



OFFICE OF CRIMINAL JUSTICE PLANNING

RESTITUTION STUDY

SENATE BILL 2685

150520



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SENATE BILL 2685 - RESTITUTION STUDY

ACQUISITIONS

TABLE OF CONTENTS

| | <u>PAGE</u> |
|--|-------------|
| I. LEGISLATIVE AUTHORITY AND MANDATES | 1 |
| II. RESTITUTION HISTORY | 1 |
| III. RESEARCH IDENTIFICATION AND METHODOLOGY | 2 |
| A. Identification | 2 |
| B. Methodology | 2 |
| IV. RESEARCH RESULTS | 5 |
| A. Research Introduction | 5 |
| B. Summaries of Survey and Case File Research | 6 |
| 1. Orange County | 6 |
| 2. Sacramento County | 10 |
| 3. Shasta County | 12 |
| C. Funds Recovered by the State Board of Control | 13 |
| V. CONCLUSIONS | 14 |
| VI. RECOMMENDATIONS | 15 |
| VII. APPENDICES | 16 |
| A. Survey Questionnaire Results - Counties At-A-Glance | |
| B. Case File Research Results - Graphs and Charts | |
| C. Restitution By Crime Type | |
| D. Legislation | |

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EXECUTIVE SUMMARY

This study examines restitution collection methods in Orange, Sacramento, and Shasta Counties pursuant to Senate Bill 2685.

Financial and case file records were reviewed and analyzed in the three counties to determine if they maintained a final accounting system, a policy relating to administrative fees for collection of restitution and recovery of money for the State Board of Control through the lien process.

Information and statistical data contained in this report were obtained through personal interviews, a data collection survey that was completed by each county and on site case file research where actual court orders and financial records were reviewed and analyzed.

All counties studied charged administrative fees as authorized in Penal Code Section 1203.1, however, there were differences between the counties in how the amount owed was calculated and the point in time when the fees were collected.

Information obtained from case file research reflects a greater percentage of probationers made some or all payments on their court-ordered restitution compared to those who made no payments.

The study revealed that 43% of the total restitution ordered in the case files reviewed was successfully collected.

Case file research for the counties studied revealed crimes against property had the greatest amount of restitution ordered and collected compared to crimes against persons or other crime types.

I. LEGISLATIVE AUTHORITY AND MANDATES

Senate Bill 2685, Chapter 1264 (1990)
Senator Newton Russell

This legislation created a one-year pilot program within the Office of Criminal Justice Planning (OCJP) to evaluate, in conjunction with the State Board of Control, the restitution collection process in three counties:

- ORANGE
- SACRAMENTO
- SHASTA

This pilot project was legislatively-mandated to specifically do the following:

- Study the effectiveness of collecting restitution ordered paid to crime victims.
- Monitor restitution orders established by the courts and their collections.
- Prepare a final accounting comparing the amount of restitution defendants are ordered to pay to victims upon sentencing with the actual amount paid by the defendants.

The scope of this study, beyond the above, was established by evaluating the legislative intent as identified by Senator Russell and his Chief of Staff, Kay Lentz. Through their assistance and guidance the study was developed to collect data which would evaluate whether each of the three counties have a final accounting system whereby they can determine collection data information in the following categories:

- The total number of probationers the court ordered to pay restitution.
- The total restitution the court ordered in dollars.
- The total restitution dollars collected.

Additionally, Senator Russell's staff requested that the study include a report on the amount of funds collected by the State Board of Control in recovering funds paid to victims from the State Restitution Fund, pursuant to Government Code Section 13959, et seq. This information is provided by the State Board of Control in Section IV, Subsection C, Page 13.

II. RESTITUTION HISTORY

Restitution, requiring offenders to compensate victims for their losses, has existed since ancient civilization. While once considered the primary factor in addressing crime, restitution began to diminish as governments were formally organized and crime was defined as an act against the state rather than against an individual. By the 19th Century, restitution had become an insignificant part of criminal law in Western societies. In mid-1960, penal reformers resurrected restitution awareness with a new focus on indirect restitution when the defendant was too poor to compensate the victim directly. In these cases, community service sentences were frequently imposed wherein the defendant was ordered to provide an unpaid service to the community rather than to the victim. Due to the criminal justice system's diminished role in assisting crime victims with their need and right to be directly compensated by the defendant for their losses, in 1982, the voters of California passed Proposition 8, the Victims' Bill of Rights. Proposition 8 added Article I, Section 28(b) to the California Constitution. The Victims' Bill of Rights specifically included the right of victims to receive restitution from the person convicted of the crime.

In 1983, Section 1203.04 was added to the California Penal Code which mandated that in every case where a person is convicted of a crime and is granted probation, the court shall require, as a condition of probation, that the person make restitution to the victim or the Restitution Fund if the crime did not involve a victim. However, if there are compelling and extraordinary reasons stated on the record why restitution should not be ordered, the court shall impose a condition of probation requiring the probationer to perform a specified number of hours of community service work.

Since the passage of Proposition 8 and subsequent victim-related legislation, the importance of restitution has resurfaced and again is viewed as an integral component of the criminal justice system. Although strides have been made on behalf of victims in the area of restitution and defendant accountability, there continues to be problem areas that need to be addressed.

The California Council on Criminal Justice (CCCJ) list the following findings related to restitution concerns in their 1983-1990 eight year report:

CCCJ Executive Summary Findings On Restitution:

- "Restitution is often not ordered in cases in which it is a viable sentencing component." (Executive Summary Finding Number Six, Page 30.)
- "Restitution collection procedures at the local level vary considerably and with mixed results in overall effectiveness and accountability." (Executive Summary Finding Number Seven, Page 30.)

III. RESEARCH IDENTIFICATION AND METHODOLOGY

A. Identification

The subjects of this study, Orange, Sacramento, and Shasta Counties, were identified in the enabling legislation. Two of the three counties identified, Shasta and Orange, had more than one agency or department involved in the restitution process. Therefore, for the purpose of this study records from a total of six different agencies or departments were reviewed and analyzed. The following is a listing of the agency records reviewed for each county participating in the study:

ORANGE COUNTY

The Orange County Probation Department is responsible for monitoring, collecting and distributing restitution for all defendants granted formal probation by the Superior and Municipal Courts in Orange County.

The County of Orange contracts with Community Services Programs, Inc. (CSP) to monitor and collect restitution on all conditional release cases, also referred to as summary probation, for the five Municipal Courts contained in the county.

SACRAMENTO COUNTY

In Sacramento County the Department of Revenue recovery (ORR) (Formally the Office of Revenue Reimbursement), is responsible for collecting and disbursing restitution ordered by the Municipal and Superior Courts.

SHASTA COUNTY

In Shasta County, the Shasta County Probation Department is responsible for determining the amount of restitution and payment schedule. The central collections division of the Treasure/Tax Collector's Office performs the actual collections, maintains payment records and disburses funds to victims. Additional records on closed restitution cases were reviewed and analyzed at the Auditor Controller's Office.

B. Methodology

The three methods used to collect the information and data presented in this report were interviews, survey, and case file research. The specifics of these methods are described as follows:

1. Interviews

On-site and telephone interviews were conducted with personnel who collected restitution payments. These personnel included account clerks, collection managers, probation officers, coordinators of victim/witness assistance centers, restitution clerks and a director of administrative and fiscal services.

2. Survey

A data collection survey was provided to the targeted agencies two weeks before the on-site visits were conducted. The information reported by each agency was then reviewed and verified during on-site field evaluation visits. Surveys were completed by each of the targeted agencies identified in the study (see Appendix A for summary of survey questions and results). The survey requested specific procedural and statistical information on how restitution was established, monitored and disbursed. The results of the survey outlined the overall process of collecting restitution in each of the agencies, as well as provided specific statistical information regarding the actual amounts of restitution ordered and collected.

Attempts were made to restrict the survey results to Fiscal Year 1988/89 for the purpose of statistical analysis. However, not all of the counties subject to this study were able to isolate and produce the necessary records for this period of time.

3. Case File Research

The case file research consisted of nonstatistically selected samples from restitution cases in all three counties. Using the nonstatistical approach affords the reviewer the opportunity to identify and select cases for testing. Every attempt was made to select cases in such a way that the overall sample will contain the same or similar attributes as the population. Statistical conclusions would not be valid with this type of sample selection. The tabulated information collected from sample cases appears in chart form in Appendix B for each agency reviewed. The top part of the chart for each county reflects the total amount of restitution owed by the sample cases selected for review as well as the total collected from this same sample group.

The bottom part of the chart presents a breakdown of how many of the sample group made payment in full, partial payments and no payments.

In the early stage of the project, the researchers intended to use a random selection approach to conduct the case file research but were unable to proceed with this selection method because the population of cases at Orange and Shasta Counties could not be determined, and cases were rejected from the study that did not fit the review criteria in all three counties. Since these cases were selected nonstatistically, the findings may not necessarily represent a conclusive finding as to each agency's total collection rates. On-site case file research was conducted in each of the agencies identified in the study to determine if they maintained a final accounting system. For the purpose of this study, a final accounting system is defined as a system where one could examine a ledger card, file, or computer file to determine how much a probationer was ordered to pay, the amount paid to date and when the payments were made. This definition was used to insure specific questions posed by Senator Russell were addressed.

In Orange County state evaluator's analyzed open and closed cases, in Sacramento County open cases were reviewed and in Shasta County closed cases were reviewed. Therefore, the statistical data presented in this report is not intended for comparison of the counties participating in the study but rather as information pertaining to collection rates for the individual county.

The sample case files reviewed during field visits were different case files than those from which the survey answers were drawn. Initially the researchers attempted to collect data on a target population of probationers that were ordered to pay restitution and track their payment history over the course of their probation grant. This approach would have resulted in the data collection period being focused on Fiscal Year 1984/85. Since all of the counties selected for the study were not able to isolate complete records covering this specific period of time, we were not able to proceed with this approach. Therefore, a sampling of restitution accounts from each county covering January 1980 through September 1991 was nonstatistically selected and analyzed to determine if payments were made as directed. The results of this research are contained in Section IV, Subsection B, commencing on Page 6 of this report. The reader will note in the individual county case file sections that some of the selected samples were rejected as they did not relate to the specific intent of this study. The following is a listing of the types of sample cases that were rejected:

- The court did not order restitution payments.
- The crime code indicated a "victimless" crime.
- The case file did not contain enough information to determine the disposition of the case.
- The case related solely to a violation of probation.
- The court ordered a restitution fine, but no direct restitution to a victim.

Case records from each of the target counties were reviewed and analyzed to determine if they captured the following information:

- The amount of restitution the sentencing court ordered a probationer to pay.
- The amount of restitution a probationer paid over a given period of time and the balance remaining.
- An established payment schedule and amount of monthly payments.
- The amount counties charged for administrative fees for collecting restitution pursuant to Penal Code Section 1203.1, which states the county may add an administrative fee for the duties associated with collecting restitution ordered by the court. The fee charged may be the actual administrative costs connected with the collection process or up to a maximum of 10% of the total amount of established restitution.
- The number of adult probationers the court ordered to pay direct restitution to victims.
- The amount of restitution ordered by sentencing courts.
- The amount of restitution collected through May of 1991.

- The period of time between collection of restitution and disbursement of the money to the victim pursuant to Penal Code Section 1203.1, which states that any cash or money orders collected for restitution shall be forwarded to the victim within 30 days from the receipt of payment or 45 days when payments are made by check or draft, or within 180 days when cumulative payments recovered are less than \$50 and in cases involving multiple victims.

IV. RESEARCH RESULTS

A. Research Introduction

The research findings are presented separately for each of the three target counties. Findings have been categorized within the two types of primary research methodology, survey or case file research. Some information about the survey or case file research was clarified and/or expanded upon during telephone and on-site interviews. This information has been incorporated into the primary methodology category. The two primary categories of findings are described as follows:

1. The first category entitled, Summary of Survey, narratively reports in the four areas, as listed below, the information obtained from the survey questionnaire:
 - Final Accounting System
 - Collection Information
 - Administrative Fees
 - State Board of Control Restitution Fund Information

The survey questionnaire responses are also summarized in a chart form, which is located in Appendix A. The reported totals for administrative fees and restitution paid by the probationer represent the verified amounts ordered by the sentencing courts for the respective counties in Fiscal Year 1989/90 and the collection data represents any payments made during Fiscal Year 1989/90, regardless of when the court order was established.

2. The second category entitled, Summary of Case File Research, provides information in the following three areas:
 - Case File Information
 - Disbursement Time To Victim
 - Probationer Income/Payment Correlation

Data compiled from the case file research is presented in Appendix A and in graph form in Appendix B. The information presented in Appendix A and B is intended to provide the reader with a visual comparison for each county of specific information relating to this study.

B. Summaries of Survey and Case File Research

1. Orange County

a. Community Service Programs, Inc. (CSP)

(1) Summary of Survey

(a) Final Accounting System

The Community Service Programs, Inc., hereafter referred to as CSP, maintains a final accounting system whereby case records can be reviewed to determine the total amount of restitution owed, dates when payments were made and the balance remaining.

(b) Collection Information

In Fiscal Year 1989/90, there were 10,405 defendants granted conditional release (commonly referred to as summary probation) by the five Municipal Courts in Orange County. The total dollar amount or the percentage of probationers ordered to pay restitution is not known; however, during Fiscal Year 1989/90 \$1,148,128 in restitution payments were collected by CSP.

(c) Administrative Fees (as defined on Page 4 of this report)

CSP charges an administrative fee for the services connected to the collection of restitution pursuant to Penal Code Section 1203.1. Their fee structure is calculated at 10% of the total amount of restitution up to a maximum of \$500. Administrative fees are collected after the restitution obligation has been paid in full. All money collected in administrative fees is returned to the County of Orange for deposit in the county's general fund. Money collected from this source is used to offset county costs for the contract services provided by CSP. In Fiscal Year 1989/90, CSP collected \$131,728 in administrative fees from restitution cases processed by their agency.

(d) State Board of Control, Restitution Fund Information

According to CSP, they had 10 accounts at the time of this study where the victims' losses have been paid by the victim compensation program and restitution pursuant to court order was still outstanding. In these cases, the State Board of Control initiated a lien procedure and, as money is collected from the probationer, it is returned to the Board to reimburse the fund for the money previously paid to the victim. At the time of the study, the combined accounts totaled \$30,060.18. Agency records were not available to show the amount of money collected and returned to the State Board of Control for Fiscal Year 1989/90.

FY 1989/90 Victim Compensation Information

Number of Victim Compensation Claims Filed with the State Board of Control: 1,162

Amount of Funds Approved and Awarded: \$3,029,165

(2) Summary of Case File Research

(a) Case File Information

One hundred cases were selected and reviewed (20 from each of the five Municipal Courts) to determine whether probationers paid restitution ordered by the courts. These case files were classified as closed due to successful collection of restitution or open with ongoing collections in process. Six cases were rejected, which left a sample size of 94 cases for review.

The Net Sample size was 94 cases

| <u>Dollars</u> | <u>Amount</u> | <u>Percent Collected</u> | <u>As of</u> |
|----------------|---------------|--------------------------|--------------|
| Ordered | 57,064 | | |
| Collected | 46,335 | 81% | 6/90 |
| Collected | 54,335 | 95% | 5/91 |

| <u>Type</u> | <u>#/Cases from Sample</u> | <u>Percent of sample</u> | <u>Total Restit. Ordered</u> | <u>Total Restit. Collected</u> | <u>Percent of Successful Collected</u> |
|-----------------|----------------------------|--------------------------|------------------------------|--------------------------------|--|
| Full Payment | 86 | 92% | 52,442 | 52,442 | 100% |
| Partial Payment | 3 | 3% | 2,655 | 1,893 | 71% |
| Nonpayment | 5 | 6% | 551,967 | 0 | 0 |

(b) Case File Information - Warrant Cases

Ninety-nine cases were selected and reviewed (approximately 20 from each of the five Municipal Courts), in which collection attempts were unsuccessful and warrants for arrest for failure to pay restitution were issued. Three of these cases were rejected for not meeting the selection criteria. These case files were classified as closed and no additional payments were forthcoming.

The Net Sample size was 96 cases

| <u>Dollars</u> | <u>Amount</u> | <u>Percent Collected</u> | <u>As of</u> |
|----------------|---------------|--------------------------|--------------|
| Ordered | 138,493 | | |
| Collected | 5,984 | 4% | 6/90 |
| Collected | 6,484 | 5% | 5/91 |

| <u>Type</u> | <u>#/Cases from Sample</u> | <u>Percent of sample</u> | <u>Total Restit. Ordered</u> | <u>Total Restit. Collected</u> | <u>Percent of Successful Collected</u> |
|-----------------|----------------------------|--------------------------|------------------------------|--------------------------------|--|
| Full Payment | 0 | 0% | Unknown | 0 | 0% |
| Partial Payment | 15 | 16% | 17,572 | 2,655 | 15% |
| Nonpayment | 81 | 84% | 551,967 | 0 | 0% |

- (c) Disbursement Time to the Victim (as defined on Page 5 of this report.

Eighty-nine restitution collections were reviewed. The findings revealed that the money in all 89 cases was disbursed to victims within two business days of receipt of payment, which is within the statutory limits established in Penal Code Section 1203.1.

- (d) Probationer Income/Payment Correlation

Employment and income information was not available in the case files reviewed for CSP.

b. Orange County Probation

- (1) Summary of Survey

- (a) Final Accounting System

The Orange County Probation Department has a final accounting system that provides information regarding the amount of restitution owed by a given defendant, dates when payments were made, and the balance remaining on the account.

- (b) Collection Information

Information pertaining to the number of formal probationers ordered to pay restitution and the dollar amount for Fiscal Year 1989/90 was not available for this agency. In Fiscal Year 1989/90, however, \$1,480,331 was collected in restitution payments and returned to crime victims.

- (c) Administrative Fees

The agency charges an administrative fee as allowed pursuant to code for the services connected with the collection process. Fees are calculated at the actual average cost for collecting restitution or \$57, whichever is less. Collection of fees does not commence until restitution has been paid in full. In Fiscal Year 1989/90, \$12,392 was collected in administrative fees and returned to the county's general fund.

(d) State Board of Control Restitution Fund Information

At the time of this study, Orange County Probation had 12 active accounts totaling \$22,469 where the lien process had been initiated by the State Board of Control. This agency reports it collected and returned \$6,853 to the State Board of Control through the lien process in Fiscal Year 1989/90.

FY 1989/90 Victim Compensation Information

The number of Victim Compensation Claims filed with the State Board of Control is reported under the CSP, Inc. section of this report.

(2) Summary of Case File Research

(a) Case File Information

Orange County Probation provided 1,155 open cases from which a sample could be chosen. They did not have a method by which a list of closed restitution cases could be isolated for review and analysis.

One hundred seven cases were selected for review, however, seventeen cases were rejected as not meeting the selection requirements.

The Net Sample size was 90 cases

| <u>Dollars</u> | <u>Amount</u> | <u>Percent Collected</u> | <u>As of</u> |
|----------------|---------------|--------------------------|--------------|
| Ordered | 461,334 | | |
| Collected | 152,356 | 33% | 6/90 |
| Collected | 236,097 | 51% | 5/91 |

| <u>Type</u> | <u>#/Cases from Sample</u> | <u>Percent of sample</u> | <u>Total Restit. Ordered</u> | <u>Total Restit. Collected</u> | <u>Percent of Successful Collected</u> |
|-----------------|----------------------------|--------------------------|------------------------------|--------------------------------|--|
| Full Payment | 47 | 52% | 161,978 | 161,978 | 100% |
| Partial Payment | 27 | 30% | 254,404 | 74,119 | 29% |
| Nonpayment | 16 | 18% | 44,951 | 0 | 0% |

(b) Probationer Income/Payment Correlation

In 69 of the 90 accounts reviewed (77%), probationers had a source of income from employment or some other form of financial assistance. Fifty-seven of the 69 (83%), probationers with a source of income made some restitution payments. In 17 cases the probationer made some payments despite having no declared source of income.

(c) Disbursement Time to the Victim

One hundred restitution collections were nonstatistically selected from 27 restitution accounts to determine whether the county disbursed the collections to the victim within the time limits established by Penal Code Section 1203.1. Additionally, restitution reports prepared by the county and payments received on or after January 1, 1990, were reviewed. The county disbursed 98 out of 100 collections within the statutory time limits required by Penal Code Section 1203.1.

2. Sacramento County

a. Office of Revenue and Reimbursements (ORR)

(1) Summary of Survey

(a) Final Accounting System

The Office of Revenue and Reimbursements, hereafter referred to as ORR, maintains a final accounting system for restitution records. ORR accounting records provide information reflecting the total amount of restitution owed, dates and amount of each payment and the remaining balance.

(b) Collection Information

In Fiscal Year 1989/90, the Municipal and Superior Courts ordered a total of \$5,350,006 in restitution and collected a total of \$793,510 during this same time period.

(c) Administrative Fees

ORR charges an administrative fee of 10% for services connected to the process of collecting restitution. The administrative fee of 10% is calculated on the total amount of restitution owed and are collected on a prorated basis from each payment made. During Fiscal Year 1989/90, a total of \$70,399 in administrative fees were collected and returned to the county's general fund.

(d) State Board of Control Restitution Fund Information

ORR was unable to provide the number of active accounts where the lien process had been initiated by the State Board of Control or the total dollars involved for these accounts.

FY 1989/90 Victim Compensation Information

Number of Victim Compensation Claims Filed with the State Board of Control: 1,422

Amount of Funds Approved and Awarded: \$2,597,960

(2) Summary of Case File Research

(a) Case File Information

The ORR provided open cases from which a sample could be selected.

One hundred eleven cases out of 11,588 open cases were selected for the review; however, 26 cases were rejected as not meeting the selection requirements.

The Net Sample size was 85 cases

| <u>Dollars</u> | <u>Amount</u> | <u>Percent Collected</u> | <u>As of</u> |
|----------------|---------------|--------------------------|--------------|
| Ordered | 108,292 | | |
| Collected | 10,280 | 9% | 6/90 |
| Collected | 13,463 | 12% | 5/91 |

| <u>Type</u> | <u>#/Cases from Sample</u> | <u>Percent of sample</u> | <u>Total Restit. Ordered</u> | <u>Total Restit. Collected</u> | <u>Percent of Successful Collected</u> |
|-----------------|----------------------------|--------------------------|------------------------------|--------------------------------|--|
| Full Payment | 1 | 1% | 388 | 388 | 100% |
| Partial Payment | 34 | 40% | 61,263 | 13,075 | 21% |
| Nonpayment | 50 | 59% | 46,641 | 0 | 0% |

(b) Probationer Income/Payment Correlation

In 52 of the 85 accounts reviewed (61%) probationers had a source of income, from employment or some other form of financial assistance. Twenty-five of the 52 probationers (48%) made some payments toward their restitution while 27, or 52%, of these probationers made no payments despite having income. The remaining 33 probationers in the target group had no declared source of income. Ten of these 33 probationers (30%) made some payments toward their court-ordered restitution.

(c) Disbursement Time to the Victim

Two hundred restitution collections were selected and reviewed from 25 separate accounts to evaluate if the county disbursed collections to victims within statutory time limits. The findings revealed that 184 of the disbursements, totaling \$8,562.68, exceeded the statutory limits of Penal Code Section 1203.1. The average disbursement time was 144 days.

3. Shasta County

a. Treasure/Tax Collector's Office, Central Collections Division

(1) Summary of Survey

(a) Final Accounting System

Shasta County has a final accounting system whereby accounting records reflect the amount of restitution owed, individual payments made and the balance remaining.

(b) Collection Information

In Fiscal Year 1989/90, the Superior and Municipal Courts ordered restitution as a condition of probation in 367 cases. The county was not able to provide information for the total amount of money owed in these cases; however, during this same fiscal year, county records reflect \$66,001 in restitution was collected on behalf of crime victims.

(c) Administrative Fees

Shasta County charges an administrative fee of 10% of the total amount of restitution for services connected to the collection process. Administrative fees are deducted from each payment made on a prorated basis until the financial obligation has been paid in full. In Fiscal Year 1989/90, \$5,318 was collected in administrative costs and returned to the county's general fund.

(d) State Board of Control Restitution Fund Information

The county was unable to provide information pertaining to the number of active cases subject to the lien process with the State Board of Control. However, account records reflect that in Fiscal Year 1989/90, \$4,264 was collected through the lien process and returned to the State Board of Control.

FY 1989/90 Victim Compensation Information

Number of Victim Compensation Claims Filed with the State Board of Control: 474

Amount of Funds Approved and Awarded: \$671,599

(2) Summary of Case File Research

(a) Case File Information

Shasta County provided a list of 247 restitution cases which were closed in Fiscal Year 1989/90. Eighty-three cases were originally selected for review; however, 35 cases were rejected as not meeting the selection requirements.

The Net Sample size was 48 cases

| | <u>Dollars</u> | <u>Amount</u> | <u>Percent Collected</u> | <u>As of</u> |
|-----------|----------------|---------------|--------------------------|--------------|
| Ordered | | 73,914 | | |
| Collected | | 53,884 | 73% | 6/90 |

| <u>Type</u> | <u>from Sample</u> | <u>#/Cases Percent of sample</u> | <u>Total Restit. Ordered</u> | <u>Total Restit. Collected</u> | <u>Percent of Successful Collected</u> |
|-----------------|--------------------|----------------------------------|------------------------------|--------------------------------|--|
| Full Payment | 27 | 56% | 48,141 | 48,141 | 100% |
| Partial Payment | 12 | 25% | 20,698 | 5,743 | 28% |
| Nonpayment | 9 | 19% | 5,075 | 0 | 0% |

b. Probationer Income/Payment Correlation

In 25 of the 48 test cases reviewed (52%), the probationer had a source of income from employment or some other form of financial assistance. Twenty three of these 25 probationers (92%) with a source of income made some restitution payments. In 10 cases the probationer made some payments despite having no declared source of income.

c. Disbursement Time to the Victim

Twenty different cases were reviewed from 234 recorded payment receipts on the county's Restitution for Payments Lists. All 20 of the tested collections, totaling \$2,484.57, were disbursed within two to three weeks of collections, which is within the statutory time limits as required by Penal Code Section 1203.1.

C. Funds Recovered by the State Board of Control

Funds may be recovered from victims after payments have been made by the State Board of Control (Board), Victims of Crime Program (Program) because the law does not permit double-recovery or enrichment of the victim (claimant). If a claimant is successful in obtaining funds from a civil suit, workers compensation case or restitution from the offender, monies paid by the State must be reimbursed. In the specific area of restitution payments made by a defendant to a victim, the Board notifies the appropriate county entity, e.g., probation department, of a lien agreement, pursuant to Government Code Section 13966, between the Program and the victim concerning any form of additional reimbursements which may become available. The Board mainly relies upon the claimant or their legal representative to inform the Program of a pending civil suit or workers compensation case. In these instances, the Board will file a formal lien with the appropriate court of jurisdiction. Per Government Code Section 13966, the Board will automatically waive 25% of its lien amount as the intent of this statute is to encourage a claimant to seek reimbursement from those parties that are responsible for the crime. The Board does, however, have the option to further reduce or waive its lien when circumstances warrant such action.

During Fiscal Year 1990/91, the Board was successful in recovering approximately \$800,000 from liens on civil suits, workers compensation and/or restitution orders.

V. CONCLUSIONS

This is a comparative summary of each of the three counties' responses to questions regarding their restitution accounting system's ability to provide the following information.

| | <u>ORANGE CSP</u> | <u>ORANGE PROBATION</u> | <u>SACRAMENTO PROBATION</u> | <u>SHASTA COUNTY</u> |
|--|-----------------------|-----------------------------|---------------------------------|--------------------------|
| <u>"Does your county have a final accounting system whereby you can determine":</u> | | | | |
| 1. How much restitution a probationer was ordered to pay to a named victim? | yes | yes | yes | yes |
| 2. How much a probationer actually paid? | yes | yes | yes | yes |
| 3. When the payments were made? | yes | yes | yes | yes |
| 4. If any money is collected for administrative costs and the percentage? | yes | yes | yes | yes |
| 5. The total number of probationers the court ordered to make restitution in a given year? | yes | no | no | no |
| 6. The total amount of court ordered restitution dollars in a given year? | no | no | yes | no |
| 7. The total amount of restitution dollars collected in a given year? | yes | yes | yes | yes |

Further Study Findings:

1. All the counties studied maintained a Final Accounting System whereby records could be reviewed to determine the total amount of restitution owed, the amount paid to date and the dates when payments were made.
2. Although all the agencies studied charged an administrative fee pursuant to Penal Code Section 1203.1, there were differences in how the amount was determined. In Orange County, CSP charged 10% of the total amount of restitution with a ceiling of \$500 and the probation department charged the actual average cost of collecting restitution or \$57, whichever is less. In Sacramento and Shasta Counties, there was no ceiling and the amount was based solely on 10% of the total amount of restitution.
3. There were differences among the agencies in relation to when administrative fees were collected. In Orange County (CSP and Probation), administrative fees are not collected until restitution is paid in full. In Sacramento and Shasta Counties, however, administrative fees are prorated and deducted from each payment made by the probationer.

4. Orange (CSP and Probation) and Shasta Counties disbursed collected money to the victim within two weeks of receipt of payment, which is within the statutory requirement set forth in Penal Code Section 1203.1. Sacramento County did not meet the statutory requirement in 92% of the identified test accounts selected for evaluation for the purpose of this study.
5. Consistently, in all the counties studied, crimes against property had the greatest amount of restitution ordered and collected rather than crimes against persons or other crime types (reference Appendix C - Restitution By Crime Type).
6. Total case file research for the sample group revealed the following:
 - 61% of the cases reviewed made payment in-full or partial payments on court-ordered restitution.
 - 39% of the cases reviewed did not make payments on court-ordered restitution.
 - 43% of the total restitution ordered for the sample group was collected.

| <u>TYPE</u> | <u>#/CASES FROM SAMPLE</u> | <u>PERCENT OF SAMPLE</u> | <u>TOTAL RESTITUTION ORDERED</u> | <u>TOTAL RESTITUTION COLLECTED</u> | <u>TOTAL PERCENT RESTITUTION COLLECTED</u> |
|-----------------|----------------------------|--------------------------|----------------------------------|------------------------------------|--|
| Full Payment | 161 | 39% | 262,949 | 262,949 | 100% |
| Partial Payment | 91 | 22% | 356,592 | 101,314 | 28% |
| Nonpayment | <u>161</u> | 39% | <u>219,555</u> | <u>0</u> | 0% |
| Totals | 413 | | 839,096 | 364,263 | |

Total overall collection rate from the combined case file research revealed a 43 percent collection rate of restitution ordered by the sentencing courts.

VI. RECOMMENDATIONS

The information presented in this section are suggested alternatives aimed at improving restitution collections on behalf of crime victims and holding law violators accountable for their actions.

- Establish statewide guidelines to standardize portions of the restitution collection process. Minimum standards should define criteria for determining when an account is delinquent as well as procedures for returning delinquent cases to sentencing courts for further proceedings. Guidelines should also include procedures for notifying victims of the delinquent status of their account as well as notice of court dates pertinent to their case. Establishing statewide guidelines would promote consistency of collection procedures throughout the state as well as accountability on the part of the probationer. Additionally, including victims issues in the guidelines would provide continued access on the part of the victim to the criminal justice system as well as improving the spirit and intent of Proposition 8. Notification procedures should also be implemented to inform victims when a probationer's term of probation has expired or when it has been deleted through modification or revoked and the balance of restitution will not be collected. The notification procedure should also insure that victims are provided with information regarding civil remedies available for the purposes of collecting the balance of restitution.
- Establish restitution reporting requirements for each county in the state. Under these reporting requirements counties would be required to maintain yearly reports reflecting the amount of outstanding restitution at the end of each fiscal year, as well as the amount of

money collected in restitution during this same period of time. Reporting requirements could be expanded to include the amount of administrative fees collected and the total dollars collected and returned to the State Board of Control through the lien process. Information obtained could be used to develop a statewide profile for evaluating how successful efforts to collect restitution are across the state. Additionally, implementation of this reporting requirement would provide an avenue for capturing statistical data for different fiscal years for the purposes of conducting comparative analysis on the success of restitution from one fiscal year to the next.

- Counties should routinely implement tax intercept procedures to improve restitution collections.
- "Legislation should be enacted to require the probation departments to report payment or nonpayment of restitution, restitution fines and penalty assessments to the sentencing court on a quarterly basis and to require the mandatory extension of probation grants in cases where such obligations are not met." (California Council on Criminal Justice, Eight Year Report, 1983-1990. Legislative Action Recommendation Number Six, Page 32).
- "Legislation should be enacted to strengthen and clarify the court's ability to ensure the payments of restitution by the offender." (California Council on Criminal Justice, Eight Year Report, 1983-1990. Legislative Action Recommendation Number Seven, Page 32.)
- "Legislation should be enacted to ensure that a portion of any wages earned by incarcerated or paroled adults and juvenile offenders be paid to either their victims or the State Restitution Fund." (California Council on Criminal Justice, Eight Year Report, 1983-1990. Legislative Action Recommendation Number Eleven, Page 32).
- Legislation should be enacted to give the Board of Prison Terms and the Youthful Offender Parole Board the power to impose restitution as a condition of parole, and ensure that failure to pay the restitution would result in revocation or extension of the parole period. (California Council on Criminal Justice, Eight Year Report 1983-1990. Legislative Action Recommendation Number 10, Page 32).
- OCJP should assess the extent to which restitution (direct, fine or community service) is effectively implemented throughout the state." (California Council on Criminal Justice, Eight Year Report 1983-1990. Executive Recommendation Number Five, Page 34).

VII. APPENDICES

- A. Survey Questionnaire Results - Counties At-A-Glance
- B. Case File Research Results - Graphs and Charts
- C. Restitution By Crime Type
- D. Legislation

APPENDIX A
SURVEY OF QUESTIONNAIRE RESULTS
COUNTIES AT-A-GLANCE

COUNTIES AT-A-GLANCE

Orange County
Community Service
Programs

Orange County
Probation

Sacramento
County

Shasta
County

| | | | | |
|---|----------|----------------|----------------|-----------|
| 1. Briefly describe the process of how monies are collected, tracked and disbursed for restitution in your county. | | | | |
| 2. Briefly describe the process of how monies are collected, tracked and disbursed for fines in your county. | | | | |
| 3. Explain how restitution amounts are established by your county or agency. | | | | |
| 4. Explain how payment schedules are established by your county or agency. | | | | |
| 5. Does your county bill probationers/defendants on a regular basis for restitution? | NO | YES MONTHLY | YES MONTHLY | NO |
| 6. Does your county disburse collected restitution to victims at set intervals? | 1-2 DAYS | 1-2 DAYS | 30-180 + DAYS | 2-3 WEEKS |
| 7. What are the collection and distribution procedures when a defendant is ordered to pay restitution to multiple victims on multiple charges? | | | | |
| 8. What are the collection and distribution procedures when a defendant has pre-existing criminal financial obligations with the county and begins making payments on a <u>new</u> restitution order? | | | | |

COUNTIES AT-A-GLANCE

| | Orange County Community Service Programs | Orange County Probation | Sacramento County | Shasta County |
|--|--|----------------------------|---------------------------------|---|
| 9. What are the collection and distribution procedures when a defendant is ordered to pay restitution to multiple victims under the same order? | | | | |
| 10. Does your county policy allow insurance companies to be reimbursed from collected restitution when their company has paid a victim for losses suffered from a crime? | NO | NO | YES | NO |
| 11. Do your restitution accounting records identify the type of crime a probationer committed as well as the payees to be reimbursed? | YES | NO | NO | NO |
| 12. Does your county have an accounting system that can provide the following information: | | | | |
| 12a. The total amount of money a probationer was ordered to pay to a specific victim or victims? | YES | YES | YES (MANUALLY) | YES (MANUALLY) |
| 12b. When the probationer is to commence payment, and the rate at which payment is to be made? | YES | YES | YES | YES |
| 12c. Dates when payments were actually or should have been made and the remaining balance? | YES | YES | YES | YES |
| 12d. Dates showing when and to whom disbursement of funds were made? | YES | YES | YES MANUALLY KEPT IN FILE | YES, AUDI- TOR CON- TROLLER'S OFFICE |
| 12e. The total amount of money collected in restitution for each fiscal year? | YES | YES | YES | YES |

COUNTIES AT-A-GLANCE

| | Orange County Community Service Programs | Orange County Probation | Sacramento County | Shasta County |
|---|---|--|--|--------------------------------------|
| 12f. Restitution amounts and the number of probationers ordered to pay restitution by court level in Fiscal Year 1989/90? | YES | NO | YES | NO |
| 13. How many defendants and/or cases were granted probation in your county in Fiscal Year 1989/90? | UNKNOWN | SUPERIOR 6,569 | SUP. 3,660 MUN. <u>1,302</u> 4,962 | SUP. 824 MUN. <u>672</u> 1,496 |
| 14. How many defendants and/or cases, as a condition of probation, were ordered to pay restitution in your county in Fiscal Year 1989/90? | 10,405 MUNICIPAL COURT/SUMMARY PROBATION | UNKNOWN SUPERIOR COURT/ FORMAL PROBATION | UNKNOWN | SUP. 224 MUN. <u>143</u> 367 |
| 15. What was the total amount of restitution established in your county in Fiscal Year 1989/90? | UNKNOWN | UNKNOWN | SF: 2,417,688 SS: 82,690 MF: 283,213 MS: <u>2,566,415</u> \$5,350,006* | KEPT MANUALLY NOT COMPILED |
| 16. What was the total amount of restitution collected in your county in Fiscal Year 1989/90? | 1,148,128 MUNICIPAL COURT/SUMMARY PROBATION | 1,480,331 | SF: 301,214 SS: 53,545 MF: 42,927 MS: <u>254,469</u> 652,155** | \$66,001 |
| 17. What were the total dollars collected by your county for administrative fees for: | | | | |
| a. Restitution ordered paid to crime victims: | \$131,728 | \$12,392 | \$ 70,399*** | \$ 5,318 |
| b. Court ordered fines | UNKNOWN | 0 | \$514,023 | \$22,105 |

KEY: MUN: Municipal Court SF: Superior Court/Formal Probation SS: Superior Court/Summary Probation
 SUP: Superior Court MF: Municipal Court/Formal Probation MS: Municipal Court/Summary Probation

*Excludes juvenile restitution established (\$360,087)

**Excludes juvenile restitution collected (\$141,355)

***Includes administrative fees collected for juvenile restitution

COUNTIES AT-A-GLANCE

| | Orange County Community Service Programs | Orange County Probation | Sacramento County | Shasta County |
|---|--|---|---|--|
| 18. How are delinquent accounts handled in your county? Does your county send past due or missed payment notices to probationers? | YES, ONLY ONCE AFTER FIRST PAYMENT IS 10 DAYS LATE | NO, COLLECTION OFFICERS CONTACT PROBATIONER WHEN PAYMENTS ARE 30-60 DAYS PAST DUE | YES, MONTHLY. 90 DAY PAST DUE ACCOUNTS QUALIFY FOR TAX INTERCEPT. | YES, 5, 30 60, 95 DAYS, THEN CONTACTED |
| 19. Did your county maintain records showing the number of probationers violated for willful failure to pay restitution as directed during Fiscal Year 1989/90? | 3,360 | N/A | NO | NO |
| 20. What agency is responsible for determining when violation proceedings should be initiated? | VICTIM/WITNESS (SUMMARY PROBATIONERS) | PROBATION (FORMAL) | PROBATION | PROBATION |
| 21. What happens to money collected for restitution payments when the county loses contact with the victim? | JUDGE ON CASE DETERMINES: COUNTY TRUST FUND, RESTITUTION FUND, CSP EMERGENCY FUND, RETURNED TO PROBATIONER | ESCHEATED TO COUNTY FUND | COUNTY GENERAL FUND | GENERAL FUND |
| 22. Of the active accounts in your county, how many accounts list the State Board of Control as the payee on behalf of a victim? | 10 (\$30,060.18) | 12 (\$22,469) | UNKNOWN | UNKNOWN |
| 23. How much money was collected and returned to the State Board of Control on behalf of victims during Fiscal Year 1989/90? | UNKNOWN | \$6,853 | UNKNOWN | \$4,264 |
| 24. How frequently is the money collected from defendants for restitution fines disbursed to the State Treasury? | UNKNOWN | WEEKLY | MONTHLY FROM AUDITOR CONTROLLER'S OFF. | MONTHLY |

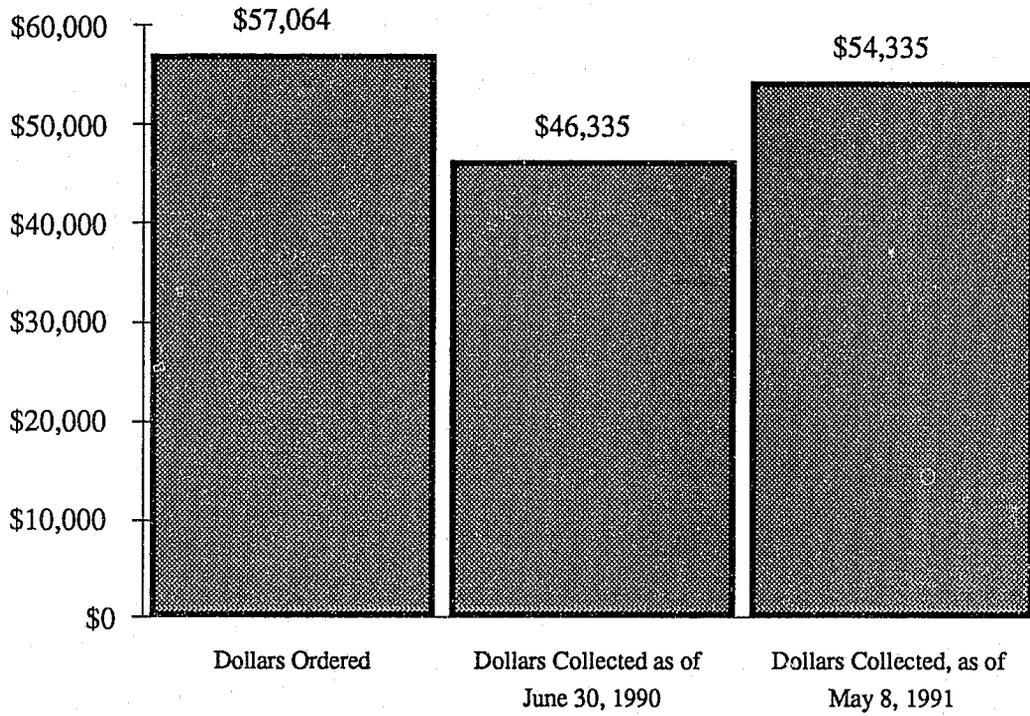
COUNTIES AT-A-GLANCE

| | Orange County Community Service Programs | Orange County Probation | Sacramento County | Shasta County |
|--|--|--|--|---------------------------------------|
| 25. Are the funds derived from administrative fees for collecting restitution paid to crime victims earmarked for a specific department or agency? | NO GENERAL FUND | YES PROBATION | YES ORR | YES TREASURER TAX COLLECTORS |
| 26. Please describe or provide a copy of internal procedures used for: a) determining, and b) collecting administrative fees for fines. (When are these fees collected?) | UNKNOWN | ADMINISTRATIVE FEES FOR FINES ARE NEITHER ASSESSED NOR COLLECTED | ADMINISTRATIVE FEES ARE 10% OF FINE WITH A MINIMUM OF \$10 NOT TO EXCEED \$30 | |
| b. Are the funds derived from these fees earmarked for a specific department or agency? | | | YES ORR | |
| 27. Do you have any suggestions for standardizing or streamlining the process of collecting restitution for crime victims? | NO RESPONSE | NO RESPONSE | YES | NO RESPONSE |

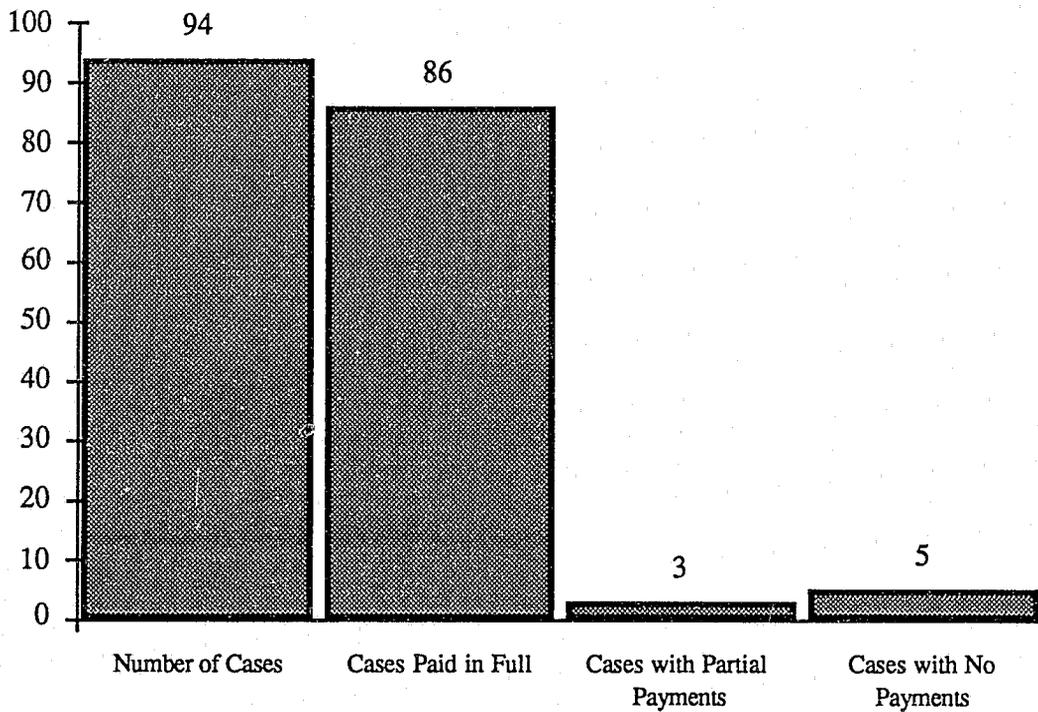
APPENDIX B
CASE FILE RESEARCH
GRAPH/CHARTS

Orange County Closed Cases

Dollars Ordered and Collected

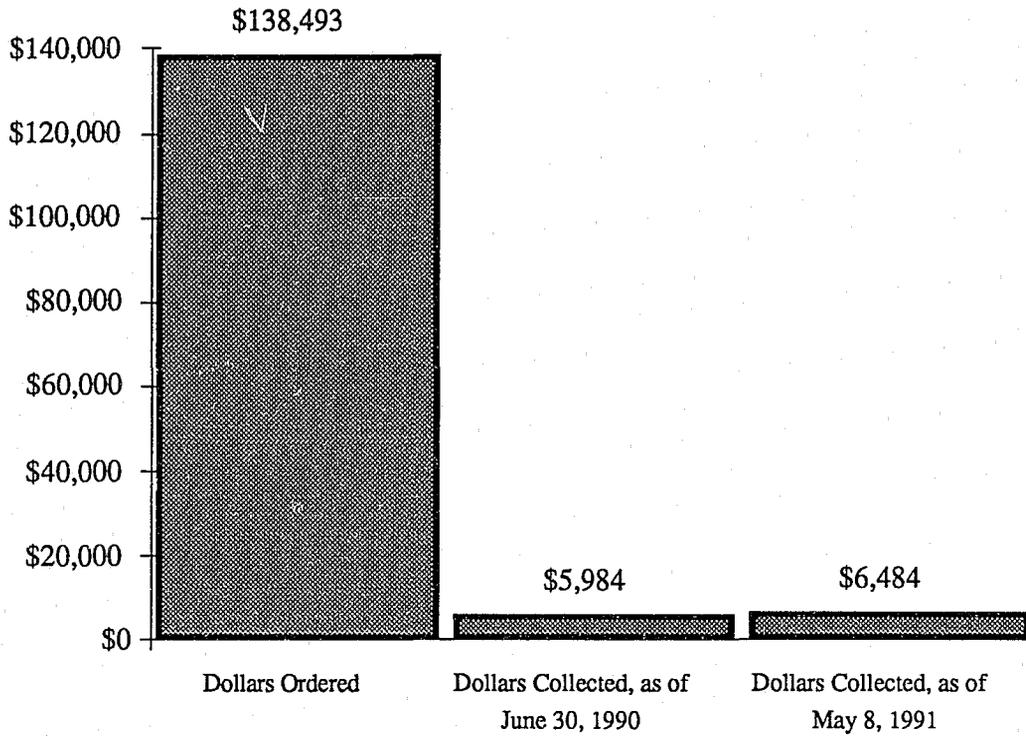


Number of Cases Reviewed

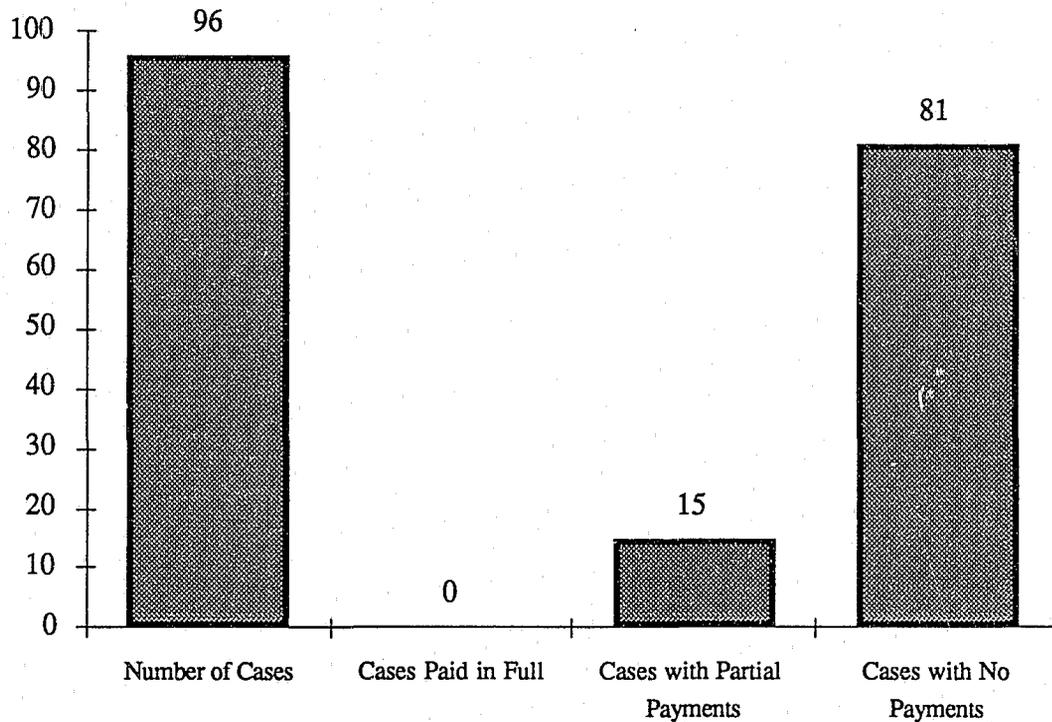


Orange County Warrant Cases

Dollars Ordered and Collected

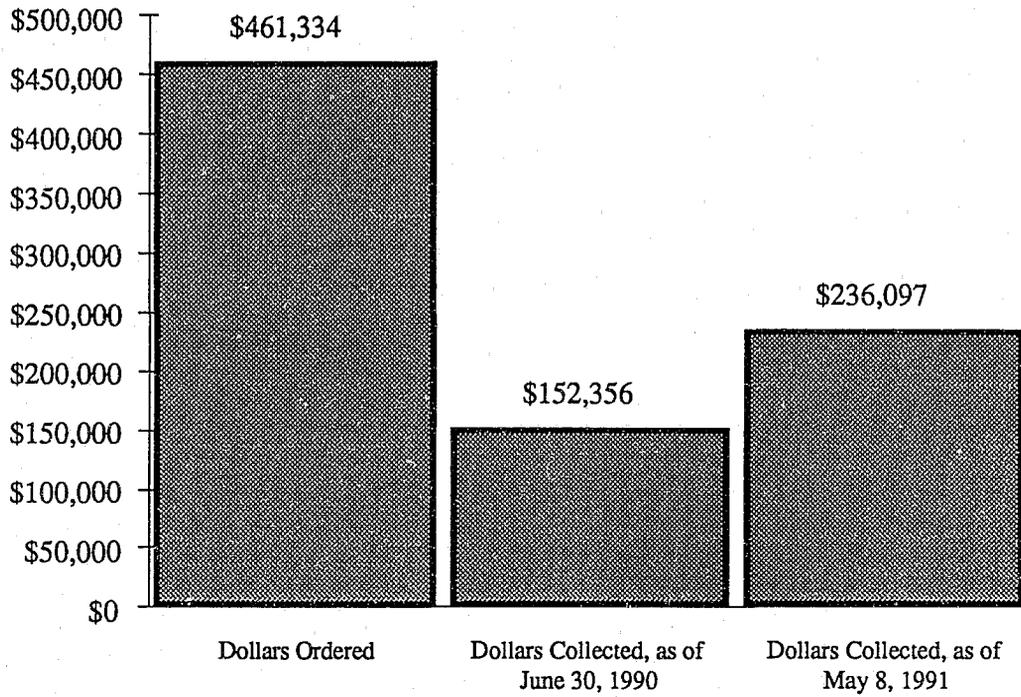


Number of Cases Reviewed

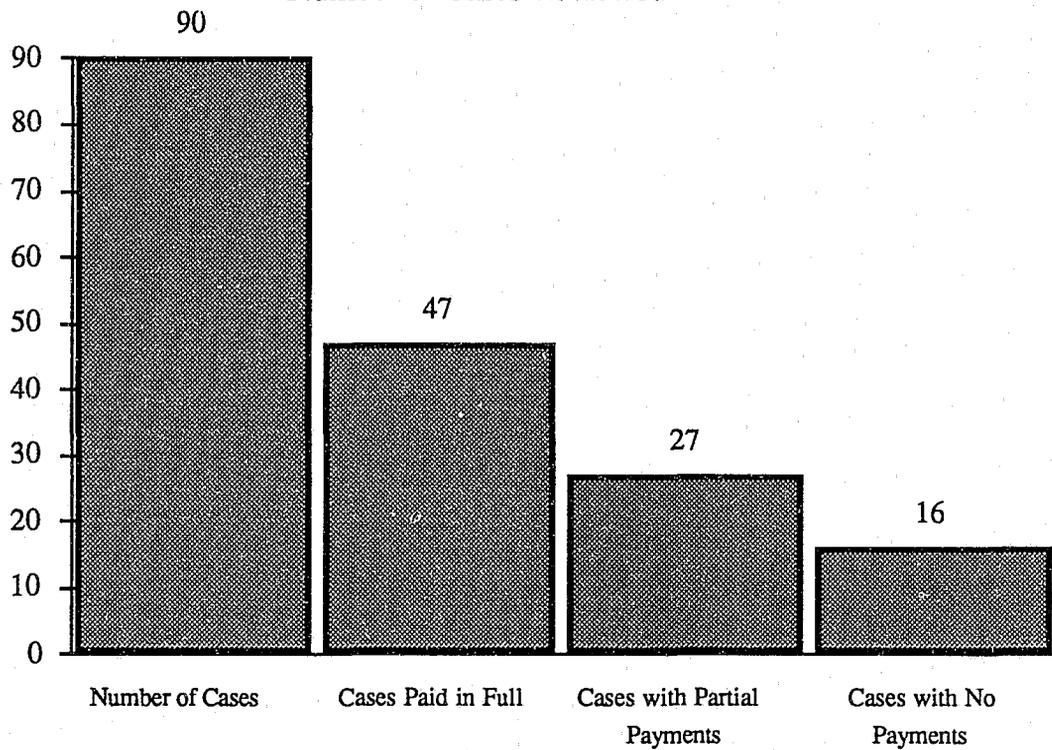


Orange County Probation Cases

Dollars Ordered and Collected

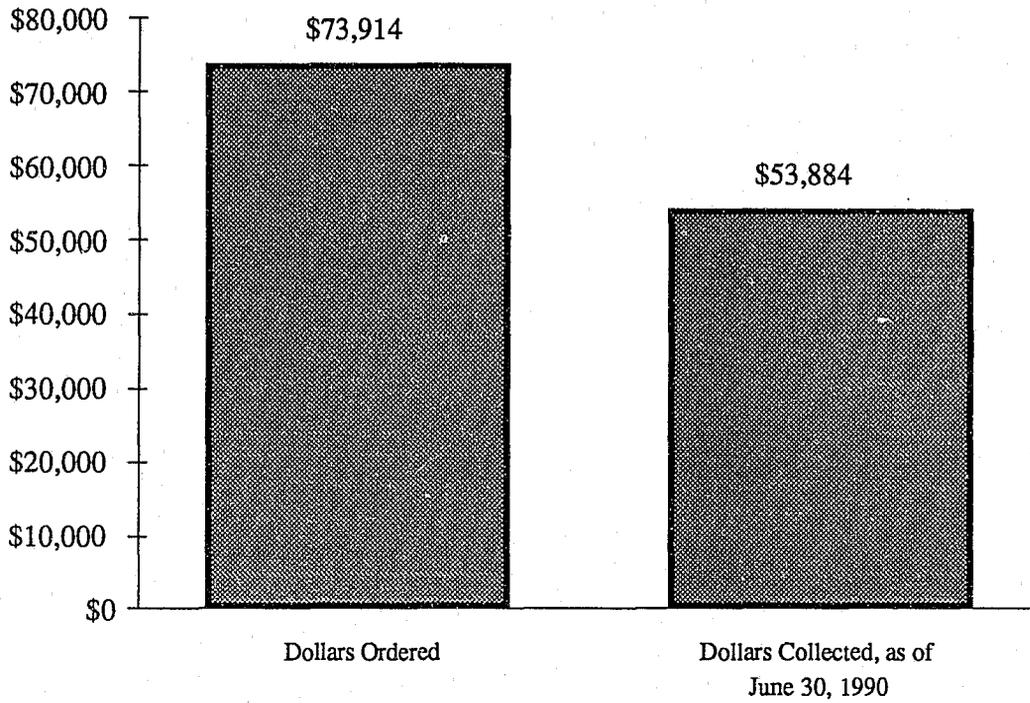


Number of Cases Reviewed

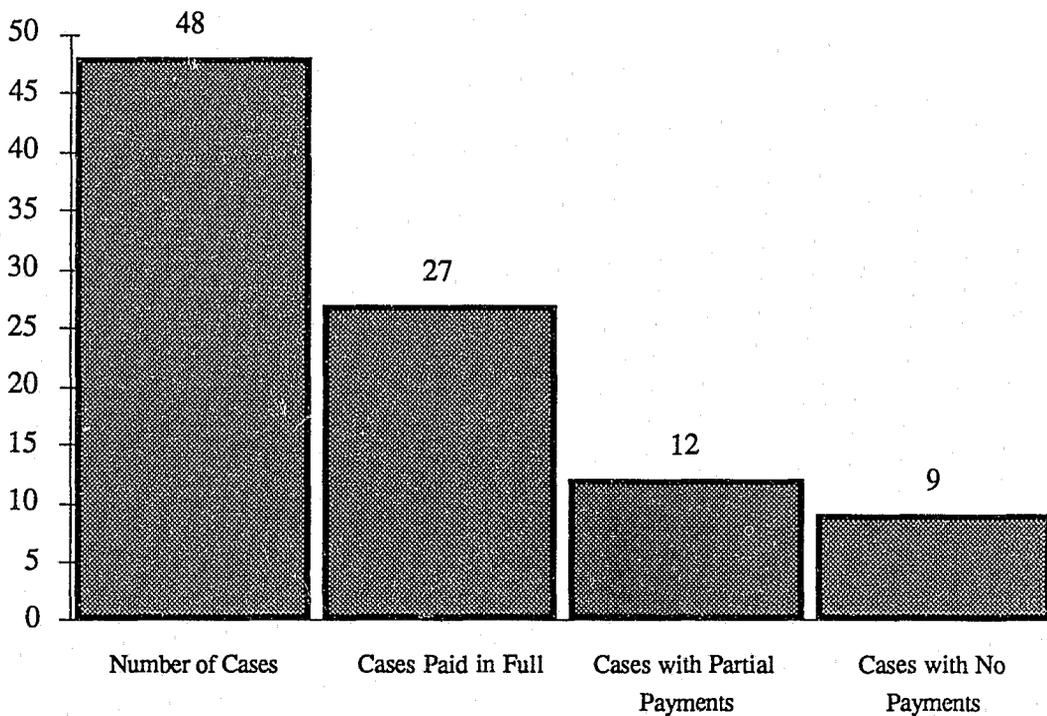


Shasta County

Dollars Ordered and Collected

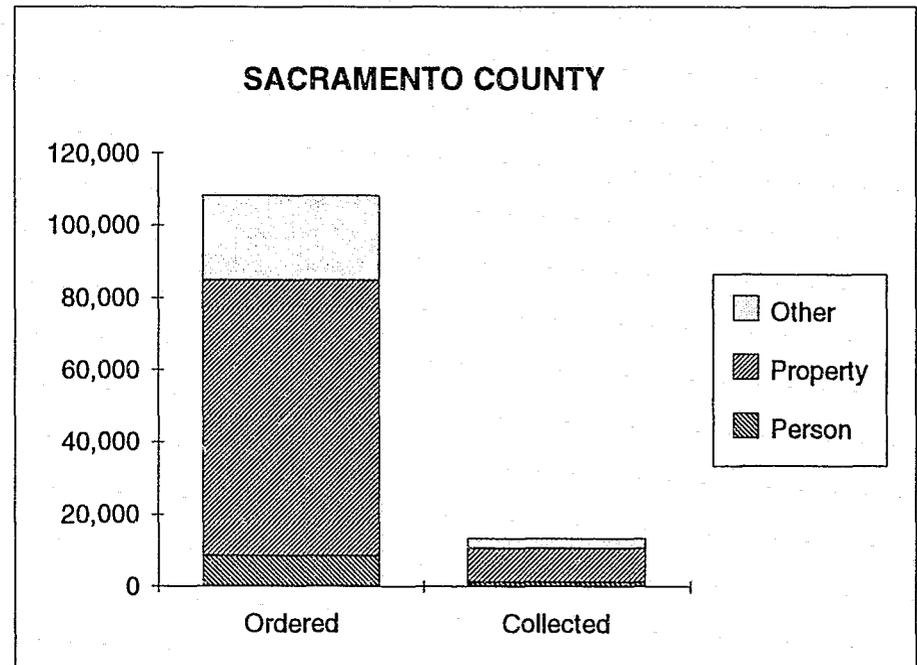
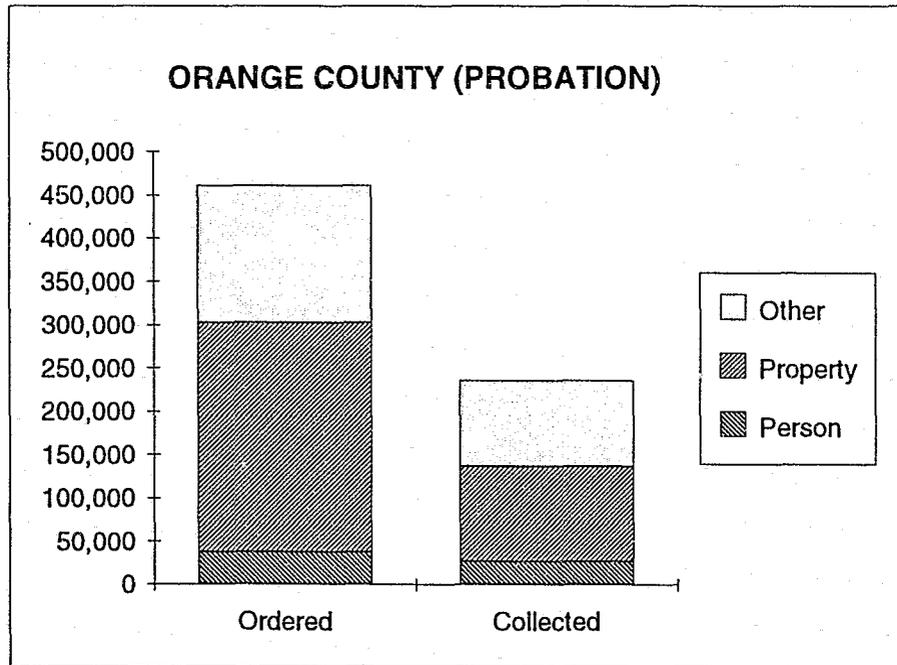
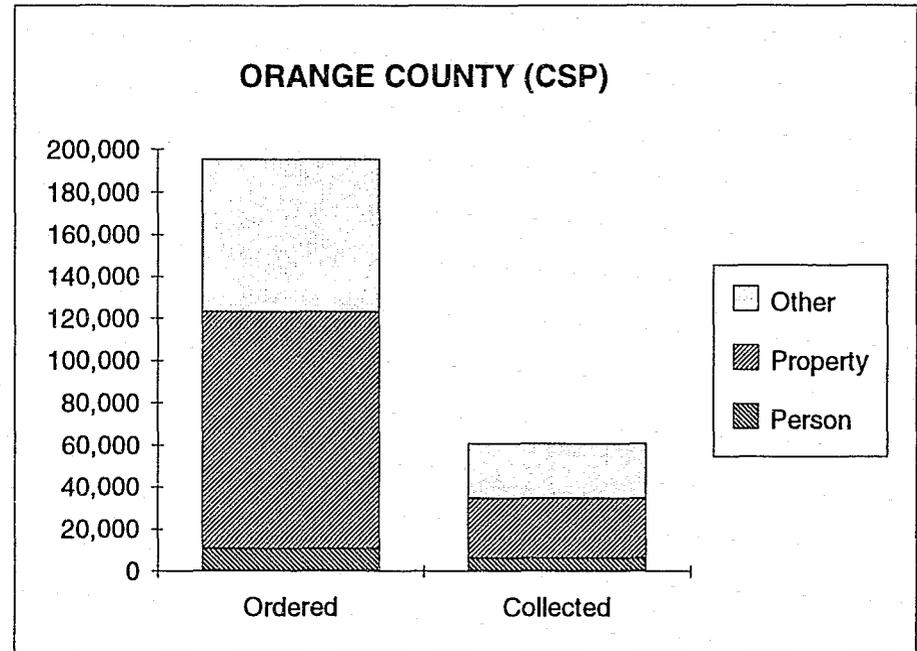
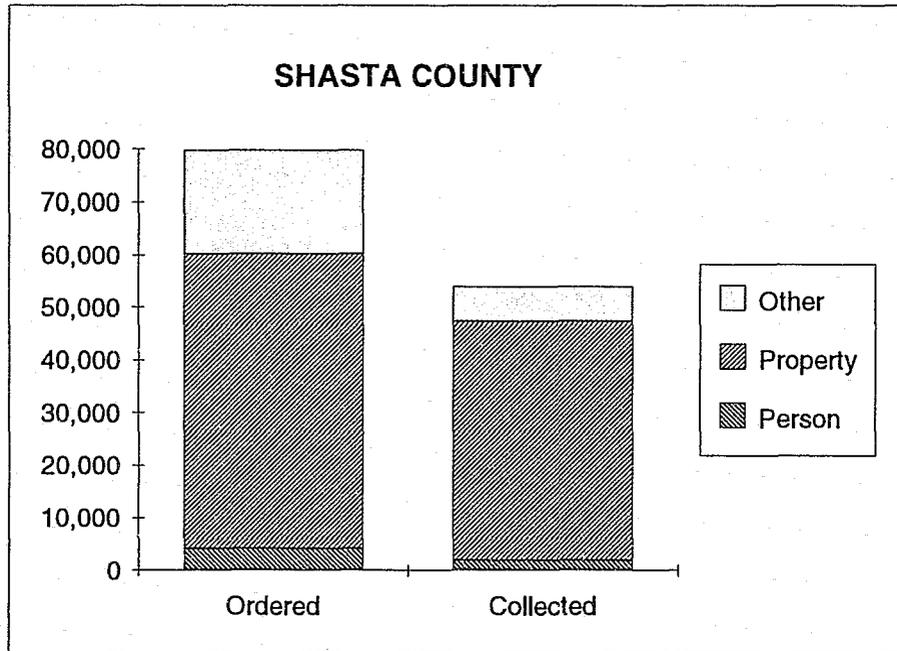


Number of Cases Reviewed



APPENDIX C
RESTITUTION BY CRIME TYPE

RESTITUTION DOLLARS BY CRIME TYPE



APPENDIX D
LEGISLATION

Senate Bill No. 2685

CHAPTER 1264

An act relating to crimes.

[Approved by Governor September 22, 1990. Filed with
Secretary of State September 25, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2685, Russell. Crimes: victim restitution.

Existing law contains numerous crime-victim restitution provisions.

This bill, in addition, would create within the Office of Criminal Justice Planning a one-year pilot program which would study the effectiveness of collecting restitution which is ordered paid to crime victims in 3 counties, as specified.

This bill would provide that the program shall be implemented by the office in conjunction with the State Board of Control.

The people of the State of California do enact as follows:

SECTION 1. There is hereby created within the Office of Criminal Justice Planning a one-year pilot program which shall study the effectiveness of collecting restitution which is ordered paid to crime victims.

The program, which shall be implemented by the office in conjunction with the State Board of Control, shall monitor restitution orders and their collections, and prepare a final accounting comparing the amount of victim restitution defendants are ordered to pay upon sentencing with the actual amount paid by the defendants. The counties included in this program shall be Sacramento County, Orange County, and Shasta County.

O

RESTITUTION STUDY

SENATE BILL 2685



Pete Wilson
Governor

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