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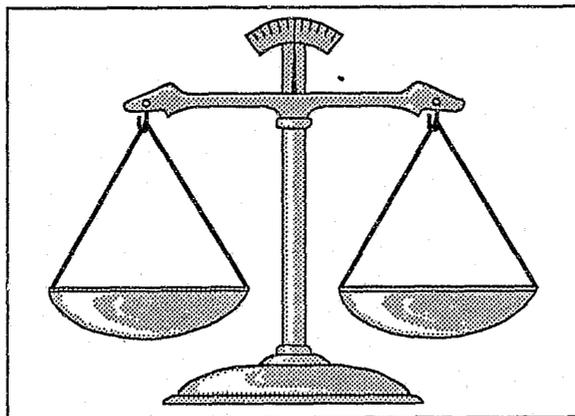
**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**

NCJRS

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ACQUISITIONS

VICTIM RESTITUTION IN NORTH CAROLINA



**REPORT TO THE 1994 SESSION
OF THE
GENERAL ASSEMBLY**

JUNE, 1994

THE HONORABLE THOMAS W. ROSS
CHAIRMAN

ROBIN L. LUBITZ
EXECUTIVE DIRECTOR

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I. INTRODUCTION

Restitution is a central feature of victim's rights. In North Carolina, victim restitution means monetary compensation to an aggrieved party for damage or loss. Victim restitution is authorized as a condition of probation as a "remedy to promote rehabilitation of criminal offenders, to provide compensation to victims of crime, and to reimburse the Crime Victims Compensation Fund," [G.S. 15A-1343(d)].

In August, 1993, the General Assembly directed the Sentencing and Policy Advisory Commission to "study restitution policy and its place as a part of North Carolina's criminal justice system." The Commission is required to make a report of its findings and recommendations, including any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly.

This report contains a description of the Sentencing Commission's study process, a summary of victim restitution procedures and practices in North Carolina, a statement of purpose and policy principles, and fifteen recommendations to enhance the system for ordering, collecting, monitoring, and enforcing victim restitution. Appendix I contains proposed legislation for certain recommendations. Appendix II contains a statistical analysis of victim restitution ordered and collected in North Carolina. Appendix III contains a summary of restitution statutes in the United States.

Study Process

The Sentencing Commission began its examination of victim restitution policy in October, 1993. Speakers from the Institute of Government, the Wake County Clerk of Court's Office, the Division of Adult Probation and Parole, and the Division of Victim and Justice Services presented information on current victim restitution policies and procedures. Staff presented 1991 data ("1991 Restitution Sentencing Practices in North Carolina") describing the frequency of restitution orders, amounts of restitution ordered, and profiles of defendants ordered to pay restitution.

In December, 1993, the Commission continued its examination of victim restitution. Staff presented data ("Restitution in North Carolina: A Look at Restitution Ordered Versus Restitution Paid") summarizing victim restitution ordered and collected through the first quarter of 1990. Staff also presented a "Compendium of Restitution Statutes in the United States" which the Subcommittee discussed. A representative of the Administrative Office of the Courts explained the automated Financial Management System and how its functions related to restitution payments. Five speakers presented proposals for improving the restitution process in North Carolina. The speakers represented the Division of Adult Probation and Parole, the Association of Clerks of Superior Court, the Victim Assistance Network, the Division of Victim and Justice Services, and Justice Fellowship. Chairman Ross appointed a Restitution Subcommittee

comprising eleven members of the Sentencing Commission in order to further study the proposals presented by various agencies and groups.

The Restitution Subcommittee met in January, February, March, and April, 1994. At each of these meetings, members discussed methods for ordering, collecting, monitoring, and enforcing victim restitution. The Subcommittee examined statutes, policies, and practices in North Carolina and in other states. They investigated and debated the merits of proposals to improve victim restitution and scrutinized legal, administrative, and resource impediments to each proposal. Upon completion of its study, the Subcommittee submitted proposals to the Sentencing Commission.

The Sentencing and Policy Advisory Commission reviewed the proposals of the Restitution Subcommittee and adopted fifteen recommendations on April 22, 1994. Taken as a whole, the recommendations comprise a comprehensive strategy to improve crime victim restitution in North Carolina.

II. VICTIM RESTITUTION IN NORTH CAROLINA

Victim Restitution Procedures

Ordering Victim Restitution

The court has the discretion to order a defendant to make restitution as a condition of probation. If the defendant is given an active sentence, the court may recommend that restitution be made a condition of work release or parole. When ordering restitution as a condition of probation, the court is statutorily required to consider the defendant's resources, including real and personal property and income derived from that property, ability to earn, obligation to support dependents, and other factors that pertain to the defendant's ability to make restitution. The amount of restitution the court orders must be supported by the evidence. The court may order partial restitution when it appears that the damage or loss caused by the offense(s) is greater than the defendant will be able to pay.

The "Fair Treatment for Victims and Witnesses Act" outlines rights that members of the criminal justice system should afford to victims of felony and serious misdemeanor crimes. These rights include the opportunity to submit a victim impact statement for consideration by the court.

Collecting, Monitoring, and Disbursing Victim Restitution

The clerk of court's office in each county collects restitution payments. The Administrative Office of the Courts maintains and monitors records of restitution payments, either in manual form in the clerks' offices or in the automated Financial Management System which contains records of installment payments of court debts. North Carolina General Statutes set out the priority for disbursing court debts as follows: (1) costs due the county; (2) costs due the city; (3) fines to the school fund; (4) restitution prorated among the persons entitled to it; (5) costs due the State; and (6) attorney's fees. The clerk of court is authorized to disburse restitution payments when: (1) complete restitution has been received; or (2) when, in the opinion of the clerk, additional payments will not be collected; or (3) upon the request of the person(s) entitled to it; and (4) at least once a calendar year.

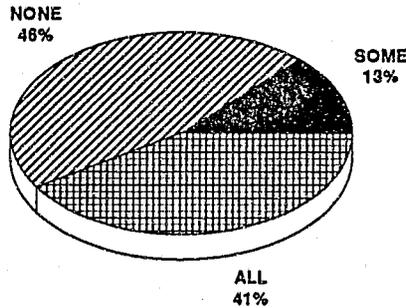
Enforcing Victim Restitution

The court may order a defendant to pay restitution as a condition of unsupervised or supervised probation. In the case of unsupervised probation, the court is responsible for enforcing the payment of restitution. If the offender does not fulfill this condition of unsupervised probation, the court may modify the sentence to place the offender on supervised probation or may activate the suspended sentence. In the case of supervised probation, the probation officer is responsible for enforcing restitution payments. North Carolina General Statutes permit the court to authorize a probation officer to determine a restitution payment schedule. If the offender does not fulfill this condition of supervised probation, the probation officer may return the case to court to ask for a modification of the sentence or the activation of the suspended sentence.

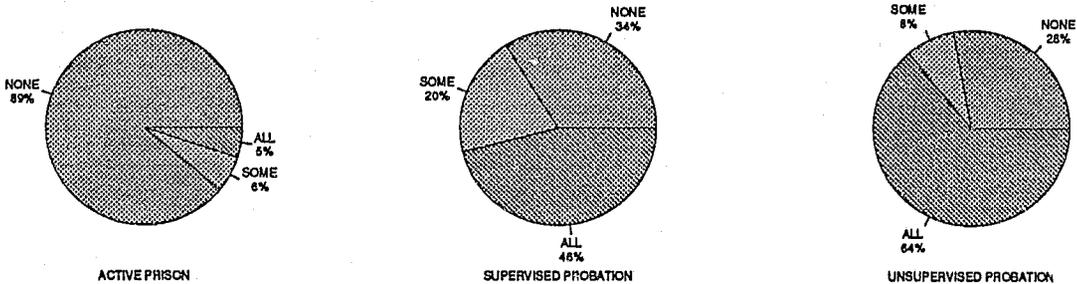
Victim Restitution Practices

In order to examine current restitution practices in North Carolina, the Sentencing Commission conducted a study of victim restitution ordered and collected. The study included data on a sample of 561 offenders ordered to pay restitution during the first quarter of 1990. In the sample, 140 offenders received an active prison sentence, 249 offenders received a sentence of supervised probation, and 172 offenders received a sentence of unsupervised probation. The study tracked the amount of restitution paid by these offenders for three and half years after the restitution was ordered.

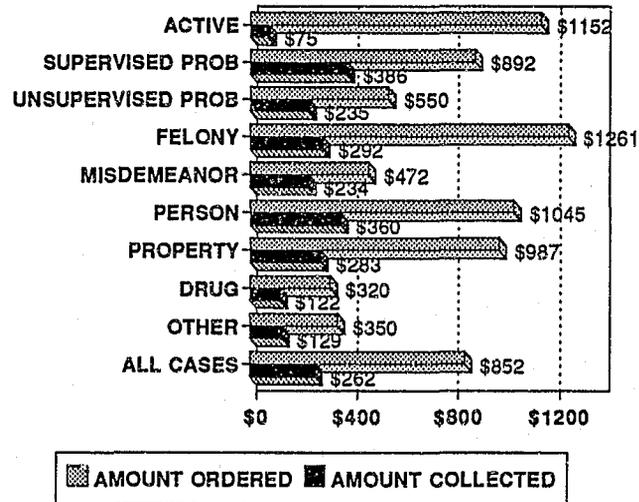
Of all persons in the sample, 46% paid no restitution. Forty-one percent paid all of the restitution ordered and 13% paid some of the restitution ordered.



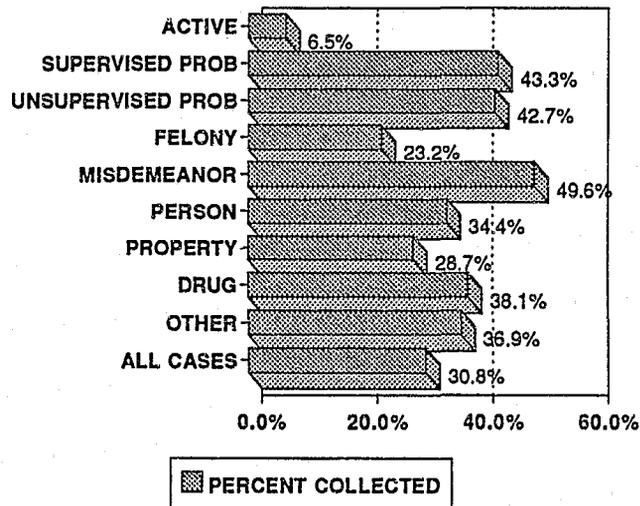
Persons on unsupervised probation were most likely (64%) to have paid all of their restitution, followed by those on supervised probation (46%). Only 5% of persons with an active (DOC) sentence paid all of their restitution. In addition, another 8% of those on unsupervised probation, 20% of those on supervised probation, and 6% of those with an active (DOC) sentence paid some of their restitution. Twenty-eight percent of those on unsupervised probation, 34% of those on supervised probation, and 89% of those with an active (DOC) sentence paid none of their restitution.



The average amount of restitution ordered was \$852 and the average amount paid was \$262. Restitution ordered for felony convictions was higher (\$1,261) than for misdemeanor convictions (\$472). Among the different categories of crime, restitution ordered for offenses against the person was the highest (\$1,045), while restitution ordered for drug offenders was the lowest (\$320). Offenders on supervised probation paid the highest amount (\$386), while those serving an active (DOC) sentence paid the lowest amount (\$75).



The overall average amount collected per offender was 30.8%. The average amount collected per offender was highest for offenders on supervised probation (43.3%) and lowest for offenders with active (DOC) sentences (6.5%). On the average, the court was more likely to collect the restitution ordered from misdemeanants (49.6%) than from felons (23.2%). Among the different categories of crime, the average amount collected per offender was highest in the drug crime category (38.1%) and lowest in the property crime category (28.7%).



III. RECOMMENDATIONS FOR IMPROVING RESTITUTION POLICY

Purpose of Victim Restitution

The North Carolina Sentencing and Policy Advisory Commission believes that the overall purpose of victim restitution is to administer justice. Offender-related purposes include accepting responsibility for the crime committed and rehabilitation by making amends for the harm caused by their actions. Victim-related goals include holding offenders accountable for their actions and, to the extent possible, restoring the victim to his or her pre-crime status.

Victim restitution policies and procedures should be fair. To be fair to a victim, restitution procedures must provide an opportunity to claim all relevant losses and be structured to develop reasonable expectations on the part of victims so that they are not "victimized" a second time through the disappointment of hopes regarding restitution payments. Similarly, restitution procedures must be fair to offenders. Loss determination procedures should be fair and based on factual evidence. Restitution orders should be shaped to the offender's ability to pay, and the judge should enter precise restitution orders which indicate the amount and terms of restitution.

Principles for Increasing Victim Restitution

From a systems perspective, it is important that restitution ordering, collecting, monitoring, and enforcement be viewed as a priority and that resources be directed to support these objectives. Without first establishing the mindset that victim restitution is important, these objectives cannot be met. Based on a 1989 study of restitution policies and practices in New Jersey by Arthur Anderson Consulting, the following principles can provide a framework for increasing victim restitution in North Carolina.

Statutory dictates must be followed. It is not sufficient to address victim restitution policy by adopting laws. It is imperative that criminal justice officials take these laws seriously and translate the laws into routine practices in courtrooms across the state.

Complete and accurate financial information about the defendant must be available to the court and must be maintained throughout probation supervision. Financial sanctions are most effective when they are tailored to fit the specific circumstances of the individual. This requires the judge to have as much relevant information as possible concerning the defendant at the time of sentencing. Probation officer activity during the period of supervision will also be more effective if the officer has a true picture of the probationer's finances.

The court must instill in the offender the seriousness of the restitution obligation. There must be an expectation that the defendant will pay as much as possible toward court-imposed financial obligations at the time of sentencing. This should be communicated to the defendant in terms of a specific dollar amount which should be made a part of the plea agreement in appropriate cases. In the cases where the monetary penalties are not paid immediately, payment schedules should be designed to collect the total due in the least amount of time given the defendant's income and other expenses. Consequences for nonpayment should be outlined clearly and in detail.

A series of increasingly negative consequences must be used routinely in response to default on the victim restitution payment plan contained in the sentence. Written policies must outline a sequence of events that follow default in the court-ordered payments and ensure compliance. A series of increasingly negative consequences should follow noncompliance with payment before the offender is brought back to court for violating the court order.

Constructive use of authority must be brought to bear on the task of enforcing court orders involving victim restitution. When an offender is returned to court for violating the terms of his or her restitution obligation, the judge must be prepared to apply sanctions for noncompliance, including revocation of the suspended sentence. Victim restitution will be a credible sanction only if offenders believe that it will be strictly enforced by the court.

Sentencing and Policy Advisory Commission Recommendations

The Sentencing and Policy Advisory Commission makes the following fifteen recommendations to improve the ordering, collecting, monitoring, and enforcing of victim restitution in North Carolina.

Ordering Victim Restitution

Recommendation 1: The Commission recommends that the Administrative Office of the Courts develop and adopt a standard form or standard information to address victim impact. The Commission further recommends that this be done in consultation with the Conference of District Attorneys and the Victim Assistance Network.

Recommendation 2: The Commission recommends legislation to require the district attorney to seek to obtain a Victim Impact Statement in all felony cases and serious misdemeanor cases and to present it to the court.

(Proposed Legislation in Appendix I, Part 1)

Recommendation 3: The Commission recommends that the Division of Adult Probation and Parole develop explicit policies and procedures for assessing the defendant's ability to pay restitution. These policies and procedures should describe pertinent financial information to be collected, verification of information procedures, staff responsible for collecting the information, point(s) in the process when the information is collected, process for relaying information to the court, and specification of the payment schedule by the court. The D.A.P.P. should develop agreements to obtain and share information about offenders' financial status with other components of the justice system, including Indigency Screening staff, Pretrial Services staff, Community Penalties staff, and TASC staff.

Recommendation 4: The Commission recommends further study of mandatory presentence reports after representatives of the Administrative Office of the Courts (Community Penalties), the Division of Adult Probation and Parole, and staff of the Sentencing Commission have conferred and developed cost estimates for preparing presentence reports for selected offender categories.

Recommendation 5: The Commission recommends legislation to make the ordering of restitution a priority in all cases where it is appropriate.

(Proposed Legislation in Appendix I, Part 2)

Recommendation 6: The Commission recommends legislation to make restitution the first priority among funds disbursed by the clerk of court.

(Proposed Legislation in Appendix I, Part 3)

Collecting, Monitoring, and Disbursing Victim Restitution

Recommendation 7: The Commission recommends that the Administrative Office of the Courts develop procedures to share automated information with the Division of Adult Probation and Parole in order to facilitate documentation and monitoring of restitution payments in cases of supervised probation.

Recommendation 8: The Commission recommends that the Administrative Office of the Courts expand its Financial Management System to include generation of monthly reports and issuance of bills, unless the Administrative Office of the Courts determines that such expansion is legally, administratively, or financially not feasible.

Recommendation 9: The Commission recommends that defendants be permitted to use credit and debit cards to pay restitution, unless the Administrative Office of the Courts determines that the use of such cards is legally, administratively, or financially not feasible.

Recommendation 10: The Commission recommends that the Division of Adult Probation and Parole continue efforts to establish a crime victim advocate program. Furthermore, the Commission supports the Department of Correction's efforts to secure grant funds to provide restitution monitoring information to victims in cases involving supervised probation and to provide post-sentencing victim advocacy services.

Enforcing Victim Restitution

Recommendation 11: The Commission recommends that the Administrative Office of the Courts and the Division of Adult Probation and Parole jointly develop written policies to enforce compliance with victim restitution in unsupervised and supervised probation cases. The agencies should indicate staff monitoring and enforcement responsibilities and procedures including a series of increasingly negative consequences to be used routinely in response to default on the restitution payment plan (e.g. automatic docketing, billing, wage withholding, privatization of collection, withholding state-granted privileges).

Recommendation 12: The Commission recommends legislation to permit the court to extend a period of probation up to five years, for a total period of ten years, if the defendant was convicted of an offense, and to extend a period of probation up to three years, for a total of five years, if the defendant was under deferred prosecution, primarily for the purpose of allowing the defendant to complete a program of restitution.

(Proposed Legislation in Appendix I, Part 4)

Recommendation 13: The Commission recommends that the court should have the authority to garnish a defendant's wages for default on a restitution obligation, unless the Administrative Office of the Courts determines that such garnishment is legally, administratively, or financially not feasible.

Recommendation 14: The Commission recommends that the Division of Adult Probation and Parole establish written policies and procedures to graduate the intensity of sanctions against probationers who default on restitution payments and study the use of restitution centers as a component of a continuum of sanctions against restitution payment violators.

Victims Compensation Fund

Recommendation 15: The Commission recommends to the General Assembly that the Victims Compensation Fund be maintained at a fully funded level.

Appendix I

Supporting Legislation

for

Sentencing Commission Recommendations

PART 1. VICTIM IMPACT STATEMENTS

Section 1. Chapter 15A of the General Statutes is amended by adding a new section to read:

"§15A-825.1. Victim impact statements.

Notwithstanding G.S. 15A-825, the district attorney shall seek to obtain from each victim of a crime, as defined in this article, a victim impact statement and present it to the court."

Sec. 2. G.S. 15A-826 reads as rewritten:

"§15A-826. Victim and witness assistants.

Victim and witness assistants are responsible for coordinating efforts within the law-enforcement and judicial systems to assure that each victim and witness is treated in accordance with this Article.

Victim and witness assistants are also responsible for providing assistance to victims in completing victim impact statements."

Sec. 3. G.S. 15A-1343 reads as rewritten:

"(d) Restitution as a Condition of Probation. - As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation, but the court is not required to make findings of fact or conclusions of law on these matters when the sentence is imposed. In determining the amount of restitution that is due, the court shall take into consideration any victim impact statement presented. The amount must be limited to that supported by the record, and the court may order partial restitution or reparation when it appears that the damage or loss caused by the offense or offenses is greater than that which the defendant is able to pay. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, "restitution" shall mean (i) compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action, and (ii) reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-455(b). As used herein, "reparation" shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein "aggrieved party" includes individuals, firms, corporations, associations, other organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. Provided, that no government agency shall benefit by way of restitution except for particular damage or loss to it over and above its normal operating costs and except that the State may receive restitution for the total amount of a judgment authorized by G.S. 7A-455(b). A

government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done. Provided further, that no third party shall benefit by way of restitution or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant, but the liability of a third party to pay indemnity to an aggrieved party or any payment of indemnity actually made by a third party to an aggrieved party does not prohibit or limit in any way the power of the court to require the defendant to make complete and full restitution or reparation to the aggrieved party for the total amount of the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders, to provide for compensation to victims of crime, and to reimburse the Crime Victims Compensation Fund established by G.S. 15B-23, and shall not be construed to be a fine or other punishment as provided for in the Constitution and laws of this State."

PART 2. ORDER RESTITUTION WHERE APPROPRIATE

Sec. 4. G.S. 15A-825 is amended by adding a new subsection to read:

"(9b) Can expect, after court review of a victim impact statement, that a judge would order restitution in all cases where it is appropriate."

PART 3. MAKE RESTITUTION FIRST PRIORITY

Sec. 5. G.S. 7A-304 reads as rewritten:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- (1) Sums in restitution prorated among the persons entitled thereto;
- ~~(1)~~(2) Costs due the county;
- ~~(2)~~(3) Costs due the city;
- ~~(3)~~(4) Fines to the county school fund;
- (4) ~~Sums in restitution prorated among the persons entitled thereto;~~
- (5) Costs due the State;
- (6) Attorney's fees.

Sums in restitution received by the clerk of superior court shall be disbursed when:

- (1) Complete restitution has been received; or
- (2) When, in the opinion of the clerk, additional payments in restriction will not be collected; or
- (3) Upon the request of the person or persons entitled thereto; and
- (4) In any event, at least once each calendar year."

PART 4. EXTEND PROBATION TO PAY RESTITUTION

Sec. 6. G.S. 15A-1342 reads as rewritten:

"(a) Period. - The court may place a convicted offender on probation for a maximum of five years. The court may place a defendant as to whom prosecution has been deferred on probation for a maximum of two years. The probation remains conditional and subject to revocation during the period of probation imposed, unless terminated as provided in subsection (b) or G.S. 15A-1341 (c).

The court with the consent of the defendant may extend the period of probation beyond five years, or beyond two years if prosecution was deferred, (i) for the purpose of allowing the defendant to complete a program of restitution, or (ii) to allow the defendant to continue medical or psychiatric treatment ordered as a condition of the probation. If the offender was convicted, then the The period of extension shall not exceed three five years beyond the original period of probation. If prosecution was deferred, then the period of extension shall not exceed three years beyond the original period of probation. The special extension authorized herein may be ordered only in the last six months of the probation term."

Sec. 7. G.S. 15A-1343.2, as enacted by Section 17.1 of Chapter 538 of the 1993 Session Laws and as amended by Section 3 of Chapter 19 of the 1994 Extra Session Laws, reads as rewritten:

"(d) Lengths of Probation Terms Under Structured Sentencing. -- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the term of probation for offenders sentenced under Article 81B shall be as follows:

- (1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;
- (2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;
- (3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and
- (4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

The court may with the consent of the offender extend the original term of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three five years, and may only be ordered in the last six months of the original probation term."

Appendix II

Statistical Analysis of Victim Restitution

Ordered and Collected in North Carolina

A LOOK AT RESTITUTION ORDERED VERSUS RESTITUTION PAID IN NORTH CAROLINA

This report analyzes restitution paid in North Carolina by a sample of offenders sentenced during the first quarter of 1990. The report summarizes all restitution paid through the third quarter of 1993. A previous report prepared for the Sentencing Commission [1991 Restitution Sentencing Practices in North Carolina] examined restitution ordered in North Carolina during 1991 for all felons and misdemeanants by type of crime. That information was obtained from computerized court records available from AOC. However, it is more difficult to determine how much of the restitution ordered by judges is actually being paid.

This study identified a sample of 561 offenders ordered to pay restitution during the first quarter of 1990. This sample included 140 offenders who received an active prison sentence, 249 offenders who received a sentence of supervised probation, and 172 offenders who received a sentence of unsupervised probation.¹ The study excludes offenders who received active jail sentences and excludes offenders convicted of worthless check offenses. Furthermore, the study does not include any possible restitution paid by offenders on parole supervision.

The data for these groups was obtained in three different ways. For offenders receiving active sentences to prison, restitution payment information was collected from computerized records maintained by the DOC's Work Release Accounting Division. For offenders sentenced to supervised probation, restitution payment information was provided by the Division of Adult Probation and Parole (compiled from individual records maintained by probation officers in the branch offices). For offenders sentenced to unsupervised probation, restitution payment information was obtained from the Clerks of Superior Court (fifty-five counties were included in the sample). The clerks were mailed information containing the names of offenders in the sample and the amount of restitution ordered. The clerks then provided the amount of restitution paid to date.

In all three groups, the most current information that was available was used -- i.e., the amount recorded as being paid as of the last quarter of 1993. Therefore, this report only summarizes the amount paid in the three and one-half years which have elapsed since the restitution was ordered. Since some cases are still active, it is possible that additional restitution will be paid in the future.

PERCENT PAYING RESTITUTION

The pie charts on the next several pages provide information on the percent of those ordered to pay restitution who have paid restitution. Of all persons in this sample, 46% paid no

¹ The sample selected for this study is not, in the strictest statistical sense, scientific. However, it is large enough to provide a general picture of what is happening.

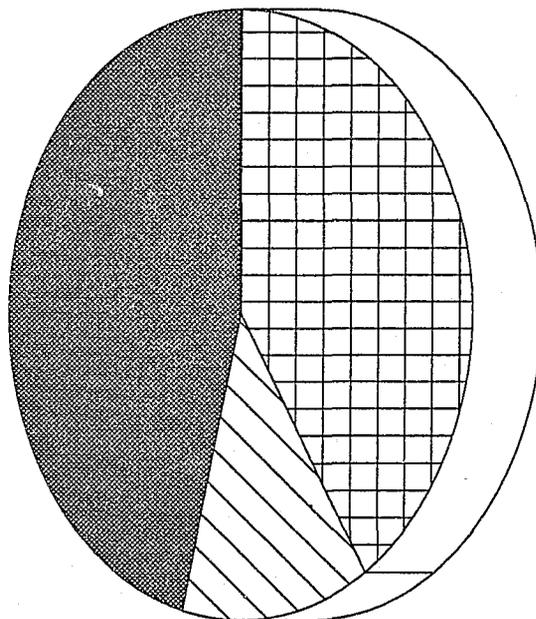
restitution. Forty-one percent paid all of the restitution ordered and 13% paid some of the restitution ordered. In comparing felons and misdemeanants, 57% of felons and 37% of misdemeanants paid no restitution. Twenty-eight percent of felons paid all of their restitution and 15% paid some of their restitution. Fifty-three percent of misdemeanants paid all of their restitution and 10% paid some of their restitution.

Persons on unsupervised probation were most likely (64%) to have paid all of their restitution, followed by those on supervised probation (46%). Only 5% of persons with an active (DOC) sentence paid all of their restitution. In addition, another 8% of those on unsupervised probation, 20% of those on supervised probation, and 6% of those with an active (DOC) sentence paid some of their restitution. Twenty-eight percent of those on unsupervised probation, 34% of those on supervised probation, and 89% of those with an active (DOC) sentence paid none of their restitution.

An examination of these offenders by crime category indicates that 62% of public order/other offenders, 40% of property offenders, 39% of drug offenders, and 37% of person offenders paid all of their restitution. In addition, 4% of public order/other offenders, 15% of property offenders, 9% of drug offenders, and 12% of person offenders paid some of their restitution. Thirty-four percent of public order/other offenders, 45% of property offenders, 51% of person offenders, and 52% of drug offenders paid none of their restitution.

RESTITUTION COLLECTED PERCENT PAYING RESTITUTION

NONE
46%



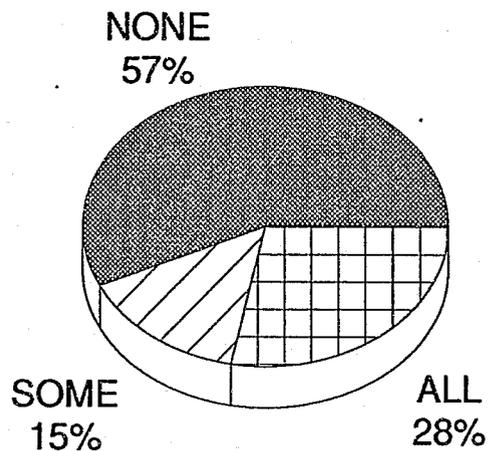
SOME
13%

ALL
41%

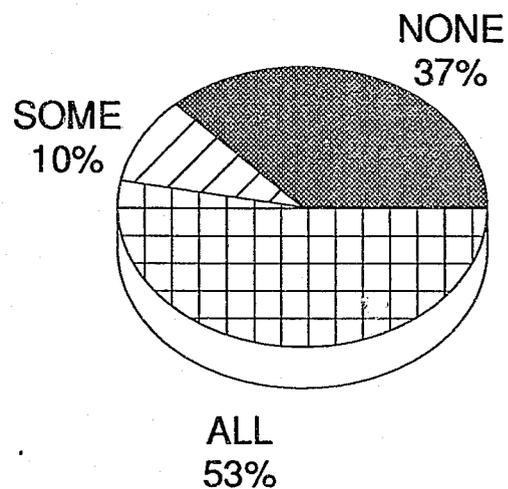
ALL CASES

RESTITUTION COLLECTED

PERCENT PAYING RESTITUTION

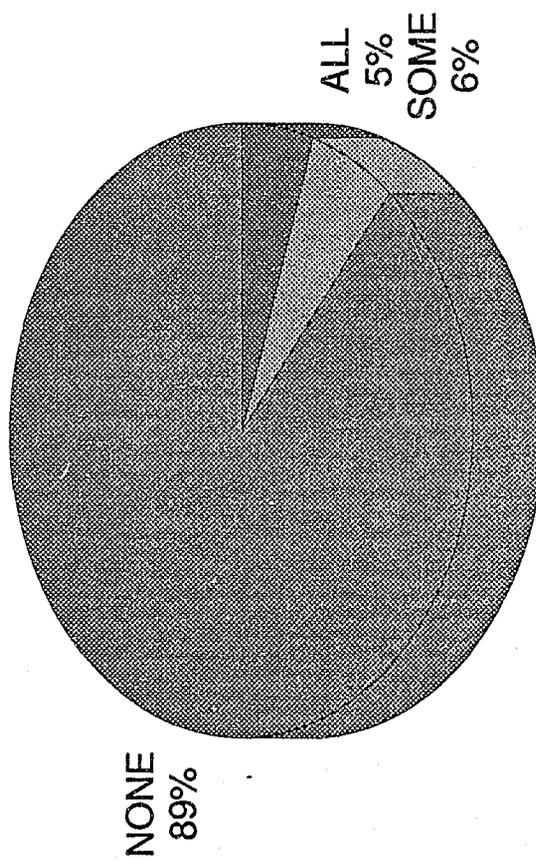


FELONIES



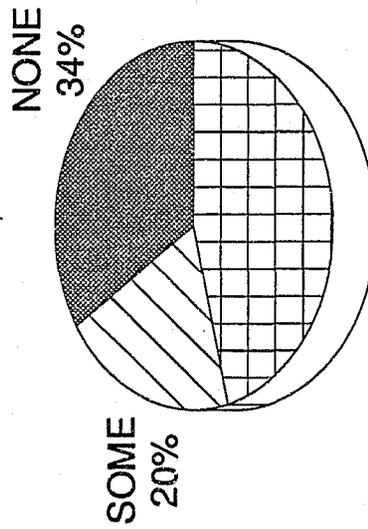
MISDEMEANORS

RESTITUTION COLLECTED PERCENT PAYING RESTITUTION

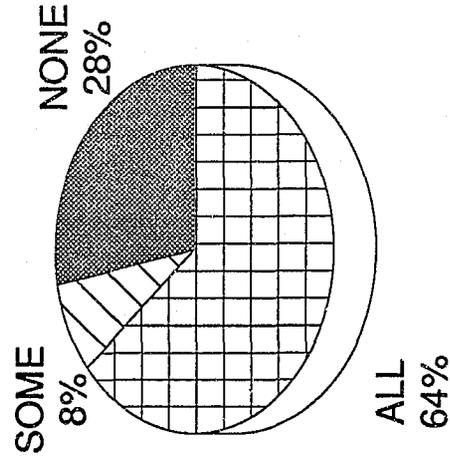


ACTIVE PRISON SENTENCE

RESTITUTION COLLECTED PERCENT PAYING RESTITUTION



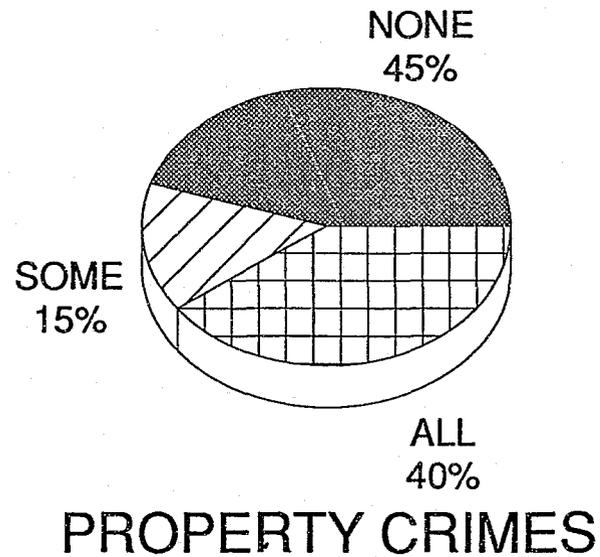
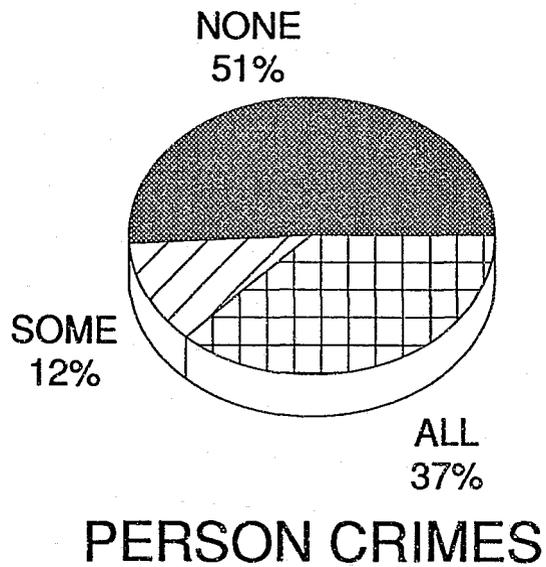
SUPERVISED PROB



UNSUPERVISED PROB

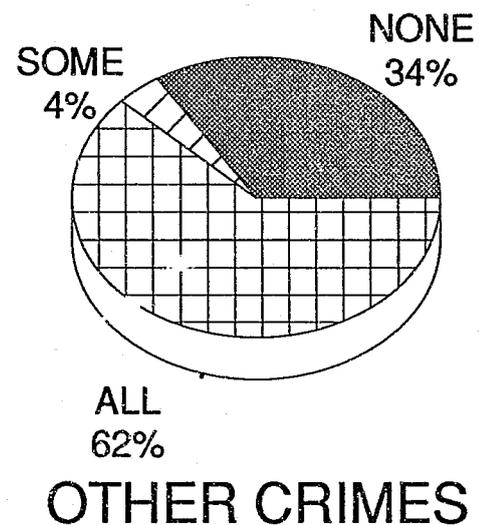
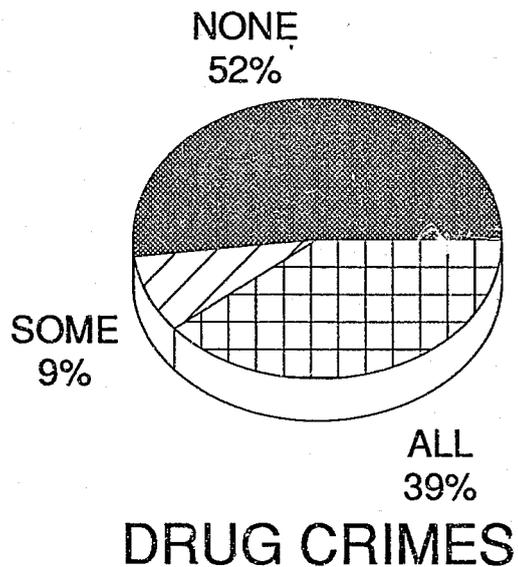
RESTITUTION COLLECTED

PERCENT PAYING RESTITUTION



RESTITUTION COLLECTED

PERCENT PAYING RESTITUTION

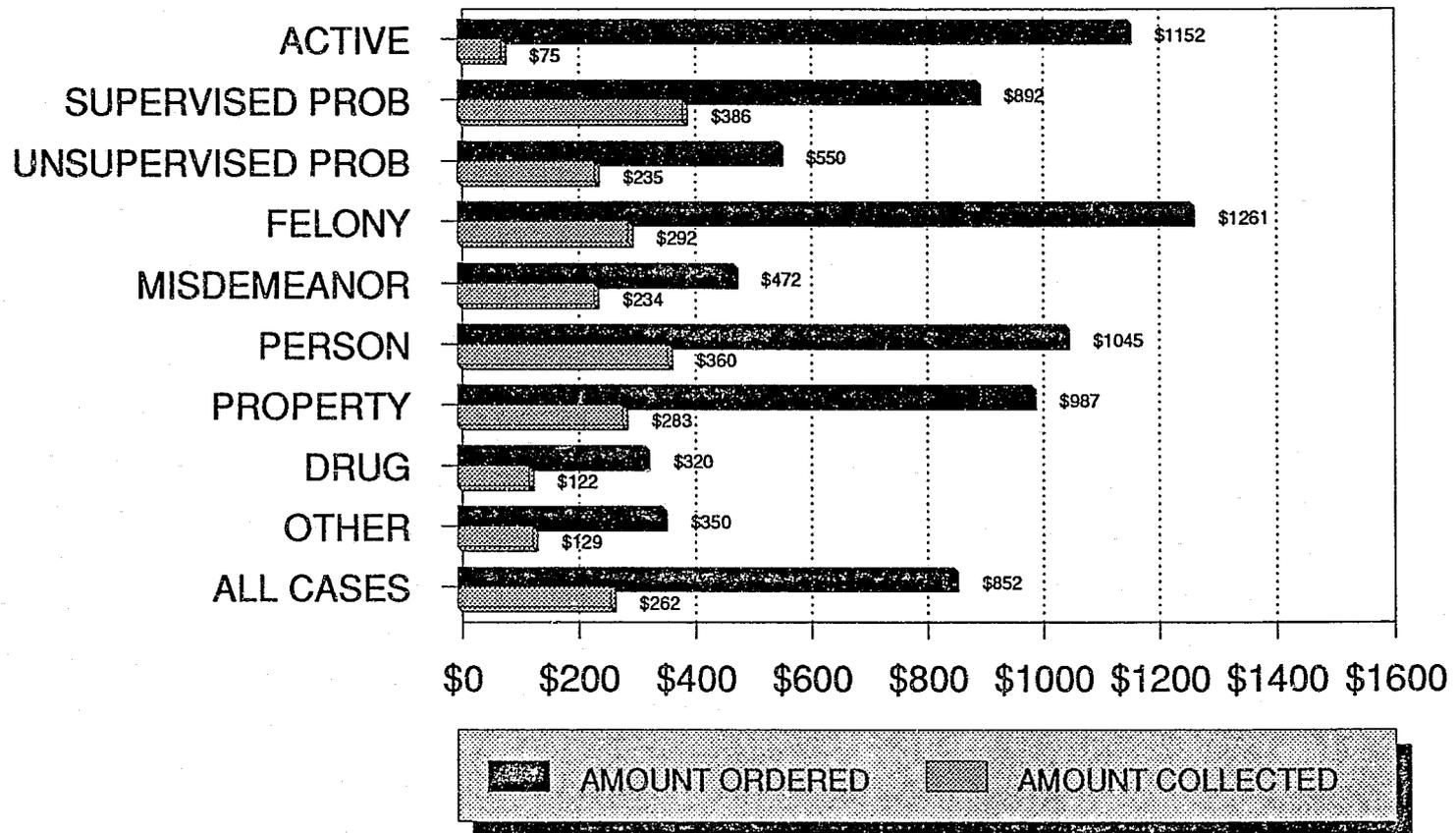


AMOUNT OF RESTITUTION ORDERED VERSUS AMOUNT OF RESTITUTION PAID

The chart on the following two pages show (1) the amounts ordered and the amounts paid and (2) the percentage of restitution paid to restitution ordered for the various breakdowns already discussed. As shown on these charts, for this sample the average restitution ordered was \$852 and the average amount paid was \$262, or 30.8%. Felony restitution ordered was highest (\$1261) and drug offenders received the lowest restitution (\$320). Amount paid was highest for those on supervised probation (\$386) and lowest for active [DOC] offenders (\$75). The percentage of restitution paid to restitution ordered was highest for misdemeanants (49.6%) and lowest for active [DOC] offenders (6.5%).

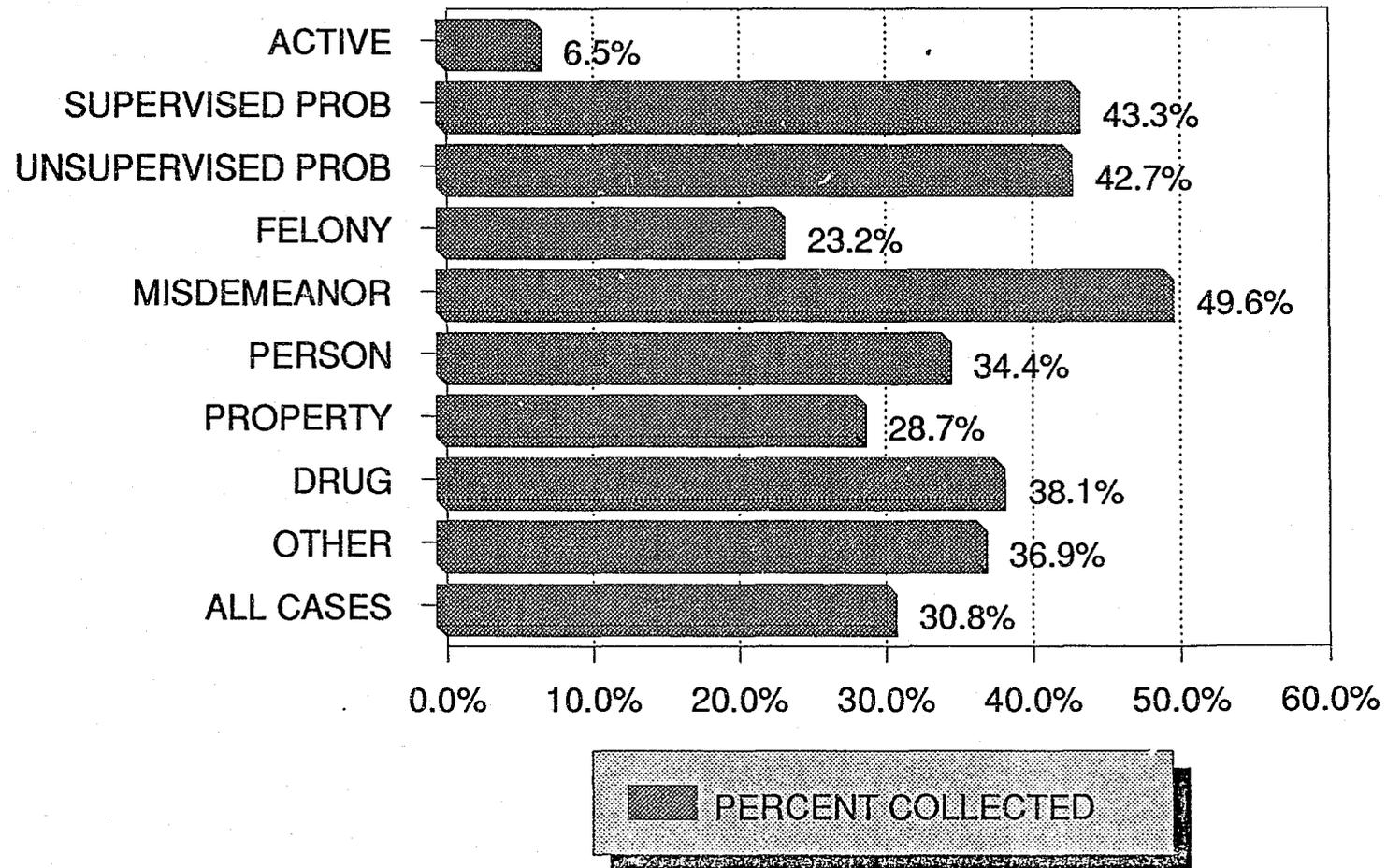
RESTITUTION ORDERED AND COLLECTED

AVERAGE AMOUNTS



RESTITUTION ORDERED AND COLLECTED

TOTAL % COLLECTED

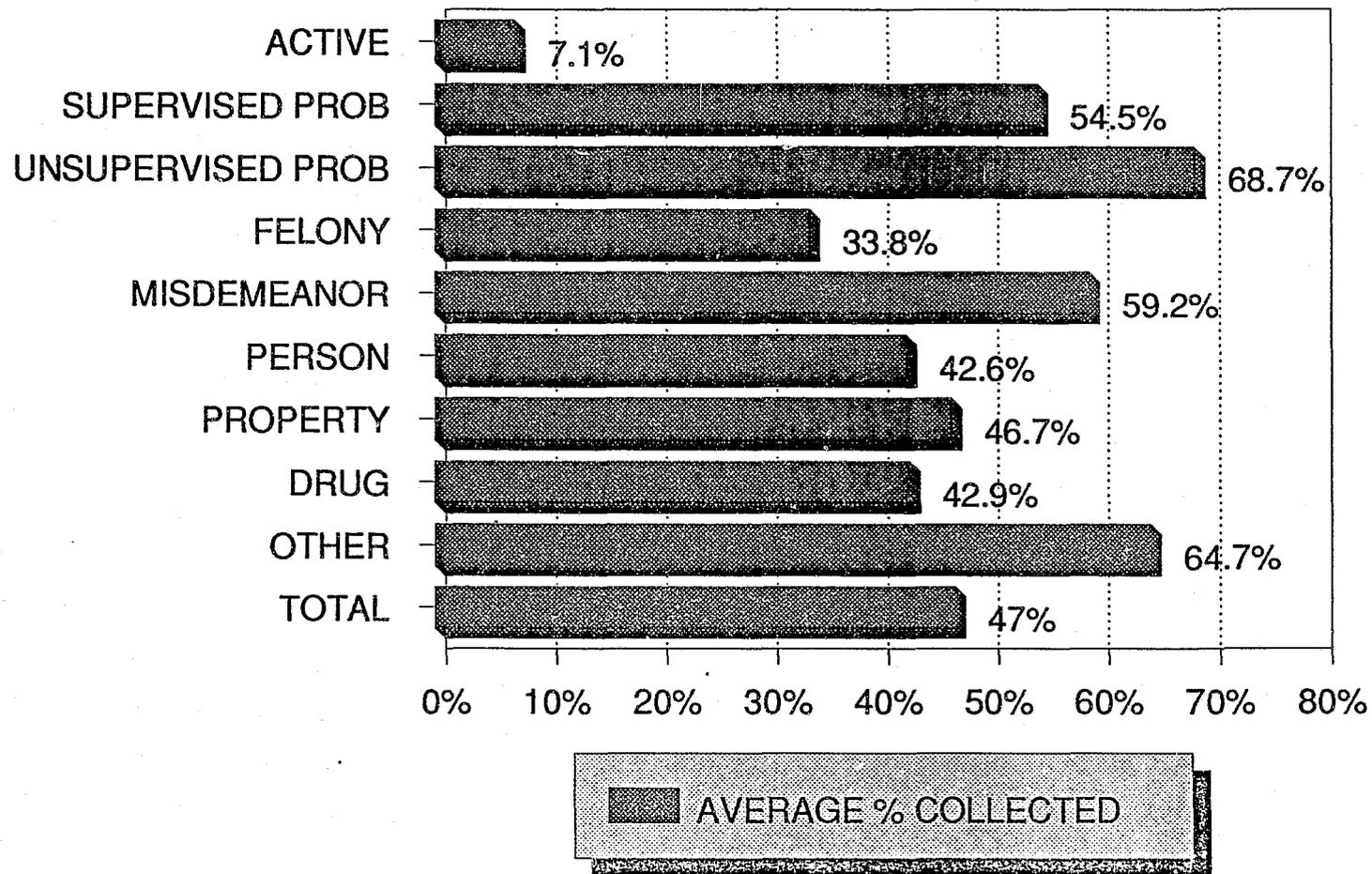


AVERAGE PERCENT OF RESTITUTION COLLECTED FOR EACH OFFENDER

Because nonpayment by offenders with a very large amount of restitution ordered can easily skew the averages when comparing amount paid to amount ordered, another way of examining the average restitution collected is to compute the percent of restitution paid to restitution ordered for each offender and then get an average percentage paid per offender.² The overall average amount collected per offender was 47.0%. The average amount collected per offender was highest for unsupervised probation offenders (68.7%) and public order/other crime category (64.7%). The average amount collected per offender was lowest for active [DOC] offenders (7.1%), followed felony offenders (33.8%).

² This, in essence, is a way of normalizing the data, i.e., giving each person in the database an equal weight. For example, if there are 10 people in the database and 9 of them are ordered to pay \$100 and one of them is ordered to pay \$10,000 and the 9 people all pay \$100 and the person ordered to pay \$10,000 pays nothing, the average amount paid to the average amount ordered is \$90 to \$1,090, or 8%. However, if we get the percentage of the average amount paid to the average amount ordered for each person, there are 9 people with 100 percent and one person with 0%. Computing the average percent collected for each offender then provides an average of 90% collected per offender.

RESTITUTION ORDERED AND COLLECTED AVERAGE % COLLECTED FOR EACH OFFENDER



Appendix III

Summary of Restitution Statutes in the United States

ISSUE	PRACTICE	STATES
I. ORDERING RESTITUTION:		
A. Determine Recipients	1. Presentence investigation report, which is required in certain cases, is prepared by the probation officer. It may include a victim impact statement.	AK, CA, CO, DE, ID, KS, MI, MN, MT, NE, NV, NH, NY, ND, OH, OK, RI, TN, TX; US
	2. The victim prepares a victim impact statement and it is presented with other information directly to the court; a presentence investigation report is optional.	IA, LA, NJ, NM, OR, PA, SC, SD, VA, WA, WV, WY
	3. Restitution hearing is held or oral testimony is received prior to sentencing.	AL, ID, MI, NE, NH, NJ, NM, ND, OR
	4. Offender develops a restitution plan and submits it to the ordering authority for modification and adoption.	GA, NM, SD, VA, WY
	5. Fact finder in the case makes the determination.	AR
B. Determine Type of Restitution	1. Court orders monetary sum based upon the loss.	ALL STATES
	2. Court may order offender to make restitution through services, either to the victim or to a public agency, if the victim consents.	KY, MI; US
	3. Court may order a fixed sum and/or a fixed number of hours under a work referral program.	DE, NH
C. Determine Amount of Restitution	1. Court may order the offender to pay any public, private, or private nonprofit organization that has provided services to the victim.	AK
	2. Court may order the offender to reimburse county services that were required to make emergency responses to the crime.	ME
	3. Court may order the offender to pay a portion of a fine as a compensatory fine to be paid to the victim.	OR

ISSUE	PRACTICE	STATES
	4. Court may order the offender to pay up to double the amount of the pecuniary damages.	UT
D. Determine Ability to Pay	1. Court determines based on PSL	CO, ID, KS, MI, MN, MT, NE, NV, NY, ND
	2. Offender develops a restitution plan and submits it to the ordering authority for modification and adoption.	GA, NM, SD, VA, WY
	3. Court determines based on evidence presented in restitution hearing.	AL, ID, NE
	4. Court determines based upon the recommendations of county financial evaluation officer.	CA
E. Determine Priority for Restitution	1. Statute gives the payment of victim restitution priority over all debts owed to the State.	AZ, ID, IA, KY, MD, WA, WI
	2. Statute gives the payment of victim restitution priority over fines.	HI, NY
F. Other Ideas	1. Constitutional article or statute requires the court to order restitution in every case in which a victim suffers a loss or injury.	CA, FL, IA, KS, KY, ME, MA, MN, MO, NH, NY, ND, RI, SC, SD, TN, UT, VT, WA, WV, WI, WY
	2. Court/supervising authority is required to make written findings to support its decision concerning restitution.	FL, GA, ID, KS, ME, MD, MI, MN, MS, NV, NM, NY, NC, ND, SC, SD, UT, VT, WA, WV, WI, WY
	3. Court orders offender sentenced to imprisonment to serve his sentence in a restitution center.	AK, CA, TX
	4. Court orders a plan of restitution which consists of: (1) restitution to the victim; (2) reimbursement of the crime victim assistance fund; (3) court costs; and (4) court-appointed attorney's fees.	IA

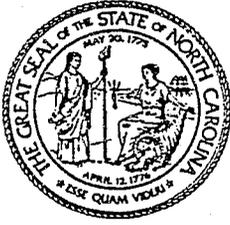
ISSUE	PRACTICE	STATES
II. ADMINISTRATIVE RESPONSIBILITY FOR RESTITUTION:		
A. Receive, Process, and Disburse Payments	1. Clerk of the court.	AL, AZ, DE, FL, GA, ID, IA, KS, KY, ME, MN, MO, NE, NJ, NM, NC, RI, SD, UT, WI, WY
	2. Department of Probation/Division of Probation/probation officer (non-incarcerated offenders).	CA, DE, GA, ME, MD, MA, NV, NH, NJ, OK, PA, TX, UT
	3. Department of Corrections/Department of Prisons (incarcerated offenders).	CA, FL, NV, NH, NJ, OK, TN, WI
	4. Offender pays victim directly.	AL, MS; US
	5. Local sheriff.	TN, TX
	6. Other authorized persons (selected by the court at that time).	GA, NY
	7. Victim Services Division of Criminal Justice Division.	IN
	8. District attorney's office.	ME
	9. U.S. Attorney General's office.	US
	10. District court judge.	PA
	11. Department of Correction collects, remits to clerk of court for disbursement.	WA
B. Monitor Payments	1. Probation or parole officer (non-incarcerated offenders).	AL, CA, ME, MD, MA, MN, MO, NV, NH, NJ, OK, UT, WA
	2. Department of Corrections (incarcerated offenders).	AL, CA, FL, NV, NH, NJ, OK, TN, WA
	3. Clerk of the court.	AZ, FL, MN, UT
	4. The supervising authority.	IA, MS, NC
	5. Other authorized persons.	MN, MO

ISSUE	PRACTICE	STATES
	6. Local sheriff.	TN, TX
	7. Court services officer/community correctional services officer.	KS
	8. Restitution officer.	MO
C. Enforce Payments	1. Department of Corrections.	AL, AK, CA, FL, ME, MD, MA, MN, MS, NH, OR, WA
	2. Clerk of the court.	AL, AZ, KY
	3. The supervising authority.	IA, GA, NC
	4. Parole Board.	AL
III. PROCESS OF COLLECTING AND DISBURSING RESTITUTION:		
A. Receive and Process Payments	1. The supervising staff in a restitution center receives offender's paycheck and deducts his obligations.	AL, AK, CA, FL, MS, NV, SC, TN, TX
	2. The court may add on a set sum or a percentage of the total amount due as a collection/administration fee.	CA, KY, MD, MT, NJ, NY, OK, RI, WI
B. Disburse Payments	N/A	
C. Monitor Payments	1. Offender reports daily to or resides in a restitution center where the supervising staff monitors his progress.	AL, AK, CA, FL, MS, NV, SC, TN, TX
	2. The Department of Corrections may extend the limits of confinement for certain offenders and place them in the community under intensive supervision of a correction officer so they may work.	AL, SC
D. Enforce Payments	1. Supervising authority may order the offender to report daily to or reside in a restitution center.	AL, AK, CA, FL, MS, NV, SC, TN, TX

ISSUE	PRACTICE	STATES
	2. Court may order offender's employer to withhold a portion of the offender's income.	AL, IL, RI, WA
	3. Court may order offender to execute an assignment of wages.	DE, NH, SD, WA
	4. Court may order the offender to apply the balance of his cash bond to restitution.	IL, MT, NY, SC
	5. Court may order sheriff to attach assets owned by offender.	AL, RI, WA
	6. The Department of Corrections may extend the limits of confinement for certain offenders and place them in the community under intensive supervision of a correction officer. The offender is required to have a forty hour work week planned.	AL, SC
	7. Court may hold the offender's driver's license. Offender receives a temporary license which expires the date his restitution is due. If it is not paid, then his license is suspended.	DE, NJ
	8. Court may set a schedule of appearances before the court during the payment period.	SD
E. Penalties for Nonpayment	1. For willful refusal to comply with the restitution order:	
	a. The court may modify or revoke probation or parole; the activated sentence may include work release.	AL, CA, CO, CT, FL, GA, HI, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, OK, PA, SD, UT, WA, WV; US
	b. The court may hold the offender in contempt.	AL, AK, AZ, GA, IA, KY, MD, MS, NH, OR, PA; US
	c. The court may order the sheriff to attach assets owned by the offender.	GA, IL, OK

ISSUE	PRACTICE	STATES
	d. The court may enter a civil judgment against the offender for the outstanding balance of the payments.	IA
	2. If the offender is unable to comply with the restitution order:	
	a. The court may modify or revoke the order.	AL, CO, IL, MD, MN, MS, MT, NJ, NC, ND, OK, OR, PA, UT, WY; US
	b. The court may extend the period of supervision.	CO, IL, IA, KS, MS, NC, OK, OR, UT, WA, WY
IV. OTHER ISSUES		
A. Civil Remedies	1. State or victim may enforce the restitution order as a civil judgment upon default.	FL, MD, MT, NE, NJ, NY, OR, UT, WA, WI, WY; US
	2. Restitution order in criminal case given full force and effect of a final judgment in a civil action.	AL, AK, CA, CO, GA, MS, MO, SD, VT
	3. Clerk automatically enters the restitution order on the civil judgment docket when the court orders the restitution.	IL, IN, MD, MN, NY, RI, UT
	4. State or victim may file restitution order as lien against offender.	AZ, IA, MI, ND
	5. Clerk automatically enters the restitution order on the civil judgment docket if the offender has not paid restitution in full by the end of his sentence.	DE, NV
	6. Court may order the clerk to place the restitution order on the civil docket.	VA
B. County Restitution Fund	1. If court is unable to locate victim, money is placed in county fund. Indigent offenders perform community service and the county pays their restitution from the fund at minimum wage.	MT

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**NORTH CAROLINA
SENTENCING AND POLICY ADVISORY COMMISSION**

**COMPENDIUM
OF
COMMUNITY CORRECTIONS PROGRAMS
IN
NORTH CAROLINA
FISCAL YEAR 1993-94**

155196

**U.S. Department of Justice
National Institute of Justice**

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January 20, 1995**