

RESTITUTION AS IT MEETS PUBLIC EXPECTATIONS
IN GEORGIA'S RESTITUTION PROGRAMS

Bill Read

Program Development Specialist
Georgia Department of Offender Rehabilitation
800 Peachtree Street N.E.
Atlanta, Georgia 30308

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In discussing restitution as it meets public expectations, it is of course necessary first to identify exactly what those expectations are. Based upon experience with Georgia's restitution programs, I believe that public expectations concerning offender restitution programs - indeed public expectations concerning any community-based correctional program - are four-fold. Generally, I believe that the public expects restitution programs to be safe for the community, to be a meaningful sanction for the offender, to be beneficial to society, and to be useful to the criminal justice system. Having established these four points as representing basic public expectations concerning restitution programs, the remainder of this paper is devoted to a discussion of how restitution programs in Georgia seek to address and satisfy these expectations.

Although the Georgia judiciary has a longstanding tradition of using restitution in conjunction with the sentencing of certain offenders, the Georgia Department of Offender Rehabilitation (DOR) has received Law Enforcement Assistance Administration (LEAA) grant funds in recent years to aid in formalizing, refining, and expanding the use of offender restitution in Georgia.^{1/} Consequently, the Georgia DOR now operates two types of formal restitution programs - a non-residential program which focuses on offenders assigned to make restitution as a condition of their probation and a residential restitution program which focuses on offenders diverted from incarceration to make restitution while living in a community facility. Some of the philosophy

and operational mechanics of these programs will be generally discussed hereafter, but the reader who is interested in a more comprehensive description is referred to an article which has been published previously.^{2/} Also, the reader should understand that the discussion which follows hereafter - except where noted - refers to general uses of restitution in Georgia rather than to either specific type of restitution program.

Having clarified these points, let us proceed to the first public expectation - that a restitution program should be safe for the community. While this expectation may seem obvious to a criminal justice professional, it remains worthy of emphasis because the public today is increasingly fearful of being victimized while simultaneously being largely unaware that most public offenders do not really constitute a dangerous threat to society. The public still tends to categorize all public offenders as dangerous criminals without being aware that a relatively small percentage of public offenders actually commit crimes of violence or crimes against persons. Dangerous offenders obviously do constitute a threat to society, and the public has every right to expect and to be reassured that criminal justice professionals will deal with such offenders in secure institutional facilities. However, the majority of public offenders have committed crimes that can perhaps best be described as non-violent property offenses. It is these non-dangerous offenders who comprise the usual target population for restitution programs which function in a community environment. Thus the basic problem facing any restitution program is how to separate the non-

dangerous offender from the dangerous offender. The primary solution is simply to intensively screen all prospective program participants prior to program entry.

In Georgia restitution programs, initial screening is usually done by probation personnel as a routine part of the pre-sentence investigation process. Some offenders can easily be excluded at this point due to the nature of their present offense or due to other factors such as prior criminal history. The remaining offenders, who constitute both probable and borderline restitution cases, are then typically discussed with the local district attorney, who excludes additional cases as inappropriate in his view for a restitution recommendation. The remaining cases are then presented to the court with a restitution recommendation and with a proposed plan of restitution. The judge then performs another screening by accepting, modifying, or rejecting the restitution recommendation and levying an appropriate sentence. Then finally, after an offender has been approved for participation in a restitution program, program personnel supervise him closely and may later request that the judge revoke the offender's probation if he shows evidence of being unable to function in a community setting. Thus a four stage screening process is normally used in Georgia restitution programs to meet the public's expectation that community restitution programs will exclude any dangerous offenders from program participation. That the public should have such an expectation is clearly right and proper. That the criminal

justice system should honor such an expectation is clearly in the best interests of everyone.

The second public expectation concerning restitution is that restitution programs should be a meaningful sanction for the offender. Another way of expressing this expectation is to state that the experience of making restitution should have both a deterrent value and a rehabilitative value regarding an offender's possible future criminal activity. The basic thrust of the deterrence aspect of this expectation is that offenders should receive some additional penalty in addition to being required to make restitution. Although equity theorists (eg; Walster, et al)^{3/} have generally argued for a purely equitable restitution sanction on the grounds that requiring additional penalties beyond simple restitution may have a negative psychological impact on the offender which could interfere with any rehabilitative impact of his paying his debt to society by making restitution, equity in any given case is probably much more strongly related to the personal perceptions of the victim and the offender than to the objective facts of the case. Consensual agreement regarding equity is certainly extremely difficult to attain in many cases even for an objective third party and indeed consensual equity may be impossible to obtain in some cases. The relationship of offender perceived equity to the successful completion of restitution and to subsequent criminality is just now beginning to be examined in the Georgia programs and no data are yet available.

In any event, the present use of restitution in Georgia generally subscribes to the view espoused by Schafer,^{4/} who argues that a penalty should be assessed in addition to requiring full restitution by the offender. The reasoning for an additional penalty is simply that since not all offenders are caught the first time that they commit a crime, to require only that simple restitution be made for a specific crime once an offender is caught would probably tempt many offenders to calculate the odds of being caught and to commit additional crimes if they believed that they would only be required to make simple restitution when eventually caught. Thus the additional penalty beyond simple restitution is viewed as a means of increasing the deterrent value of the criminal justice sanction, thereby presumably decreasing the likelihood of future criminal behavior. In Georgia programs, this additional penalty usually consists of requiring the offender to pay a fine and/or court costs and requiring the offender to remain on probation or to reside in a community facility for a specified period.

In most cases, offender restitution in Georgia must be made monetarily, so that the primary needs of the victim are addressed. However, in many cases the Georgia restitution programs require offenders to make restitution to the community at large by performing unpaid community service tasks in lieu of monetarily paying restitution and/or a fine. This procedure

is typically used with cases in which the victim loss was recovered, with cases in which the crime was against society at large rather than against an individual victim, and with cases in which monetary payments are not deemed appropriate due to the offender's high or low economic status. The service restitution program aspect is intended to provide a sanction which will perhaps be more meaningful to the offender than the mere payment of money and which may also have a positive rehabilitative impact on the offender in addition to its deterrent value.

Some examples of community service activities in which offenders have participated include: helping in mental hospitals and health centers, repairing the houses of elderly pensioners to prevent condemnation, doing grounds maintenance for youth recreation groups, assisting civic and charity organizations in money-making projects, constructing playground equipment for church and neighborhood child care centers, collecting and repairing toys for needy children at Christmas, and conducting community clean-up projects. The question of whether participation in such community service activities actually does have a rehabilitative impact on offenders has to my knowledge not yet been scientifically demonstrated, but the potential for such rehabilitative impacts occurring can be easily recognized. Nader and Combs-Schilling^{5/} have reported instances in other cultures in which offenders make service restitution to their community, and they note that both the

offenders and citizens share civic pride in the outcomes of such community service projects. Likewise, it is fairly common in Georgia restitution programs to hear offenders comment about how participating in community service activities has been a positive experience for them. Thus the public expectation that restitution programs should have a meaningful impact upon offenders is recognized and addressed by Georgia's restitution programs from both the deterrent and rehabilitative perspectives.

The third public expectation concerning restitution is the expectation that restitution programs will be beneficial to society - both to victims in particular and to society in general. With regard to victims, although the funneling effect of the criminal justice system requires that government funded victim compensation programs must eventually be developed if the needs of all victims are ever to be fully addressed, offender restitution programs can nevertheless play an important part in the overall framework of victim compensation programs by partially funding the operating costs of such programs. Meanwhile, offender restitution programs can significantly address the needs of certain victims when the offender is caught and convicted. For example, during fiscal years 1976 and 1977, offenders in Georgia's restitution programs paid over \$1,531,000 in restitution to the victims of their offenses. Additionally, these offenders paid over \$5,152,000 in fines and court costs. Certainly these figures represent a significant contribution

by offenders making restitution to their victims and to society.

Moreover, offender restitution programs have other specific benefits to society at large. One of these benefits is clearly an economic one in that the offender remains in his local community working, paying taxes, and supporting his family while responsibly paying his debt to society instead of perhaps being incarcerated in a distant institution and becoming a non-productive tax drain on society, while his family may be forced to go on welfare. For example, during fiscal year 1977, offenders making restitution through Georgia's nine community-based restitution facilities paid over \$162,000 in taxes, spent over \$210,000 in their local communities for their own personal support, provided over \$56,000 in assistance to their families, and saved an additional \$62,000 for use upon release to non-residential status. Additionally, the phenomenon of incarceration is increasingly being recognized as a process which wreaks havoc on an individual's sense of self-worth, which exposes him to peer pressures of other more hardened criminals, which contributes greatly to family instability by enforced separation, and which leaves a person stigmatized in his community as an ex-convict upon his eventual release. In truth, the full social costs to an offender, his family, and to society at large as a consequence of incarceration have still not yet been fully assessed, but these costs are certainly recognized to be both significant and far-reaching. It would

therefore also seem that the positive social benefits of appropriate community-based criminal justice sanctions such as restitution programs would be equally significant and far-reaching and should be employed to effectively reintegrate all non-dangerous offenders back into society.

The fourth public expectation concerning restitution is that restitution programs should be useful to the criminal justice system. Certainly one way in which restitution programs are useful is that they are flexible in their nature and can be administered by many various arms of the criminal justice system at points ranging from pre-plea to post-incarceration. The Georgia DOR's restitution programs are operated by its Probation and Community Facilities Divisions and function both during and after the sentencing process. Thus Georgia's restitution programs serve both to enhance the use of restitution with probation in lieu of more traditional probation sanctions and to divert offenders from incarceration into residential community restitution facilities. However, restitution programs operate successfully in other states within district attorney offices or within court service sections.

Another area in which restitution programs are useful to the criminal justice system concerns the area of citizen support. Offender restitution is an extremely attractive concept and generates a broad base of citizen support which includes both liberals and conservatives. The present state of affairs in

which the needs of the criminal justice system are a low priority item when a state's meager budgetary resources are parceled out can be largely attributed to the fact that the general public is uninformed concerning the merits of an expanded community-based criminal justice system. However, restitution programs, by virtue of their broad-based appeal, can be used as a focal point to get local citizens involved in criminal justice problems to a point where the citizens will recognize that crime is a local problem and can be dealt with most effectively on a local level. In Georgia, for example, the formation of Citizen Advisory Boards and Community Correctional Associations is encouraged to generate and focus public support for criminal justice needs. If citizen involvement in restitution programs is structured properly, citizens soon begin to view a local program as their community program. The ultimate result is a growing involvement in all local community correctional programs and a transformation of diffuse public support into organized public pressure on legislative bodies to provide additional needed criminal justice resources on both a local and state level.

Lastly, restitution programs can also be extremely useful to the criminal justice system by helping to combat system overcrowding. For example, restitution programs which operate at the pre-sentencing level can streamline the court process by reducing the number of cases which ultimately go to trial.

However, it is in the area of diversion from incarceration that restitution programs can be of most significant benefit by helping to reduce the prison overcrowding problem which confronts most states in the nation today. Georgia presently operates nine residential facility programs which divert offenders from incarceration. The model program is the Cobb Restitution-Adjustment Center, a 40-bed leased facility which operates at the post-sentencing level. Program staff review all cases sentenced to incarceration from the Cobb Judicial Circuit and use both objective and subjective screening criteria to select for program participation those non-dangerous offenders who can be safely supervised in a community facility environment. The judge then amends his sentence to probation conditional upon the offender successfully participating in the Cobb Center program. The program itself consists of each offender maintaining employment in the community, making restitution as appropriate, and participating in a variety of individual and group learning experiences which are designed to improve the offender's personal and societal adjustment. The average length of residential status for an offender is 5 months, after which he is released to complete his probation under non-residential supervision.

The impact of the Cobb Center on prison admissions since it opened in November, 1975 has been quite noteworthy. For example, the number of prison commitments from the Cobb Judicial Circuit for the year prior to the Cobb Center opening

was 191. By contrast, the number of prison commitments from the Cobb Judicial Circuit for the first full year of program operation was 93. Thus the Cobb Center has effectively reduced prison commitments from the Cobb Judicial Circuit by 51%, with a total of 160 offenders having been diverted from incarceration in the 20 months that the program has been opened. And this diversion has been accomplished at virtually no risk to the community, because offenders who are unable to readily adjust to the demands of the program are quickly revoked to incarceration. To date, 78% of all offenders entering the Cobb Center program have successfully completed it, and recidivism among program graduates so far is only 3%.

The implications on any prison system of operating a statewide network of such restitution diversion facilities is truly significant. For example, a recent computer survey of new admissions to the Georgia prison system revealed that about 35% of all incoming offenders meet the objective criteria for entrance into the Cobb Center. Even assuming that about 10% of these offenders would upon subjective review be excluded from program participation, we are still left with about 25% of all new admissions who could be reasonably diverted from incarceration into a residential community facility. In Georgia, this would mean the diversion of about 1,750 offenders per year, thus immediately and significantly relieving the present prison overcrowding situation. Not surprisingly, the

Georgia Office of Planning and Budget and the DOR are looking very closely at the possibility of expanding the use of such facilities in Georgia.

The ~~relative cost effectiveness~~ of such restitution diversion facilities is also quite impressive. The Cobb Center, for example, operates on an annual state budget of approximately \$200,000. However, this gross budget actually represents an annual net budget of about \$150,000 because of the monies returned to the state treasury each year through such program income as room and board charges and taxes on offender earnings. The average sentence given to offenders entering the Cobb program is three years, and under Georgia law the minimum possible time after which any such offender can be paroled is one year. Thus, the Cobb Center can provide community-based residential and non-residential followup supervision for 80 offenders for one year at a cost of about ~~\$1,900~~ per offender. By contrast, it now costs the state of Georgia about ~~\$3,500~~ just to provide basic custodial incarceration for each inmate for a one year period.

Moreover, when capital outlay costs for new prisons are computed, the argument for community restitution diversion facilities is even more impressive. For example, Georgia is presently building a few new prisons to accommodate the projected increasing prison population. The average cost of a new prison is presently about \$28,000 per bed, or about \$11,000,000 for a 400 bed institution. Annual operating costs are then estimated

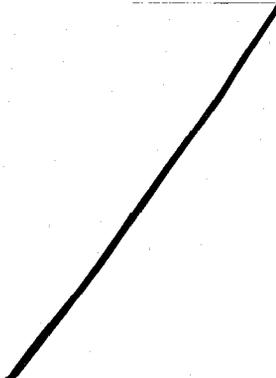
to be about \$1,500,000 thereafter. The total cost for building and operating such a prison over a 30 year period will thus be about \$56,000,000 in 1977 dollars. Again assuming a one year minimum average time of incarceration for non-dangerous offenders, only 12,000 such offenders could be incarcerated over a 30 year period at such an institution, at an average cost of about \$4,600 per offender per year. By comparison, the same \$56,000,000 could be used to operate twelve community diversion centers which could handle nearly 29,000 offenders during the same 30 year period at an average cost of about \$2,000 per offender per year. Additionally, whereas prisons are a relatively inflexible part of the corrections system once they have been constructed, a leased community facility operation can be modified as needed and is thus an extremely flexible unit of a dynamic corrections system. Clearly then, community restitution diversion programs such as the Cobb Center have many significant advantages over more traditional institutional facilities and certainly address and meet the public expectation that restitution programs should be useful to the criminal justice system.

In closing, I would simply say that restitution programs represent a type of community-based criminal justice sanction which can quite easily meet all public expectations concerning such programs. A properly administered restitution program is safe for the community, is a meaningful sanction for the offender, is beneficial to society, and is useful to the

criminal justice system. From a short-range perspective, it is the immediate pragmatic usefulness of restitution diversion programs to significantly alleviate the overcrowding pressures which presently confront the criminal justice system which should be particularly remembered. And from a longer-range perspective, it is the many far-reaching benefits of initially using the popular offender restitution concept to inform and organize the general public to support future increased resources for all criminal justice system needs, with a special emphasis on community-based correctional programs which have favorable cost-effectiveness outcomes, which should be recalled.

REFERENCES

- 1/ In 1974, LEAA grant number 74ED-99-0004 enabled the Georgia DOR to implement a residential facility restitution program. This program has since become state funded. In 1976, LEAA grant number 76ED-99-0026 enabled the Georgia DOR to implement a research-based non-residential pilot program designed to enhance the use of restitution with traditional probation sanctions. This program is presently still in progress.
- 2/ Read, Bill, How Restitution Works in Georgia, 60 JUDICATURE 7 (February, 1977).
- 3/ Walster, Elaine, et al, New Directions in Equity Research, 25 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 151 (1973).
- 4/ Schafer, Stephen, The Proper Role of a Victim-Compensation System, 21 CRIME AND DELINQUENCY 45 (January, 1975).
- 5/ Nader, L. and Combs-Schilling, E., Restitution in Cross Cultural Perspective, in J. Hudson (ed.) RESTITUTION IN CRIMINAL JUSTICE, 1976 (p. 13-33).



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