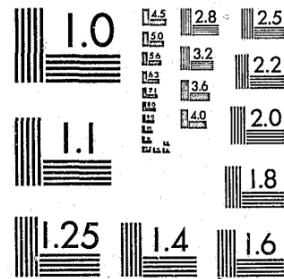


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THE IOWA RESTITUTION IN PROBATION EXPERIMENT

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U.S. Department of Justice
National Institute of Justice

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During its 1974 session, the Iowa Legislature passed a bill which required among other things that restitution would be made to the victims of criminal behavior. It is a "Hodge-podge" piece of legislation which deals with deferred sentence; conditions of probation; pre-sentence investigations; conditions of parole; and, of course, restitution.

With reference to restitution, the statute states;

"It is the policy of the state that restitution be made by each violator of the criminal laws to the victims of his criminal activities to the extent that the violator is reasonably able to do so. This section will be interpreted and administered to effectuate this policy."

Consequently, the State of Iowa has established that restitution shall be made as a matter of policy, but the statute does not state the reasons for the establishment of this policy. The debate indicated, however, that the major reasons were strong feelings of compassion for victims and a desire to punish violators. During the debate, the opinion was also expressed that the act of restitution would be rehabilitative in and of itself.

The law requires that restitution be a condition of a disposition of either deferred sentence or probation, and further requires that a formal plan of restitution be developed. It requires that such a plan be developed promptly and that the plan include "a specific amount of restitution to each victim and a schedule of restitution payments." Interestingly, it places the major responsibility for developing a plan of restitution on the defendant: "...the defendant, in cooperation with the probation officer assigned to the defendant, shall promptly prepare a plan of restitution....".

Once prepared, the plan of restitution must be presented to the court. The court may approve it, disapprove it, or modify it. At any subsequent date the plan of restitution may be changed to reduce or increase the amount of restitution made. Such changes can be made only upon approval of the court.

Full restitution is not required: the defendant is required to pay restitution to the extent that he or she is reasonably able to do so and the law recognizes that changing circumstances can affect the ability of the defendant to pay.

If the court approves a plan which does not require full restitution, or if the court orders no restitution, the court is required to file a specific statement as to its reasons and the facts supporting its determination.

The defendant has the right to request a hearing at any time on any issue relating to the plan of restitution and the court must grant the hearing. There is no similar right for victims.

Once the plan of restitution is approved by the court, it becomes a formal condition of probation. If the defendant fails to comply with the plan, the defendant is to be considered in violation of the probation or deferred sentence contract and can be revoked and incarcerated. (In our jurisdiction I am not aware of any case in which a probation has been revoked only because of inability or failure to pay restitution).

The other major provision of this bill specifies that by accepting restitution, the victim has not relinquished the right to recover further damages through civil action.

It is important to note that the Iowa law does not make restitution a pre-condition of either probation or deferred sentence. The disposition is made first and then a plan of restitution is developed. As a result, restitution is not considered as an alternative to incarceration, nor is inability a factor in denying probation. Further, the law states specifically that the period of probation shall not be extended merely to collect restitution. Consequently, if the court places an offender on probation for two years and if a plan of restitution is approved subsequently which provides for a monthly payment of \$25.00, the defendant is required to pay a total of \$600.00 regardless of the total amount of loss to the victim.

A few examples of restitution plans have been attached. In some cases preparation of the restitution plan has resulted in the development of a more general debt adjustment or debt consolidation plan. This has happened frequently enough so that some staff members have suggested that our department develop a debt adjustment service as an integral part of our correctional programs.

While the law requires the defendant to prepare a plan of restitution in cooperation with the probation officer, in practice it works the other way around. The probation officer assumes the major responsibility for preparation of the plan, whether or not the court orders it. As a result, the probation officer must determine the number of victims involved; the total amount of loss; the resources of the offender; and then must negotiate a plan which is both reasonable and satisfactory. This has substantially increased the work load of probation officers. Partly as a result of this and partly as a result of common sense, the letter of the law is sometimes avoided.

Where there is a single victim involved and where the loss to the victim is small, it is not unusual for the probation officer to see to it that restitution is made without developing a formal plan. The court is merely informed that restitution has been made and that no formal plan is necessary.

The Iowa law is specific in that it is the policy of the State of Iowa that offenders shall make restitution to their victims, but the law is not specific as to the purpose behind that policy. As a result, the tendency is to effectuate the policy without determining what effect it

has on the victim; what effect it has on the offender; and what effect it has on the correctional system itself. We just collect the money, regardless of effect.

In spite of the fact that we have no data to support this, there is little question in my mind but that one effect on the system is that the work load has increased. This is obviously true in the case of probation officers, but is also true for the administration which must develop accounting procedures and systems. It is quite possible that it costs the state as much or even more to collect and disburse restitution as the victims eventually receive. This does not mean necessarily that restitution is a bad idea; but unless it has other value for the system, for the victim, or for the offender, it is possible, if the legislature wishes to compensate victims, that it would be more efficient for the state to do this directly with funds appropriated for that purpose.

On a subjective basis, it seems that one value to the system is in the area of public relations. Even on a casual contact basis, merchants have indicated that they are quite aware of receiving restitution and that they are more interested in receiving restitution than in having all offenders incarcerated. If this subjective observation is correct, it is likely that the state policy on restitution will result in a decreased demand for and reliance on institutionalization as the correctional method. Unfortunately, we have no data upon which a conclusion can be reached objectively. It is something we ought to know, however, because if restitution does help to form public opinion favorable to using non-institutional correctional programs, restitution is indeed a valuable tool.

In our system we also have no objective data as to the effect on the offender. Iowa law calls for restitution to be made on the basis of that which can be reasonably made by the offender. "Reasonable" is a word which lends itself to wide interpretation; like beauty, it lies in the eyes of the beholder. The relationship between a probation officer and a probationer is authorization by its nature and if the probationer perceives the amount of restitution as unreasonable if it is perceived as being so high as to force the offender into further thefts - the payment of restitution itself could harden the probationer's attitude. Again, we don't know, but we need to know.

Shortly after the passage of the law described above, our department began implementing a project called the "Restitution in Probation Experiment", otherwise known as RIPE. It is modeled on the Minnesota Restitution Center program, except that it occurs prior to and, we hope, without incarceration. Part of our purpose was to develop objective data about the questions raised above.

We have had a good deal of difficulty in implementing this program. There was a delay of a few months as evaluation and

probation staff attempted to develop a competent evaluation design, a design which would be capable of providing us with information which would be more useful than a mere survey of attitudes.

Once the evaluation design was settled on, however, we found that we had been naive in assuming that face to face contact between victim and offender would be a very personal contact, and we should have known better. As an example, when a car is stolen and demolished, restitution is paid to an insurance company rather than the owner. As a result, the victim becomes an insurance company. It is one thing for an offender to sit down with an individual from whom he has stolen directly, but it is something else again for an offender to sit down with a representative of State Farm. The offender views insurance companies in much the same way that law abiding fellow citizens all too often view insurance companies--as fair game. In one case which comes to mind, the victim was a large grocery store chain which had accepted a multitude of bad checks. As their representative in the face to face contact with the offender, the corporation sent their chief of security. The offender had some difficulty in viewing this person as the victim.

To a very large extent, restitution on a personal basis has gone the way of most business transactions in our society. The victim is often a corporation as against a neighborhood grocer and most Americans look upon corporations differently, which might explain the rise in shoplifting and in employee theft. Even when the victim is a real person, restitution is often made to an insurance company, and this, too, removes the offender from a sense of dealing with his victim. In summary, the impersonalization of our society has been a problem.

In the evaluation of this program, we are attempting to determine if offenders who pay restitution recidivate at a higher rate than those who do not; we are attempting to determine if offenders who deal directly with their victims recidivate at a higher or lower rate than those who do not; we are attempting to determine whether offenders who face their victims pay restitution more or less readily than those who do not; and we are attempting to determine whether or not restitution orders increase the number of technical violations and technical revocations. The evaluators have collected data for a twelve month period and they are now analyzing it. Unfortunately, the report will not be available until late December 1975, so at this time I can provide very little objective data.

Some interesting questions have been raised by offenders, however. An offender steals a car and demolishes it. The insurance company pays the victim \$2000.00 and submits a claim for restitution in that amount. The offender pays it. The offender says the demolished car belongs to him but the insurance company has sold the car for salvage and has not deducted the income from its restitution claim. Should the insurance company pay the offender the amount of the salvage?

In a burglary, an offender damages a couple of drawers in a desk. The victim files a claim for a new desk and the offender makes restitution in that amount. Who owns the damaged desk? Offenders have expressed the opinion that the offender does.

There are many questions such as the above which relate to who owns property once restitution is paid.

Subjectively, we are of the opinion that claims submitted by victims tend to be lower when made directly to the offender as against being made to an insurance company. Statements of loss made to police tend to be higher than final claims made to a probation officer or to the offender.

Victims do appear to be quite willing to accept less than full restitution when they are aware of the financial status of the offender. In at least one situation, a victim has refused to accept restitution after talking with the offender and learning of his financial limitations.

Offenders do not seem to resent paying restitution. To the contrary, they seem to consider restitution to be a legitimate debt. On the other hand, as indicated above, they are quite aware that injustices can, and do, exist and they are concerned that restitution be fair and just. They do not want companies to make a profit on their payments.

When the evaluation report is available, we hope to be able to make some judgment as to whether restitution has any rehabilitative value. Some comparisons ought to be made between our RIPE program and the Restitution Center programs, although such comparisons will be difficult to make. But most importantly, at least in the case of Iowa where the payment of restitution has been made the official policy of the state, we need to define the purpose of restitution. Is it to compensate the victim? Is it to punish the offender? Is it to rehabilitate? Is it an alternative to incarceration? Or, is it a public relations device for correctional agencies?

It is unlikely that restitution can compensate the victim since in most cases restitution is not made in full. The use of restitution as an alternative to incarceration is risky, because the converse is implied. That is, failure or inability will result in incarceration. If punishment is the purpose, there should be nothing else--no probation rules, as an example. Perhaps it is a rehabilitative tool, but if it is it will be effective only for some people and consequently should be applied only on a diagnostic basis. If it is good public relations, as I think it is, we should admit that both to ourselves and to the offender.

Quite clearly, however, until we know what it is we expect to accomplish with restitution, there is no way we can determine its effectiveness.

PLAN OF RESTITUTION

TO: Judge, Fifth Judicial District
FROM: Probation Officer, Fifth Judicial District
Department of Court Services
DATE: June 16, 1975

I. SENTENCE AND CHARGE

The record shows that on the 25th day of July, 1974, the defendant appeared in the County District Court in person and with her attorney and entered a plea of guilty to the crime of False Drawing or Uttering of a Check, as defined in Section 713.3 of the 1973 Code of Iowa. At that time a pre-sentence investigation was ordered and sentencing was set for August 8, 1974.

On the 8th day of August, 1974, it was the judgment and order of the Court that the defendant be confined to the Women's Reformatory at Rockwell City, Iowa, for a period not to exceed seven (7) years and that she pay the costs of this action. It was further ordered that the sentence be suspended and that the defendant be placed on probation to the Fifth Judicial District Department of Court Services.

It was further ordered that the defendant make restitution on all outstanding checks.

II. PRESENT SITUATION

The defendant is presently residing with a friend. She is 19 years of age, single, and has no children. She is employed as a sales clerk. Her gross income is \$340.00 per month and she clears \$302.38. The defendant gets paid on the first and fifteenth of each month. She also receives a commission check on the fifteenth of each month which varies each month. A list of the defendant's monthly expenses is as follows:

<u>EXPENSE</u>	<u>AMOUNT</u>	<u>TOTAL BALANCE</u>
Room and Board	\$ 80.00	\$
Transportation	20.00	
Credit Union	108.00	978.09
Tire Company	15.00	332.33
Attorney		180.30
Miscellaneous	20.00	
	<u>\$223.00</u>	

This figure does not include the \$100.00 per month the defendant is to pay toward restitution.

III. PLAN OF RESTITUTION

A summary listing of the outstanding checks drawn by the defendant is as follows:

<u>CHECKS</u>	<u>AMOUNT</u>
Department Stores	\$1,143.52
Restaurants	29.43
Grocery Stores	82.31
Shoe Stores	24.70
TOTAL:	<u>\$1,279.96</u>

In this Plan of Restitution, the defendant agrees to pay \$100.00 per month until the full amount of restitution to cover all bad checks is paid, plus court costs involved in this action.

To date, the defendant has paid in \$365.00 on this restitution. Checks amounting in the sum of \$249.64 have already been paid to Department Stores.

IV. CONCLUSION

It is the opinion of this Agent that the defendant will be able to meet the restitution payments as stated in this Plan.

This Plan is submitted with the understanding that it may have to be revised in the future if the defendant's status changes to any great extent.

PLAN OF RESTITUTION

TO: Judge, Fifth Judicial District of Iowa
 FROM: Probation Officer, Fifth Judicial District
 Department of Court Services
 DATE: December 17, 1973

I. SENTENCE AND CHARGE

The record shows that on the 25th day of July, 1973, the defendant appeared in Polk County District Court in person and with his attorney and entered a plea of guilty to the crime of Assault with Intent to Inflict Great Bodily Injury as defined in Section 694.6 of the 1973 Code of Iowa. The Court accepted said plea of guilty and requested that the Department of Court Services make a pre-sentence investigation.

The record shows that on the 24th day of August, 1973, the defendant appeared in Court with his attorney, this being the date set for sentencing. It was the order of the Court that the defendant be imprisoned at the Men's Reformatory at Anamosa, Iowa, for a term not to exceed one (1) year. It was further ordered that the sentence be suspended and the defendant be granted probation for a period of one (1) year.

On the 1st day of November, 1973, a supplemental order was issued by the Court amending the original order. The supplemental order stated that the defendant would be responsible for payment of restitution as a condition of his probation.

On the 30th day of November, 1973, a hearing was held in Polk County District Court to determine if the defendant's constitutional rights had been violated by the issuance of the supplemental order requiring payment of restitution. At this time, the defendant's appeal was denied. The defendant was ordered to pay restitution as stated in the order of November 1, 1973, and in accordance with Senate File 26. A violation of this order would be considered a violation of the defendant's probation.

II. PRESENT SITUATION

The defendant is presently residing with his wife. There are no children of this marriage or for which the defendant pays child support. The defendant is employed. He has been temporarily laid-off since December 12, 1973, however he feels reasonably sure he will be back at work by February of 1974. He has applied for unemployment benefits in the mean time. The defendant's usual salary would be \$300.00 per month take home. The defendant's wife is presently working two (2) jobs. She is

employed full time by the United Way, where her take home pay is \$308.94 per month. Her second part time job is with Blue Cross-Blue Shield, and her take home pay here is approximately \$100.00 per month. A list of the defendant's monthly expenses totaling \$659.24 is as follows:

<u>EXPENSE</u>	<u>AMOUNT</u>	<u>TOTAL-IF KNOWN</u>
Rent	\$120.00	
Finance Co.	30.00	\$630.00
Tire Co.	15.00	225.00
Department Store	20.00	200.00
Groceries	140.00	
Lawyer	25.00	700.00
Doctor	10.00	
Car Repair	40.00	
Renter's Insurance	10.24	139.00
Car, Truck Insurance	15.00	
Water	7.00	
Lights and Gas	25.00	
Fuel Oil	40.00	
Telephone	20.00	
Gas (car and truck)	40.00	
Miscellaneous	40.00	
Parking	12.00	
Car Payment	45.00	643.00
Dentist	5.00	150.00
TOTAL:	\$659.24	
Defendant	\$300.00	
Wife	308.94	
	100.00	
total	\$708.94	
less payments	659.24	
total	\$ 54.70	

This figure does not include the \$25.00 per month the defendant is to pay towards restitution.

III. PLAN OF RESTITUTION

A summary listing of the bills incurred by the victims of this offense is as follows:

<u>EXPENSE</u>	<u>AMOUNT</u>	<u>INSURANCE PAID</u>	<u>BALANCE</u>
Ambulance	\$ 42.		\$ 42.
Doctor	128.	\$ --	
Doctor	10.	75.	53
		10.	--

<u>EXPENSE</u>	<u>AMOUNT</u>	<u>INSURANCE PAID</u>	<u>BALANCE</u>
Doctor	\$1,235.	\$ 437.50	\$ 797.50
Doctor	35.	35.	2.
Doctor	50.	50.	--
Anesthetist	139.40	139.40	--
Doctor	170.	20.	150.
House of Vision	69.70	--	69.70
Doctor	17.	--	17.
Doctor	20.	--	20.
Iowa Lutheran	16.	16.	--
Iowa Lutheran	30.	30.	--
Car damage	78.49	78.49	--
Pharmacy	27.13	--	27.13
Pharmacy	6.	--	6.
Iowa Lutheran	<u>1,835.65</u>	<u>1,835.65</u>	--
TOTALS:	\$3,911.37	\$2,727.04	\$1,184.33

Receipts and insurance forms verifying the victim's bills are in the possession of this Agent and can be made available to the Court upon request.

In determining a reasonable Plan of Restitution, there seemed to be two (2) alternatives to consider. The first is that the defendant obtain a loan for the full or partial amount of expense incurred by the victim, reimburse the victim and make monthly payments to the loan company. However, after talking with several loan companies, it was apparent to this Agent that a loan could not be obtained at this time by the defendant. The second alternative and the Plan to be submitted to the Court is that the defendant make monthly payments to the victims through the office of the Department of Court Services. The amount to be paid monthly figured at \$25.00 and to continue through August, 1974, which is the date the defendant is due for discharge from probation. At that time, the defendant will have paid a total of \$200.00 in restitution.

IV. VICTIM'S RESPONSE

This Agent has talked with the victim at some length regarding his feelings toward the Plan of Restitution which is being submitted to the Court. Although the total to be paid does not nearly compensate the victims for their total expenses, the victim has indicated that he is very pleased to receive the amount settled on as he did not originally feel he would get any reimbursement. He has expressed that his faith in justice is somewhat restored and is appreciative of the effort made on the Court's part to see that some restitution is made.

The victims have been informed that this payment of restitution in no way denies them the right to pursue recovery of additional compensation through civil action after August, 1974, when the defendant is discharged from probation, if they should so desire.

V. CONCLUSION

This Plan of Restitution has been difficult to figure, primarily because of the great difference in the amount of the victim's expenses and the defendant's inability to pay. It is the opinion of this Agent that the Plan is a realistic one which the defendant will be able to follow.