%	49	2.02%	67	2.77%	239	9.88%	2,420
NY City Total	998	36.91%	252	9.32%	770	28.48%	157	5.81%	70	2.59%	70	2.59%	387	14.31%	2,704
***	***	***	***	***	***	***	***	***	***	***	***	***	***	***	***
NY State Total	1,631	23.30%	964	13.77%	795	11.36%	673	9.62%	570	8.14%	181	2.59%	2,185	31.22%	6,999

APPENDIX H

VICTIM IMPACT STATEMENTS REQUESTED: 1986

APPENDIX H

Victim Impact Statements Requested, 1986

County	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	TOTAL
Albany	88	60	47	44	65	81	74	52	95	81	58	62	807
Allegany	31	15	15	10	25	9	10	16	10	10	13	18	182
Broome	69	48	49	54	64	53	48	55	51	69	37	56	653
Cattaraugus	7	9	18	10	17	8	23	5	9	14	3	29	152
Cayuga	10	10	12	18	23	17	14	7	9	24	10	10	164
Chautauqua	15	15	100	64	49	75	75	49	47	87	41	56	673
Chemung	30	11	23	31	12	14	23	23	23	35	25	24	274
Chenango	4	5	9	43	40	6	6	4	4	9	6	2	138
Clinton	0	0	0	8	11	5	3	8	3	9	9	0	56
Columbia	4	11	5	18	6	5	8	7	12	11	12	6	105
Cortland	0	5	2	5	5	2	3	9	4	3	1	13	52
Delaware	2	4	6	13	11	19	18	9	8	6	11	7	114
Dutchess	0	0	0	0	0	42	71	42	47	47	0	0	249
Erie	0	145	94	58	234	104	123	178	104	173	66	138	1,417
Essex	2	3	6	9	9	2	3	16	44	17	13	7	131
Franklin	11	15	15	15	28	19	12	24	22	25	11	13	210
Fulton	12	14	21	10	9	4	4	22	20	13	5	16	150
Genesee	0	0	6	2	0	12	0	24	16	27	15	18	120
Greene	0	7	4	4	6	7	11	4	5	4	6	6	64
Hamilton	0	0	0	0	0	0	0	0	2	0	0	0	2
Herkimer	0	4	10	17	9	7	8	9	9	14	14	11	112
Jefferson	13	10	7	19	17	14	5	12	16	4	9	17	143
Lewis	3	7	4	2	2	5	3	1	3	3	5	2	40
Livingston	4	2	1	27	12	9	11	7	7	13	20	20	133
Madison	14	8	19	10	12	15	8	20	10	10	13	15	154
Monroe	59	58	59	58	59	58	230	187	270	266	249	284	1,837
Montgomery	0	0	0	3	1	0	3	3	10	2	8	4	34
Nassau	96	116	151	166	148	181	173	88	128	100	146	119	1,612
Niagara	0	0	42	35	48	55	53	34	41	38	32	44	422
Oneida	35	131	135	117	197	99	102	92	124	123	96	103	1,354
Onondaga	238	175	171	220	217	228	201	203	178	228	188	208	2,455
Ontario	6	4	28	25	31	26	15	47	33	53	56	37	361
Orange	54	54	68	76	63	68	67	68	98	100	59	71	846
Orleans	11	9	8	11	11	11	12	9	11	8	7	7	115
Oswego	44	33	20	40	19	34	24	32	37	40	33	28	384
Otsego	0	5	4	1	1	12	9	2	10	8	9		61
Putnam	27	30	35	6	14	16	16	12	9	15	12	25	217
Rensselaer	29	0	0	0	0	0	0	0	0	0	0	0	29
Rockland	66	54	52	45	48	50	50	45	36	38	0	49	533
St. Lawrence	14	31	0	27	29	0	0	0	17	0	24	0	142
Saratoga	22	15	31	0	29	20	19	5	15	15	2	4	177
Schenectady	36	59	29	51	30	40	37	0	54	42	37	50	465
Schoharie	0	0	0	0	0	0	0	0	0	0	0	0	0
Schuyler	15	8	15	8	16	16	11	11	11	16	7	17	151
Seneca	6	16	10	11	10	16	8	4	21	31	17	8	158
Steuben	26	15	31	29	9	16	10	15	31	8	11	11	212
Suffolk	1	0	62	75	107	96	88	133	152	179	94	115	1,102
Sullivan	9	18	6	2	32	6	18	13	11	13	25	18	171
Tioga	0	0	0	0	0	0	0	0	0	0	16	12	28
Tompkins	6	12	14	24	21	25	15	22	40	31	28	20	258
Ulster	66	67	66	67	66	67	67	67	67	0	0	0	600
Warren	0	0	0	0	0	0	0	0	0	17	14	23	54
Washington	0	0	0	0	0	0	0	0	0	0	0	0	0
Wayne	19	19	17	28	19	22	22	13	20	31	37	33	280
Westchester	0	0	0	138	145	127	130	135	160	165	158	163	1,321
Wyoming	3	3	2	5	5	12	13	4	5	7	4	4	67
Yates	0	2	4	0	6	3	1	0	7	4	2	1	30
Total Upstate	1207	1342	1533	1759	2047	1838	1958	1847	2176	2286	1774	2004	21,771
Bronx	0	0	0	0	0	0	0	0	0	0	0	0	0
Kings	0	0	0	0	0	463	361	238	246	339	246	284	2,177
New York	0	0	0	0	0	403	408	339	564	678	457	469	3,318
Queens	0	0	0	0	0	6	499	238	517	518	446	621	2,845
Richmond	0	0	0	0	45	20	43	28	16	23	35	10	220
Total NYC	0	0	0	0	45	892	1311	843	1343	1558	1184	1384	8,560
State Total	1207	1342	1533	1759	2092	2730	3269	2690	3519	3844	2958	3388	30,331

APPENDIX I

VICTIM IMPACT STATEMENTS RECEIVED: 1986

APPENDIX I

Victim Impact Statements Received, 1986

County	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	TOTAL
Albany	79	57	37	33	60	66	71	43	61	64	57	48	676
Allegany	8	17	11	6	14	5	13	7	17	18	4	11	131
Broome	35	26	35	38	45	34	37	33	35	50	30	53	451
Cattaraugus	3	5	10	5	8	8	6	3	4	3	0	3	58
Cayuga	5	5	7	10	7	3	6	1	4	8	4	3	63
Chautauqua	12	12	62	39	28	33	59	13	22	37	22	24	363
Chemung	19	10	14	20	18	9	7	9	10	9	8	12	145
Chenango	1	4	8	20	24	7	4	5	4	7	6	2	92
Clinton	0	0	0	14	4	4	3	2	4	6	4	9	50
Columbia	1	6	5	8	1	3	5	3	9	8	7	3	59
Cortland	0	4	0	3	3	0	0	6	2	1	0	8	27
Delaware	1	2	4	12	10	17	15	5	5	4	9	6	90
Dutchess	0	0	0	0	0	6	14	7	15	15	0	0	57
Erie	0	111	43	34	107	40	51	123	49	68	23	79	728
Essex	2	2	1	4	6	2	0	1	21	13	5	5	62
Franklin	11	14	15	15	28	16	11	21	19	17	8	13	188
Fulton	5	3	22	5	7	2	2	8	13	3	1	10	81
Genesee	0	0	6	2	0	12	0	19	11	16	7	13	86
Greene	0	6	4	2	6	9	7	8	4	6	3	1	56
Hamilton	0	0	0	0	0	0	0	0	2	0	0	0	2
Herkimer	0	4	6	10	8	5	7	7	8	6	10	10	81
Jefferson	11	8	5	9	9	6	3	1	13	5	8	8	86
Lewis	3	7	4	0	1	4	2	1	3	3	5	2	35
Livingston	2	3	3	14	11	5	5	2	0	3	14	4	66
Madison	12	5	7	6	10	8	5	12	5	6	2	12	90
Monroe	40	40	40	40	40	40	121	95	112	134	123	0	825
Montgomery	0	0	0	2	1	0	2	2	8	3	1	1	20
Nassau	96	116	151	166	148	181	173	88	128	100	146	119	1,612
Niagara	0	0	14	17	23	24	24	10	17	24	14	16	183
Oneida	31	85	129	107	100	99	98	92	123	123	91	103	1,184
Onondaga	125	94	102	141	130	133	113	94	86	117	102	99	1,336
Ontario	5	4	15	17	26	20	12	33	26	40	36	27	261
Orange	54	54	68	76	63	68	67	68	98	100	76	83	875
Orleans	6	4	5	5	4	7	5	4	3	4	6	4	57
Oswego	19	16	20	31	14	29	21	24	31	30	30	26	291
Otsego	0	3	4	1	1	6	2	4	2	8	2	0	33
Putnam	25	27	31	5	9	13	5	10	13	10	16	8	172
Rensselaer	29	0	0	0	0	0	0	0	0	0	0	0	29
Rockland	58	48	48	42	42	44	41	39	34	33	0	41	470
St. Lawrence	14	31	0	27	29	0	0	0	17	0	24	0	142
Saratoga	4	7	30	13	5	8	3	3	5	3	1	3	82
Schenectady	33	56	25	47	27	36	33	0	48	37	34	36	412
Schoharie	0	0	0	0	0	0	0	0	7	11	6	10	34
Schuyler	13	6	15	8	6	9	7	14	10	18	6	9	121
Seneca	4	9	6	6	6	12	3	1	14	20	11	5	97
Steuben	11	11	24	22	6	12	7	3	22	7	7	5	137
Suffolk	1	0	62	0	107	96	0	133	152	179	94	115	939
Sullivan	5	8	6	2	8	4	8	8	6	5	18	15	93
Tioga	0	0	0	0	0	0	0	0	0	0	7	8	15
Tompkins	3	10	11	18	17	16	9	9	23	18	18	12	164
Ulster	66	67	66	67	66	67	67	67	0	0	0	0	600
Warren	0	0	0	0	0	0	0	0	0	17	14	23	54
Washington	0	0	0	0	0	0	0	0	0	0	0	0	0
Wayne	11	19	11	29	18	8	16	8	17	22	30	23	203
Westchester	0	0	0	71	63	50	52	65	75	80	63	81	600
Wyoming	3	3	2	5	5	12	13	4	3	6	4	4	64
Yates	0	1	5	0	2	4	0	0	3	2	3	0	20
Total Upstate	866	1030	1199	1252	1389	1299	1240	1218	1490	1527	1223	1215	14,948
Bronx	0	0	0	0	0	0	0	0	0	0	0	0	0
Kings	0	0	0	0	0	259	245	150	147	207	166	148	1,322
New York	0	0	0	0	0	240	249	186	313	362	318	294	1,962
Queens	0	0	0	0	0	5	399	192	417	422	360	480	2,275
Richmond	0	0	0	0	24	15	41	14	10	15	22	6	147
Total NYC	0	0	0	0	24	519	934	542	887	1006	866	928	5,706
State Total	866	1030	1199	1252	1413	1818	2174	1760	2377	2533	2089	2143	20,654

APPENDIX J

VICTIM IMPACT STATEMENTS FORWARDED TO COURT: 1986

APPENDIX J

Victim Impact Statements Forwarded to Court, 1986

County	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	TOTAL
Albany	69	66	67	86	64	46	88	56	27	62	48	35	714
Allegany	13	13	8	16	11	12	13	11	14	17	14	15	157
Broome	35	26	35	38	45	34	37	33	35	50	30	53	451
Cattaraugus	2	4	6	5	6	4	3	3	1	0	0	0	34
Cayuga	5	5	7	10	7	3	6	1	4	8	4	3	63
Chautauqua	12	12	62	39	28	33	59	13	22	37	22	24	363
Chemung	12	7	5	7	9	6	4	5	7	13	6	10	91
Chenango	1	4	8	8	5	6	33	6	3	8	6	2	90
Clinton	0	0	0	9	15	5	1	4	3	8	5	9	59
Columbia	1	6	5	8	1	3	5	3	8	8	7	2	57
Cortland	3	5	0	3	3	0	0	6	2	1	0	8	31
Delaware	1	2	4	12	10	17	15	5	5	4	9	6	90
Dutchess	0	0	0	0	0	13	19	11	15	15	0	0	73
Erie	0	110	39	28	99	30	46	123	46	66	22	76	685
Essex	2	2	1	4	6	2	0	1	21	13	5	5	62
Franklin	11	14	15	15	28	16	11	21	19	17	8	13	188
Fulton	4	9	16	11	6	2	2	1	5	11	1	8	76
Genesee	0	0	13	2	11	12	13	19	11	16	7	13	117
Greene		6	4	0	6	9	7	8	4	6	3	1	54
Hamilton	0	0	0	0	0	0	0	0	1	0	0	0	1
Herkimer	0	4	6	10	7	5	4	3	6	3	10	6	64
Jefferson	11	8	5	9	9	6	3	1	13	5	8	8	86
Lewis	3	12	5	0	1	4	2	1	3	3	5	2	41
Livingston	2	3	2	14	11	5	5	2	0	3	14	14	76
Madison	12	5	7	6	10	7	5	12	10	6	2	15	97
Monroe	40	40	40	40	40	40	121	95	112	134	123	103	928
Montgomery	0	0	0	2	1	0	1	0	11	3	0	0	18
Nassau	96	116	151	166	148	181	173	88	128	100	146	119	1,612
Niagara	0	0	13	18	20	28	22	10	13	31	13	15	183
Oneida	31	85	129	107	100	99	98	92	123	123	94	103	1,184
Onondaga	125	94	102	141	130	133	113	94	86	117	102	99	1,336
Ontario	5	4	15	17	26	20	12	33	26	40	36	27	261
Orange	54	54	68	120	74	64	66	45	90	74	76	83	878
Orleans	0	0	0	0	7	9	6	9	8	6	6	6	57
Oswego	19	16	20	31	14	29	21	24	31	30	30	26	291
Otsego	0	3	4	1	1	6	2	4	2	8	2	0	33
Putnam	25	27	31	5	9	13	5	10	13	10	16	8	172
Rensselaer	29	0	0	0	0	0	0	0	0	0	0	0	29
Rockland	58	48	48	42	42	44	41	39	34	33	0	41	470
St. Lawrence	14	31	0	27	29	0	0	0	17	0	24	0	142
Saratoga	3	7	10	0	10	5	6	2	5	3	1	1	53
Schenectady	33	56	25	47	27	36	33	0	48	64	60	36	465
Schoharie	0	0	0	0	0	0	0	0	7	11	6	10	34
Schuyler	8	8	17	9	8	7	7	19	8	19	6	11	127
Seneca	4	9	6	6	6	12	3	1	14	20	11	5	97
Steuben	10	10	19	16	5	11	7	1	20	6	3	5	113
Suffolk	1	0	62	0	107	96	0	133	152	179	94	115	939
Sullivan	1	1	6	2	6	7	7	10	8	7	20	15	90
Tioga	0	0	0	0	0	0	0	0	0	0	4	5	9
Tompkins	3	9	9	16	16	16	5	11	21	18	12	10	146
Ulster	66	67	66	67	66	67	67	67	67	0	0	0	600
Warren	0	0	0	0	0	0	0	0	0	17	14	23	54
Washington	0	0	0	0	0	0	0	0	0	0	0	0	0
Wayne	11	19	11	15	16	16	13	15	14	22	33	19	204
Westchester	0	0	0	71	63	50	52	65	75	80	63	81	600
Wyoming	3	3	2	5	5	12	13	4	3	6	4	4	64
Yates	0	1	1	1	5	3	1	0	0	2	1	1	16
Total Upstate	838	1031	1176	1312	1379	1284	1276	1220	1421	1543	1236	1299	15,015
Bronx	0	0	0	0	0	0	0	0	0	0	0	0	0
Kings	0	0	0	0	0	258	214	111	143	199	161	143	1,229
New York	0	0	0	0	0	254	295	215	376	441	392	404	2,377
Queens	0	0	0	0	0	2	399	166	372	359	316	426	2,040
Richmond	0	0	0	0	29	15	41	14	10	15	22	6	152
Total NYC	0	0	0	0	29	529	949	506	901	1014	891	979	5,798
State Total	838	1031	1176	1312	1408	1813	2225	1726	2322	2557	2127	2278	20,813

APPENDIX K

RESTITUTION SURVEY

THE USE AND ADMINISTRATION OF MONETARY RESTITUTION BY COUNTY PROBATION DEPARTMENTS IN NEW YORK STATE

Purpose of the Survey

Section 420.10, subsection 8b of the Criminal Procedure Law requires the Division of Criminal Justice Services to make recommendations to promote the use of restitution and encourage its enforcement. This survey provides a systematic means for gathering information on current practices and experiences in the use and administration of monetary restitution in county probation departments. This information is important for the development of sound policy recommendations.

Who is Conducting the Survey

The New York State Division of Criminal Justice Services is conducting this survey in cooperation with the New York State Division of Probation and Correctional Alternatives and the New York State Crime Victims Board. The survey has also received the support of the Council of Probation Administrators.

What is the Questionnaire About

The questionnaire is divided into four parts:

- A. Utilization of Monetary Restitution - asks about the collection of "victim impact" information, the evaluation of both "victim impact" and "defendant" information related to monetary restitution, and monetary restitution recommendations made in pre-plea and pre-sentence reports.
- B. Administration of Monetary Restitution - asks about the agency's resources used to administer monetary restitution, the accounting system used, the collection of monetary restitution from offenders and its disbursement to victims, the monitoring and enforcement of monetary restitution orders, and the designated surcharge.
- C. Guidelines for the Use and Administration of Restitution - asks about the adequacy of guidelines provided by the State for the administration of monetary restitution and about agency-specific guidelines that may have been developed by your agency.
- D. Comments and Recommendations - open-ended questions have been included to elicit comments on issues you may think were not adequately addressed in this survey and on recommendations for both expanding the use of and improving the administration of monetary restitution.

Confidentiality of Responses

All responses will be confidential. Data will be reported in a manner that does not allow departments or persons responding to the survey to be identified.

Who Should Complete the Questionnaire

We recommend that the staff members most knowledgeable about the use and administration of monetary restitution in your agency complete this questionnaire.

If You Have Questions

Please contact Sharon Lansing at the New York State Division of Criminal Justice Services (518-457-8381).

INSTRUCTIONS FOR COMPLETING THE QUESTIONNAIRE

With the exception of Questions "1" to "5" which are concerned with collecting "victim impact" information in general, please consider only criminal cases involving monetary restitution when responding to questions.

DO NOT DO SPECIAL ANALYSES TO RESPOND TO ANY OF THESE QUESTIONS. We are looking for your "best estimate" of the frequency of activities. While reasonable accuracy is important, it is not expected that special analyses should be performed to respond to these questions. However, if you find it difficult to estimate the level of activity, a "Not Known" response is available.

All instructions are written in *italics*. Please be sure to read these instructions carefully before answering questions. For some of the questions, you will be asked to *circle only one response code* while others will be accompanied by instructions that ask you to *circle all response codes that apply*.

DEFINITION

The term below is defined as follows for the purposes of this survey.

Administration of Monetary Restitution - Includes the following:

- o Notifying the victim of the conditions of the order and the availability of civil proceedings for collection;
- o The collection of monetary restitution;
- o The monitoring and enforcement of restitution orders;
- o The disbursement of collected restitution to victims;
- o Fiscal account management;
- o Recordkeeping; and
- o The reporting of specified data to the New York State Division of Probation and Correctional Alternatives.

**THE USE AND ADMINISTRATION OF MONETARY RESTITUTION
BY COUNTY PROBATION DEPARTMENTS IN NEW YORK STATE**

Agency Name: _____

Telephone Number: _____

Names and Job Titles of Persons Completing this Questionnaire:

A. THE USE OF MONETARY RESTITUTION

The questions which follow ask about procedures your agency uses to collect "victim impact" information during pre-plea and pre-sentence investigations.

Questions 1 through 5 deal with "victim impact" information collected for all pre-plea and pre-sentence reports - not just reports involving monetary restitution.

Please circle only one response code for each question unless otherwise instructed.

Remember, we want your best estimate. Do not do special analyses to answer any of these questions. However, if you find it difficult to make a good estimate, please circle response code "6" for "Not Known".

1. How often during the last twelve months did the police or district attorney provide your agency with sufficient information to contact victims (e.g., name, address, telephone number)?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

2. How often are each of the initial and follow-up methods of contact listed below used by your agency to inform victims of their right to submit "victim impact" information?

For each method enter one of the codes below in both the initial and follow-up contact columns:

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

	Initial Contact	Follow-up Contact
a. Letter only	_____	_____
b. Letter and informational packet	_____	_____
c. Telephone	_____	_____
d. In person	_____	_____
e. Other methods - <i>Specify below.</i>	_____	_____
_____	_____	_____

3. How often during the past twelve months did victims who were contacted for "victim impact" information provide this information?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

4. Are there any victim services agencies located in your county?

1 Yes
2 No

5a. How often during the past twelve months did your agency seek the assistance of victim services agencies to collect "victim impact" information?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

-> Go to Question 6a.

-> Go to Question 6a.

5b. During this twelve month period, how often was the assistance of victim services agencies sought for each of the reasons listed below?

For each reason enter one of the codes below:

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

- _____ Lack of staff trained to collect "victim impact" information.
- _____ Lack of resources to support outreach services.
- _____ Victims were reluctant or found it difficult (e.g., emotional trauma of rape) to provide "victim impact" information.
- _____ Other reasons - *Specify.* _____
- _____
- _____

The following questions focus on the collection and evaluation of victims' requests for monetary restitution and the evaluation of offenders' ability to pay monetary restitution for pre-plea and pre-sentence reports.

Please circle only one response code for each question unless otherwise instructed.

6a. How often during the past twelve months did victims not request monetary restitution even though they were entitled to it?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

-> Go to Question 7.

-> Go to Question 7.

6b. When these victims did not request monetary restitution, how often were each of the reasons listed below given by victims to explain why they were not requesting it?

For each reason enter one of the codes below:

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

- _____ Victims thought that monetary losses were too small.
- _____ Victims had received or would be receiving monetary compensation from the Crime Victims Board, insurance companies, or other third party payers.
- _____ Victims did not believe monetary restitution would actually be received (e.g., victims knew that offenders did not have the financial resources to pay restitution).
- _____ Victims wanted to forget about the crimes.
- _____ Submitting information was too much trouble for victims.
- _____ Victims feared retaliation from offenders.
- _____ Victims were discouraged by delays in the court process.
- _____ No reasons given.
- _____ Other reasons - *Specify.* _____

7. Has your agency implemented procedures to determine whether or not victims requesting monetary restitution have received or will be receiving monetary compensation from the Crime Victims Board, insurance companies, or other third party payers?

- 1 Yes
- 2 No

8. What procedure or formula is used by your agency to evaluate the ability of offenders to pay monetary restitution? *Please describe briefly below or attach documentation.*

9. Based on your agency's evaluations of offenders' "ability to pay" completed during the past twelve months, how often did offenders have the financial resources to pay at least some of the monetary restitution requested?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

The following questions focus on restitution recommendations presented by your agency in pre-plea and pre-sentence reports and the response of the courts to these recommendations.

Please circle only one response code for each question unless otherwise instructed.

Remember, we want your best estimate. Do not do special analyses to answer any of these questions. However, if you find it difficult to make a good estimate, please circle response code "6" for "Not Known".

10. In instances where the Crime Victims Board or other third party payers had compensating victims, how often during the past twelve months did your agency recommend that monetary restitution also be paid to these third party payers such as the Crime Victims Board?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

11. When your agency determined that offenders did not have the financial resources to pay the full amount of monetary restitution but were able to pay at least some of it, how often during the past twelve months were each of the recommendations listed below made to the court?

For each reason enter one of the codes below:

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

- _____ Both "partial monetary restitution" and "victim/community service" were recommended.
- _____ Only payment of "partial monetary restitution" was recommended.
- _____ Only "victim/community service" was recommended in lieu of monetary restitution.
- _____ Neither "partial monetary restitution" or "victim/community service" was recommended.
- _____ Payment of the full amount of monetary restitution was recommended.
- _____ Other recommendations - *Specify.* _____
- _____

12. How often during the past twelve months did the courts, in anticipation of offenders having the "ability to pay" at a future date, order payment of the full amount of restitution at the time of sentencing even though your agency had determined that offenders did not have the financial resources to pay it?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

- 13a. How often during the past twelve months did the courts follow your agency's monetary restitution recommendations?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

-----> Go to Question 14a.

13b. When the courts did not follow your agency's monetary restitution recommendations during this twelve month period, how often were each of the actions listed below taken by the court instead?

For each reason enter one of the codes below:

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not known

_____ The amount of monetary restitution ordered by the court was less than what was recommended.

_____ The amount of monetary restitution ordered by the court was more than what was recommended.

_____ The courts ordered "victim/community service" instead of "monetary restitution."

_____ Other reason - *Specify*. _____

The questions which follow ask about the use of pre-payment of monetary restitution.

14a. How often during the past twelve months do you believe arrangements were made for offenders to pay restitution prior to sentencing?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

1 |
-> Go to Question 15.

6 |
-> Go to Question 15.

14b. To your knowledge, who is collecting pre-payment of monetary restitution from these offenders and disbursing it to victims? *Please circle more than one response code if appropriate.*

1 Probation Department

2 Courts

3 District Attorney

4 Victim services agency

5 Other (Specify) _____

6 Not known

B. THE ADMINISTRATION OF MONETARY RESTITUTION

This group of questions asks about the scheduling of restitution payments for offenders.

Remember, we want your best estimate. Do not do special analyses to answer any of these questions. However, if you find it difficult to make a good estimate, please circle response code "6" for "Not Known".

15. When pre-plea or pre-sentence reports are not requested for offenders by the courts, who recommends monetary restitution payment schedules to the courts for these offenders? Please circle more than one response code if appropriate.

- 1 Probation Department
- 2 District Attorney
- 3 Victim services agency
- 4 No one
- 5 Other (Specify) _____
- 6 Not known

16. When payment of monetary restitution was recommended by your agency, how often during the past twelve months were specific payment schedules included in these recommendations to the courts (i.e., schedules were more specific than "before completion of probation")?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

- 17a. During the past twelve months, approximately what percentage of the restitution orders directed by the court to your agency for collection did not include payment schedules?

_____ % ----> If your answer is 0% - Go to Question 18.

- 17b. During this twelve month period, how often did your agency establish specific payment schedules for these restitution orders?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

This next group of questions asks about the agencies involved in the collection of monetary restitution from non-probationers and probationers.

18. During the past twelve months, approximately what percentage of the monetary restitution orders directed by the courts to your agency for collection were for offenders whose sentences included probation (i.e., probation or "probation and jail")?

_____ %

19. To your knowledge, who is currently collecting the monetary restitution ordered by the court for each of the non-probation dispositions listed below.

Please circle more than one response code for each disposition if appropriate. For example, if both the Probation Department and the Court are collecting monetary restitution for ACD dispositions (a.), you should circle both codes "1" and "2."

	Probation Department	Court	District Attorney	Victims Services Agency	Other (Specify)
a. Adjourment in contemplation of dismissal (ACD)	1	2	3	4	_____
b. Fines *	1	2	3	4	_____
c. Unconditional Discharge	1	2	3	4	_____
d. Conditional Discharge	1	2	3	4	_____
e. Jail (no probation)	1	2	3	4	_____
f. Prison (Parole and Conditional Release)	1	2	3	4	_____

* Remember, we want to know who is collecting the monetary restitution - not the fine.

The next questions ask about the agency staff involved in the administration of restitution and the amount of time the staff devotes to the administration of monetary restitution.

20. Which staff are currently involved in each of the areas of the administration of restitution listed below?

Please circle more than one response code for each area of administration if appropriate.

	Director	Probation Officer Supervisor	Probation Officer	Probation Aide/ Assistant	Accountant	Clerk/ Secretary	Other (Specify)
a. Notifying the victim of the condition of the order and the availability of civil proceedings for collection	1	2	3	4	5	6	_____
b. The collection of monetary restitution	1	2	3	4	5	6	_____
c. The monitoring and enforcement of <u>probationers'</u> restitution orders	1	2	3	4	5	6	_____
d. The monitoring and enforcement of <u>non-probationers'</u> restitution orders	1	2	3	4	5	6	_____
e. The disbursement of collected restitution to victims	1	2	3	4	5	6	_____
f. Fiscal account management	1	2	3	4	5	6	_____
g. Recordkeeping	1	2	3	4	5	6	_____
h. Reporting of specified data to the State	1	2	3	4	5	6	_____

21. Approximately what percentage of the total work time involved in the administration of monetary restitution is done by staff within each of the job classifications listed below?

The "Percentage of Work" column should add to 100%. For example, probation officers may do 40% of the work, clerical staff 20%, and the Director the remaining 40%.

	Percentage of Work
a. Director	_____ %
b. Probation officer supervisors .	_____ %
c. Probation officers	_____ %
d. Probation Aides/Assistants	_____ %
e. Accountants	_____ %
f. Clerks/Secretaries	_____ %
g. Other staff - <i>Specify below.</i>	_____ %
_____	_____ %
	100% TOTAL

22. Approximately what percentage of your agency's total staff time is currently devoted per month to the administration of monetary restitution?

_____ %

The following questions ask about the accounting system your agency uses to administer monetary restitution.

23. Does your agency use a computerized fiscal accounting system for the administration of monetary restitution ordered by the courts?

- 1 Yes
2 No

24. Are the accounts for restitution ordered after October 31, 1984, interest bearing accounts?

- 1 Yes
2 No

This next question asks about the way your agency handles the collection of monetary restitution.

25. What forms of payment are accepted from offenders? *Please circle more than one response code if appropriate.*

- 1 Cash ----> _____ % Approximately what percentage of the restitution collected during the past month was cash?
- 2 Personal checks
- 3 Third party checks
- 4 Money orders
- 5 Certified checks
- 6 Bank drafts
- 7 Credit cards
- 8 Other forms of payment - *Specify.* _____

The following questions focus on the disbursement of monetary restitution to victims.

Please circle only one response code unless otherwise instructed.

Remember, we want your best estimate. Do not do special analyses to answer any of these questions. However, if you find it difficult to make a good estimate, please circle response code "6" for "Not Known".

26a. Has your agency established a specific schedule for disbursing monetary restitution to victims (e.g., payments are disbursed once a week, on the last business day of every month, or as soon as received).

- 1 Yes
- 2 No ----> *Go to Question 27.*

26b. What is your agency's schedule for disbursing monetary restitution to victims?

- 1 As soon as received
- 2 Weekly
- 3 Bi-Weekly
- 4 Monthly
- 5 Other - *Specify.* _____

27. How often are the methods listed below used to transmit restitution disbursements to victims?

For each reason enter one of the codes below:

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

- a. _____ Check is mailed to the victim.
- b. _____ Victim picks up the check at the agency.
- c. _____ Other methods - *Specify.* _____

28. During the past twelve months, what percentage of victims could not be located for the disbursement of monetary restitution?

_____ %

29. What procedure does your agency usually use when money collected for a single restitution order must be disbursed to multiple victims and the courts do not provide a directive in the order?

- 1 No standard procedure.
- 2 Victims receive their share of the restitution only after the order has been satisfied.
- 3 Victims receive their share of each restitution payment made by the offender.
- 4 Criteria have been established to determine the order in which victims are paid (e.g., individuals will receive their full share of the restitution before businesses).
- 5 Other - *Specify.* _____

30. During the past twelve months, approximately what percentage of the number of monetary restitution orders for victims were directed by the court to be disbursed to third party payers (i.e., the Crime Victims Board, insurance companies, or other third party payers)?

_____ %

The questions which follow focus on the way your agency handles the monitoring and enforcement of monetary restitution orders.

Remember, we want your best estimate. Do not do special analyses to answer any of these questions. However, if you find it difficult to make a good estimate, please circle response code "6" for "Not Known".

31. How many days late must an offender's restitution payment usually be before follow-up action is taken?

_____ Days

32. How many of an offender's restitution payments must usually be unpaid before the court is notified that the offender is in default?

_____ Payment(s)

33. Is the offender usually given formal notice before the court is notified that he is in default?

- 1 Yes
- 2 No

34a. During the past twelve months, did any of the offenders with monetary restitution orders complete all other conditions of their sentences before the restitution orders were satisfied?

- 1 Yes ----> _____% Approximately, what percentage of offenders?
2 No ----> Go to Question 35a.

34b. When offenders completed all other conditions of their sentences before the orders were satisfied, how often during this twelve month period did this happen because of the reasons listed below?

For each reason enter one of the codes below:

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

_____ Payment schedules were not included in the restitution orders.

_____ Other reasons - Specify. _____

35a. How often were monetary restitution orders modified or vacated by the courts during the past twelve months?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

35b. How often were these restitution orders modified or vacated during this twelve month period because of a decrease in offenders' financial resources?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

36a. When restitution payments were the only conditions of probation that were not met prior to the conclusion of sentence, how often during the past twelve months did your agency attempt to file violations of probation?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

|-> Go to Question 37.

|-> Go to Question 37.

36b. How often did the courts allow these violations of probation to be filed?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

36c. When these violations of probation were sustained, how often were each of the actions listed below taken by the courts?

For each action enter one of the codes below:

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

_____ Offenders were returned to probation.

_____ Offenders were incarcerated.

_____ Other actions - Specify. _____

This next set of questions asks about the 5% designated surcharge.

37. How frequently do you believe the designated surcharges on monetary restitution orders were disregarded by the courts during the past twelve months?

1 = Never 2 = Seldom 3 = Sometimes 4 = Usually 5 = Always 6 = Not Known

38a. In your opinion, should legislation be passed to permit the waiver of the 5% designated surcharge?

1 Yes

2 No ----> Go to Question 39.

38b. When should the courts be allowed to waive the 5% designated surcharge? Please describe briefly below.

39. Is the designated surcharge collected by your agency being used to directly support the administration of restitution?

1 Yes

2 No

3 Not known

C. GUIDELINES FOR THE USE AND ADMINISTRATION OF MONETARY RESTITUTION

40a. In October of 1984, the NYS Division of Probation and Correctional Alternatives issued legal and general guidelines for the administration of monetary restitution based on Chapter 965 of the Laws of 1984. These guidelines were distributed to the agencies in each county designated as the collection agencies for monetary restitution. Have these guidelines proven adequate for conducting the administration of restitution in your agency?

- 1 Yes ----> Go to Question 41.
- 2 No

40b. Which State guidelines has your agency found to be inadequate? Please list these guidelines below and briefly explain why they are inadequate.

41. Has your agency developed written guidelines for any of the activities listed below?

Circle the appropriate code for each activity.

Please submit a copy of any written guidelines with this completed questionnaire.

	Yes	No
a. Collection of "victim impact" information	1	2
b. Evaluation of the appropriateness of "victim impact" information for inclusion in "victim impact" statements in pre-plea and pre-sentence reports	1	2
c. Determination of whether or not the victim has or will be receiving compensation from the Crime Victims Board or other third party payers	1	2
d. Collection of "ability to pay" information from offenders	1	2
e. Evaluation of the ability of offenders' to pay monetary restitution.	1	2
f. Collection of monetary restitution	1	2
g. Disbursement of monetary restitution	1	2
h. Management of the fiscal accounting system for monetary restitution..	1	2
i. Monitoring and enforcement of <u>probationers'</u> monetary restitution orders	1	2
j. Monitoring and enforcement of <u>non-probationers'</u> monetary restitution orders	1	2
k. Other - <i>Specify</i> .	1	2

Please remember to submit a copy of any written guideline with the completed questionnaire.

D. COMMENTS AND RECOMMENDATIONS

What recommendations would you make to the State to:

Expand the use of monetary restitution?

Improve the administration of monetary restitution?

Are there any issues that are of concern to you regarding monetary restitution that this survey has not addressed?

THANK YOU.

APPENDIX L

DIVISION OF PROBATION & CORRECTIONAL ALTERNATIVES URBANIZATION INDEX

Urbanization Index

The urbanization index (See Table I) is an indicator of the degree to which counties can be defined as urban, based upon three dimensions: population, density and contiguous metropolitan areas.

1. Population: The population figures are the reported totals determined by the 1980 census. Reported population, in thousands, was identified and rank ordered for each county in New York State.
2. Density: The density dimension was taken from the New York State Statistical Yearbook, 10th Edition (1983-84). First, the population per square mile was obtained and arranged in rank order after the population rank order was determined. For example, Rockland County ranked third in population density but maintained a significantly lower population than the eleven largest counties in New York State. Therefore, it received a lower ranking for the urbanization index than the density dimension, alone, may have indicated.
3. Contiguous metropolitan areas: The standard metropolitan statistical areas have been developed and reported in the New York State Statistical Yearbook, 10th Edition. This dimension identifies those counties that either include or are close to a major metropolitan area in New York State. For example, Nassau and Suffolk Counties are highly urbanized because of their proximity to New York City. This dimension was used largely to eliminate those counties identified as mixed urban and rural counties based upon population alone. While St. Lawrence County ranked 19th of the counties based upon population alone, it has been grouped with rural counties because of its lack of an urban center and low density.

All counties were analyzed based upon these three dimensions and five final groupings were established as follows:

- 1) RURAL - all counties not otherwise identified
- 2) MIXED URBAN/RURAL - see attached listing
- 3) URBAN, UPSTATE - see attached listing
- 4) URBAN, DOWNSTATE - see attached listing
- 5) NEW YORK CITY - New York, Bronx, Queens, Kings, Richmond Counties

Rationale

New York City was maintained as a separate entity because of its unique characteristics in terms of population, density and as the leading metropolitan area in New York State. The next six largest counties were divided into two groupings, since Nassau, Suffolk and Westchester Counties are so closely connected to New York City, in terms of urbanization. This distinction left Erie, Monroe and Onondaga counties as the next cluster of counties to be considered comparable. The next category, MIXED URBAN/RURAL is the least tidy due to the differences of the three chosen dimensions. Thus, four counties with equivalent rankings on population were omitted based upon their differences in the other two areas. All other counties were grouped together in the rural category.

TABLE I
URBANIZATION INDEX
(without New York City)

Department	Population	Population Per Sq. Mile	City Centers
URBAN (DOWNSTATE)	Rank Order	(Density Ranking)	(SMSA) *
NASSAU	1,321.6	1	(near NYC)
SUFFOLK	1,284.2	4	(near NYC)
WESTCHESTER	866.6	2	(near NYC)
<hr/>			
URBAN (UPSTATE)			
ERIE	1,015.5	6	Buffalo
MONROE	702.2	5	Rochester
ONONDAGA	463.9	8	Syracuse
<hr/>			
MIXED URBAN/RURAL			
ALBANY	285.9	9	Albany
ORANGE	259.6	12	Middletown/Newburg
ROCKLAND	259.5	3	(near NYC)
ONEIDA	253.5	17	Utica/Rome
DUTCHESS	245.1	13	Poughkeepsie
NIAGARA	227.4	10	(near Buffalo)
BROOME	213.6	14	Binghamton
ULSTER	158.2	19	
SARATOGA	153.8	18	
RENSSELAER	152.0	16	Troy
SCHENECTADY	149.9	7	Schenectady
**			
CHEMUNG	97.7	15	Elmira
<hr/>			
RURAL			

All other departments

* Standard Metropolitan Statistical Areas as defined by the New York State Statistical Yearbook, 10th Edition (1983-1984).

** Rank Order by population alone, includes Chautauqua, St. Lawrence, Oswego, and Steuben between Schenectady and Chemung. These counties do not have high density, nor a city center.

APPENDIX M

SUGGESTED COVER LETTER AND VICTIM IMPACT STATEMENT FORM

Date: _____

Dear _____,

The Probation Department is currently conducting a pre-sentence investigation on defendant _____, who has been convicted of _____. Our investigation and pre-sentence report will assist the sentencing court in determining what sentence should be imposed. As part of any sentence, the court may require that defendants make restitution for their victim's losses or damages. Since our records reveal that you (your family member) were (was) the unfortunate victim in this case, your comments/concerns are important to the court. Although you are under no legal obligation to do so, we would appreciate your own account of the incident, the extent of your personal injury, economic loss, damages, the amount of restitution you are seeking, and your views regarding what sentence should be imposed.

A victim impact statement will be attached to the pre-sentence report and submitted to the court, the prosecutor, the defendant's attorney, and the defendant if he/she has no attorney. The prosecutor must make available this victim impact statement to the victim or victim's family prior to sentencing and inform the court of the amount of restitution requested.

The department would appreciate your completing the attached blank victim impact statement and returning this statement to Mr./Ms. _____ at our office address: _____ no later than _____ day, _____, 198_.

Please contact us at (tel.) _____ should you have any questions, if you are reluctant to complete this statement or fear for your or your family's safety. You may also want to contact _____, a victim service provider, at (tel.) _____ to help you prepare this statement.

Your immediate attention and cooperation in this matter are greatly appreciated.

Sincerely,

VICTIM IMPACT STATEMENT

(Please print or type. Attach extra sheet if necessary.)

VICTIM'S ACCOUNT OF INCIDENT:

EXTENT OF PERSONAL INJURIES FROM INCIDENT:

ECONOMIC LOSS:

DAMAGES:

AMOUNT OF RESTITUTION SOUGHT:

VICTIM'S VIEW TOWARD SENTENCE:

(Preparer's Signature)

(Date)

APPENDIX N

**TYPES OF VICTIM SERVICES PROGRAMS IN EACH COUNTY THAT RECEIVE FUNDING
FROM THE CRIME VICTIMS BOARD (CVB), THE DEPARTMENT OF HEALTH (DOH),
AND/OR THE DEPARTMENT OF SOCIAL SERVICES, FY 1986-87**

TYPES OF VICTIM SERVICES PROGRAMS IN EACH COUNTY THAT RECEIVE FUNDING FROM THE CRIME VICTIMS BOARD (CVB), THE DEPARTMENT OF HEALTH (DOH), AND/OR THE DEPARTMENT OF SOCIAL SERVICES
 _FY 1986-87

County	VICTIM SERVICE PROGRAMS						
	Rape Crises		Domestic Violence		Court Related (CVB)	Elderly Victims (CVB)	Comprehensive Services (CVB)
	(CVB)	(DOH)	(CVB)	(DSS)			
Albany	1	3		1			
Allegany				1			
Bronx	1	1		2		1	
Broome	1	1	1	1			
Cattaraugus				1		1	
Cayuga		1		1			
Chautauqua		1	1	2			
Chemung		1		1		1	
Chenango				1		1	
Clinton		2		2		1	
Columbia		1					
Cortland		1		1			
Delaware		2		1		1	
Dutchess		1		2		1	
Erie		2		4	1	2	
Essex				1			
Franklin				1			
Fulton		1		1			
Genesee		1		1		1	
Greene	1		1	1			
Hamilton							
Herkimer				1			
Jefferson		2	1	1			
Kings	1	5		3	1	4	
Lewis		2					
Livingston				1			
Madison	.5		.5	1			
Monroe	1	1	2	1	1	1	
Montgomery		1		1			
Nassau		1	1	2		2	
New York		8	2	10	1	1	
Niagara				3			
Oneida		2		1			
Onondaga	1	1		2		1	
Ontario		1		1			
Orange		1		1		1	
Orleans		1		1			
Oswego	1	2		1			
Otsego		1		1			
Putnam				1			
Queens		3		2		3	
Rensselaer	1	1		1			
Richmond		1			1		
Rockland		1	1	1	1		
St. Lawrence	1	1		1			
Saratoga		1		1			
Schenectady	1	1	1	1			
Schoharie		1		1			
Schuyler		1					
Seneca							
Steuben		2					
Suffolk		2		3	1	1	
Sullivan				1			
Tioga						1	
Tompkins	2	2		1			
Ulster		1		2		1	
Warren		1		1			
Washington							
Wayne		1					
Westchester		1	2	4		1	
Wyoming							
Yates		1					
New York City	1		1			5	
TOTAL	14.5	70	14.5	79	7	4	32

APPENDIX O

SAMPLE FORMAT FOR NOTIFYING CRIME VICTIMS/INTENDED BENEFICIARIES

SAMPLE FORMAT FOR NOTIFYING
CRIME VICTIM/INTENDED BENEFICIARY

(Name and address of Probation Dept.)

(Date)

Dear _____:

On _____, Judge _____ sentenced
_____ to _____. As
part of the sentence, the defendant was ordered to pay
restitution/reparation in the amount of \$_____ to you.
The Court has directed that payments be first forwarded to
this Department at the rate of \$_____ per _____.

At the end of each month, the amount collected from
the defendant will be mailed to you until the total amount
is paid.

Should defendant not pay, the Court will be notified
and the district attorney may begin legal proceedings for
the collection of unpaid amounts. In addition, you may
begin civil action to collect amounts in excess of payments
ordered or for amounts ordered but unpaid.

Please inform us of any change in your address.

If you have any questions, please contact _____
at _____.

Very truly yours,

(Signature)