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Restitution and Community Service; Improving Enforcement of Court-Ordered Restitution

Reviewed by Peter S. Gilchrist, III, District Attorney, 26th Judicial District (Charlotte), North Carolina

Review of:

Douglas C. McDonald, "Restitution and Community Service," National Institute of Justice *Crime File Study Guide* (Washington, DC: U.S. Department of Justice, 1988); Barbara E. Smith, Robert C. Davis, and Susan W. Hillenbrand, "Improving Enforcement of Court-Ordered Restitution," A Study of the American Bar Association, Criminal Justice Section, Victim Witness Project (Washington, DC: August 1989).

A variety of formal and informal practices are available that require defendants to make restitution to victims or perform community service. Most commonly, these sanctions are ordered as a condition of probation. However, these practices are used by a minority of courts and for only a small proportion of offenders.

In a National Institute of Justice *Crime File Study Guide*, Douglas McDonald states that the lack of broad acceptance of these sanctions is due in part to the lack of agreement about why they should be imposed. Unanswered questions include whether the sanctions punish, rehabilitate, or deter; whether they are beneficial to defendants or serve victims; and whether, for taxpayers, they are less costly and more constructive than imprisonment. Although the missions of many restitution and community service programs are formulated in vague, abstract, and idealistic terms, this may be an advantage, allowing different judges to impose these sanctions for different reasons.

Despite the absence of research showing that victim restitution or community service reduces the criminality of adults (some research suggests that these sanctions do reduce recidivism among juvenile offenders), rehabilitation is still a motivation for imposing them. Another justification for using these

sentences — that they are alternatives to more costly, and perhaps more harmful, incarceration — is also questionable, since there is little likelihood that the persons who receive these sanctions (usually young people, white-collar offenders, and first offenders) would otherwise have been imprisoned.

Restitution and community service are punitive, as long as the conditions are strictly enforced.

Nevertheless, McDonald concludes, restitution and community service certainly are punitive, as long as the conditions are strictly enforced. Because of the unanswered questions and the difficulties of enforcement, however, he is unsure whether these sentencing options will endure or fade as another fad.

The second article, "Improving Enforcement of Court-Ordered Restitution," examines some issues raised by McDonald. Smith, Davis, and Hillenbrand conducted a study for the American Bar Association Criminal

Justice Section on how restitution orders are enforced and how the orders are viewed by crime victims. The study included interviews with 75 directors of restitution programs and intensive study (interviews with program and court staff, collection of data from a sample of cases, and interviews with victims) of four programs in Minneapolis, Minnesota; Salt Lake County, Utah; Montgomery, Alabama; and New York City. Although many of the details and much of the analysis will not be of interest to prosecutors, the study provides some new insights into factors that influence offender compliance and victim satisfaction.

Not surprisingly, offender compliance with a judge's order to pay restitution is influenced by the offender's ability to pay. Thus, unrealistic orders result in high rates of noncompliance, which frustrate both the victims and the officials who have the responsibility to try to collect the payments. The study also reports that programs that closely monitor offenders, beginning as soon as restitution is ordered, increase compliance. In addition, two practices that are rarely used in restitution programs improve compliance: notifying defendants **before** the due date that payments are coming due, and following through with substantial incarceration for nonpayment. Collection efforts normally begin only after a defendant has failed to comply, and most judges are reluctant to enforce their orders, especially with indigents. Basic business practices used by commercial enterprises, which bill debtors before due dates and immediately follow up on delinquent accounts, are the exceptions in restitution programs. Another conclusion should be obvious to anyone who has dealt with defendants and their appearance bonds: defendants without community ties and with previous criminal records renege on restitution payments more often than offenders with community ties and no prior records.

Victim satisfaction is influenced not only by victims' receiving the money to cover their losses, but also by being kept informed about the restitution process. When victims are kept informed and treated with consideration, they express a strong degree of satisfaction even when restitution does not occur.

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Both articles suggest that judges want their restitution orders to be complied with but fail to take the actions that make compliance probable. If the courts are willing to enforce these orders, however, compliance can be improved. Prosecutors can assist in such efforts, but the primary obligation for enforcing judges' restitution orders rests with the judges.