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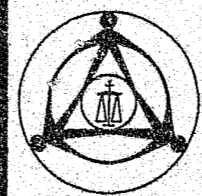
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THE AMERICAN UNIVERSITY
Criminal Courts Technical Assistance Project
Institute for Studies in Justice and Social Behavior
The American University Law School
Washington, D.C.

RECOMMENDATIONS FOR IMPROVING THE USE
OF RESTITUTION AS A DISPOSITIONAL
ALTERNATIVE, AS ADMINISTERED BY THE
CONNECTICUT ADULT PROBATION DIVISION

NCJRS

MAR 8 1977

ACQUISITIONS

October 1975

NATIONAL CENTER FOR STATE COURTS

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FOREWORD

On behalf of the Connecticut Adult Probation Division, the Governor's Planning Committee on Criminal Administration (SPA) requested technical assistance through LEAA's Criminal Courts Technical Assistance Project at The American University to explore the feasibility of improving and expanding the use of restitution as a dispositional alternative. Two specific concerns were identified by the Division, which had heretofore administered a restitution program primarily in welfare fraud cases; 1) how to best determine situations where restitution might be appropriate, and, 2) possible procedures to implement the use of restitution in the state.

In response to this request, the project assigned the National Center for State Courts to explore these issues with Connecticut officials and develop alternative designs for a criminal restitution system. During the course of this effort, members of the team met with Bruce Borre and James Reis of the Planning Committee; Terry S. Capshaw, Director, Bob Bree, Director Supervisor, Jack Fay, of the Division staff; and Judge Roman J. Lexton, Chief Judge of the Connecticut Court of Common Pleas. Additional assistance was provided by Raymond A. Zardetto, Assistant Chief Probation Officer for Passaic County, New Jersey.

I. Restitution: Background

Restitution has increasingly been regarded and used as a disposition alternative by criminal justice system personnel.¹ As a remedy, restitution exercises a threefold legal effect; each aspect of which can produce benefits if properly employed in certain categories of criminal cases. First, restitution as a disposition alternative relieves the economic hardship visited upon victims of crime by returning to them at least a part of the value of their property or expenses. Second, restitution constrains the defendant to make positive recompense for the harm he has caused. Third, if successfully employed, it can reduce the burdens on both incarceration institutions and diversion agencies by removing defendants from these units; as well, it can reduce costs borne by social institutions such as welfare agencies.

Improving the treatment of victims was a primary aim of primitive legal systems, all of which employed restitution as the principal disposition. (A discussion of the history of criminal restitution, analyzing the propensity of sovereigns to separate criminal from civil matters in order to develop penalties as both revenue and power sources, is contained in R. Laster, Criminal Restitution: A Survey of Its Past History and An Analysis of Its Present Usefulness, 5 U. Rich L. Rev. 71 (1970).)

¹ Indicative of the heightened interest is the recent announcement of the First International Symposium on Restitution sponsored by the Minnesota Department of Corrections under LEAA grant, to be held in Minneapolis on November 10 and 11, 1975.

Restitution, when employed to restore the victim to his pre-crime status, benefits not only the victim but the criminal justice system, which becomes not a thing apart from the general citizenry, but actively works to help them.

Substantial theoretical attention has been devoted to the idea of "creative restitution", a concept which holds that by relating the criminal to his victim through the renewal of the relationship to redress the original injury, both criminal and victim benefit in a psychological sense. The criminal can feel he has, in the most concrete fashion, made amends for his conduct while the victim recognizes that the criminal can be capable of acting to remedy his acts and play a constructive role in society. Proponents of "creative restitution" emphasize their belief that rehabilitation is more likely to occur if the criminal himself takes part in determining how he will engage in restitution.

As regards the reduced burdens on institutions that restitution can effect, it should be recognized that as the economic weight of incarceration increases, other approaches to dealing with antisocial behavior become vital, but administration of a restitution program involves assumption of added financial obligations encompassing additional personnel and other resources. Insofar as restitution can successfully be applied to recompense agencies for fraudulent receipt of monies or services, some economic benefit flows back to the taxpayer.

Interest was expressed by the Connecticut personnel in improvement of the restitution program in the state.

Restitution has been employed as a criminal disposition in Connecticut primarily in welfare fraud cases. (It was asserted that currently the annual amount of restitution ordered approximated \$100,000.) Use of restitution in such cases has been premised on two statutory sections (Conn. Gen. Stats. 53 a-30 and 53 a-44) which permit imposition of "restitution of the fruits of his offense" as a condition of probation and the imposition of an "alternative fine based on the defendant's gain," which may not exceed double the amount of the gain from the commission of the crime (a hearing may be conducted to determine the dollar amount or property value if no evidence is in the record).

In Connecticut, attention was directed primarily toward identification of a workable program plan. A useful summary of legal principles which merit observance to produce an acceptable plan has been provided by a commentator:

For liquidated damages, the order of restitution must be limited to a return of the items taken or the actual out-of-pocket expenses incurred by the injured party. Unliquidated damages must be admitted by the defendant or documented during the criminal proceeding as evidence of the harm suffered by the victim. Furthermore, the injury must be causally connected to the crime for which the defendant is convicted, not 'substantially related in kind'. Finally, a maximum period of time must be set for the service of probation to promote a rehabilitative end and to prevent any to use the criminal process to effectuate a civil remedy... (R. Laster, op. cit., pp.96-97.)²

²Two analyses of cases in which legal issues regarding restitution were considered are Comment, Conditions of Probation Imposed on Wisconsin Felons; Costs of Prosecution and Restitution, 1962 Wis. L. Rev. 672 and Note, Use of Restitution in the Criminal Process: 'People vs. Miller', 16 U.C.L.A. L. Rev. 456 (1969).

II. Relevant Facts and Problems

Connecticut has two major trial courts: the Superior Court and the Court of Common Pleas. The Superior Court generally exercises jurisdiction in felonies and the Court of Common Pleas in misdemeanors, although there are exceptions to this general split. Both courts are staffed by judges who rotate among the court locations: the Superior Court sits at locations within each of the eight counties; there are nineteen Court of Common Pleas judicial districts, but in practice each judge rotates only among a few adjacent districts. Rotation normally occurs every twelve weeks.

The adult probation division currently processes restitution orders. Most are issued in welfare fraud cases where the state is the party receiving restitution. Payment is made according to specific provision of the court order and is by certified check given by the defendant to his assigned probation officer payable to one of four District Supervisors (headquartered in Willimantic, New Haven, Hartford, and Bridgeport). The individual officer keeps a record of each payment in his own book. The district office forwards the payment to the victim, usually on the first of each month, but if amounts are very small, they are accumulated before payment.

It was asserted that approximately 200 cases are currently being processed in the Hartford district. This requires the full-time attention of one clerical employee; the cases handled by the more rural Willimantic district require about three-fourths of one employee's time.

There are now approximately 16,000 persons under the supervision of the adult probation division, with approximately 152 probation officers. About 6,000 presentence investigation reports are prepared annually: these are mandatory in felony cases and discretionary with the court for misdemeanor defendants. Presentence investigations are assigned by district supervisors on the day the case is referred by the court. In addition to presentence investigations the department is responsible for the preparation of numerous other reports and investigations.

Support payments in matrimonial and custody matters are processed by the family relations divisions attached to each Superior Court and Court of Common Pleas office. These offices are under the administration of the courts; the adult probation division is an independent agency under the supervision of a commission which is now chaired by the Chief Justice of the Supreme Court.

Several critical factors can be identified as determinants of the success of a restitution program. These factors must be addressed prior to specification of administrative duties:

- a. Determination of ability of defendant to make restitution, and the need of the victim. This will indicate whether a case is an appropriate one for a restitution disposition. The presentence investigation should include the defendant's economic condition and ability to earn, as well as the potential utility of restitution to the victim.
- b. Method and amount of payment. The payment method must be designed to facilitate compliance but

ensure ready monitoring by the responsible officer.

c. Basis for amount. Restitution should be based on clear evidence of the amount involved, gathered either at trial, through a separate hearing, by an investigative report provided to the court, or perhaps by an affidavit of the injured party. In some instances, the defendant may admit the amount.

d. Means of communicating order. The court order of restitution should be communicated to the interested parties through an appropriate form.

e. Technique for follow-up on payments. The decision as to whether restitution will be combined with probation will, in all instances, turn on the ability of the court to monitor payments in any other way. The probation officer, if responsible, must be given a regular schedule to follow.

f. Procedure in event of failure to pay. If a restitution defendant does not make payments the court must be ready to determine whether a penalty (and what kind) is appropriate or what other action is necessitated.

g. Statistical reporting. To provide for monitoring and evaluation, the activities of any newly developed restitution system should be subjected to ongoing analysis.

Specific procedures recommended for each of these duties will be outlined later in this report.

In sum, a successful restitution system relies on three major factors: a) provision of information for a court decision as to the appropriateness of restitution, usually through the medium of a presentence report; b) limitation of restitution to appropriate categories of cases; and c) a workable procedure for administering the system and for enforcement of orders.

III. Considerations for a Connecticut Restitution System

Connecticut lacks in its present use of restitution a satisfactory structure to address any of the three factors previously discussed: information for decision, limitation of remedy to certain kinds of cases, and workable procedure for administration and enforcement. The main source of information for decision are presentence investigations which are not prepared in all cases. Criticism has been directed by judges to the assertedly excessive length of the presentence investigation reports. An immediate benefit might be achieved by the use of a summary sheet with long-form reports. For some purposes, a short-form report with a special series of restitution check-off inquiries should be initiated.

The full scope of potential areas for use of restitution as a disposition alternative has yet to be systematically explored in Connecticut. The willingness to use the alternative ought not be dampened while this exploration is ongoing. However some caution is suggested. The invocation of this alternative is legitimately within the discretionary power of the trial court judge. But prudent application requires that some consistency, not necessarily in terms of the individual disposition, but as to administrative support, be mandated. Adoption of appropriate rules of court and directives promulgated in furtherance of the rules will be useful as guidelines.

Initially the alternative ought to be invoked in that class of cases where assessment of value can most readily be made: larceny, other thefts, welfare fraud, etc. When restitution has been shown effective in these cases, expansion by statutory amendment might be desirable.

The adult probation division does not now have sufficient staff to administer the system. The family relations division is not familiar with some aspects of the program for which the adult probation division has a developed expertise. Therefore, a special restitution unit in the adult probation division appears to be a useful approach. The geographic compactness of Connecticut would permit a central unit to handle all processing upon receipt of payments and other data from individual probation officers. Although with proper design, staffing and administrative procedures, a central unit would eventually be fully capable of dealing with the estimated volume of restitution orders, it is recommended that a pilot program be instituted initially. The program should be limited to a selected, small number of judicial districts until the unit becomes familiar with its duties.

IV. Restitution as an Alternative or
Supplementary Disposition

Among other possible options, the court may elect to order restitution in the following ways:

(1) a custodial sentence suspended, the defendant placed on probation and restitution ordered;

(2) similar to option (1), a probation sentence supplemented by a fine as well as restitution;

(3) a custodial sentence in relation to which restitution may be ordered paid either before, during, or after the term of confinement;

(4) an order for the payment of restitution with neither incarceration nor probation.

Each of these options would be weighed by the court prior to imposition of sentence. The sentencing function is among the most onerous faced by any jurist and is difficult regardless of the range of alternatives available.

Option (1) presents a satisfactory means of assuring close supervision of the behavior of a convicted person and, at the same time, enables the supervisor to monitor payments on the restitution account. As with all restitution options, the court must analyze the constraints of the time over which restitution is made as well as the constraints which have been discussed earlier in this report (e.g., the needs of the victim). Restitution in combination with probation supervision also assures a technique whereby a failure to comply with the terms of the restitution ordered can result in

a citation for violation of probation, thereby facilitating bringing the matter before the court.

In option (2), the combination of an order for restitution and the payment of fines should be confined to those instances where the defendant is clearly able to bear the financial burden and where unintended inequities do not result. It may, for instance, be inappropriate to impose a fine which redounds to the benefit of the state as well as an order of restitution in welfare fraud cases.

In exercising the third option, it should be clear that, in most instances, a defendant in custody may have reduced means by which to pay restitution amounts. There may, however, be individual financial circumstances that would enable the payment of restitution during incarceration. As to restitution paid before or after a period of incarceration, the court must again weigh the impact upon the defendant. Especially where the restitution is ordered paid after a lengthy period of incarceration, the court must consider whether the value of the payment might not be substantially lost with regard to the victim.

In the fourth option, the payment of restitution without direct supervision may be appropriate where the court deems the individual offender not amenable to probation counseling and supervision. Payment of restitution under these circumstances does impose a problem, however, in that there must be a means of monitoring or otherwise assuring payments. Since the monitoring function under options (1) and (2) is conducted by the probation division, it may be reasonable to assign

this function to that division under options (3) and (4) as well. Were this choice to be made by the court, clear guidelines as to the standing of the department (or the victim) to move before the court in the event of default of payment of restitution must be promulgated.

A. Operational Considerations

Formulation of procedures relating to restitution requires the adoption of procedures in both the courts, which order restitution, and in the adult probation division which monitors and enforces those orders.

1. The Courts

The courts should address two factors concerning the operation of a uniform restitution system.

1. The Rotation of Judges. The Connecticut Judicial Department has determined that rotation of judges through the state and within districts of the state is the desirable assignment method. Any procedure requiring uniformity must take into account the movement of the judges. Where the judicial presence in a particular location varies through the year, the opportunities for departures from standard to conform to the individual needs of the judges is increased. To minimize the expected variance, operating procedures must be made explicit and adhered to.

2. Judicial Monitoring and Enforcement. An effective restitution system, although assigned to a competent probation department, must be a continuing concern of the judiciary. Probation personnel must know that the court

is monitoring the performance of the department as it enforces the order. Absent this knowledge, the danger exists that probation personnel will conceive of themselves simply as collection agents. Concern and follow-up by the courts where defaults occur will assure conformity with court orders and will reinforce a professional attitude among probation personnel.

Specific steps which must be taken by the court in probable restitution cases include:

- a. Amount of Restitution. The court must ascertain the amount of loss, damage or injury. This amount can be determined from several sources including,
 1. Information contained in the presentence investigation (in those instances where one has been ordered).
 2. Special investigation requested from the probation division.
 3. Facts adduced from testimony at trial.
 4. A special hearing ordered by the court.
 5. Substantiated information contained in formal charge.
 6. Affidavit from injured party.
- b. Determination of ability of defendant to pay and the need of the victim. The court must determine the financial status of the defendant and the nature, degree and amount of harm to the victim who may be subject to restitution. Restitution may not be a

permissible alternative where the defendant is indigent or where such an order would work an unreasonable hardship on the defendant. The determination may be made by :

1. Direct inquiry by the court at the time of sentencing.
2. Inclusion of financial status information in the presentence investigation or other investigative report.
3. Preparation by the probation department of a special financial status report in cases in which restitution is a likely alternative.
4. Inclusion of facts concerning the victim in the presentence investigation.

c. Conditions of payment. The court, having decided that restitution in a particular amount is to be part of the sentence, should specify the method, amount and condition of payment.

1. The method of payment is dependent upon the other elements of the sentence which the court imposes as described above. Assuming that restitution would be payable during a period of probation, the court should inform the offender that payments are to be made through the probation division and that a mechanism for payment will be communicated to the defendant by the division.

2. The full amount of the restitution should be stated by the court and made part of the judgment of conviction.
 3. The period over which the restitution is to be paid, as well as the amount and frequency of periodic payments, if time payment is authorized, should be stated by the court.
 4. A brief statement of the reason for the imposition of restitution should be made.
 5. The name and address of the party or agency to whom restitution payments are to be disbursed (by the probation division) should be stated.
 6. The defendant should be informed of the general conditions of payment and of the power of the probation division, if payment is not made, to have the matter returned to the court (whether by a violation of probation or motion for contempt) for further action by the court.
- d. The sentence having been imposed and stated to the defendant, the clerk should provide, in addition to the formal judgment of conviction, written notice to the defendant, the probation department, the victim and other appropriate parties of the terms and conditions of the sentence particularly as to restitution.

e. The court should inform the defendant that contact must be made with the probation department for more specific instruction. (See Operational Considerations - Adult Probation Division.)

2. Adult Probation Division

As with the courts, certain factors must be dealt with in probation prior to recommending operating procedures for a uniform restitution system.

1. The Connecticut Adult Probation Division, like so many probation departments around the country, is faced with spiraling caseloads and increasingly complex demands on staff time and talents. To effectively operate a restitution payment system, the resources of the probation division must be used in an efficient manner. This the leadership of the Connecticut division is disposed to do.

2. In addition to the usual demands of investigation and supervision, the division, in restitution cases, is faced with a difficult task in almost any environment - collection of money. To do this, the support of the court in the enforcement of orders is critical. Furthermore, the staff must have sufficient accounting, monitoring and clerical resources upon which to rely. Costs will undoubtedly increase for these services, but the benefits should be commensurately high.

The adult probation division now collects restitution but is rarely assigned the responsibility to collect fine payments. In the Court of Common Pleas fines are

generally imposed for motor vehicle violations. If the defendant is unable to pay the fine, the matter is kept open on the court docket until payment is made. The Superior Court reportedly rarely imposes fines except in gambling and narcotics cases. Since the adult probation division services both the Superior Court and the Court of Common Pleas, some benefits, even in fine cases, would arise were the restitution collection process to be made uniform and improved. With a new restitution accounting system, the division would also have an increased capability to process fines. Three benefits are likely to accrue.

A. Dockets, which would otherwise remain open in the Court of Common Pleas pending receipt of fines, could be closed with time payments of fines authorized through the probation division.

B. A regular mechanism for fine collection might dispose the Superior Court to use fines as a dispositional alternative in a larger category of cases.

C. Centralizing the collection of both restitution and fines in the single division would provide further justification for the creation of a centralized accounting section for the division.

The alternatives as to payment and the required support services must be considered. At present, restitution payments, made through supervision officers by certified check or money order, are payable to one of the four district supervisors who disburse the payments. While this system has the benefit of having a probation supervisor monitoring, by direct receipt, the payments of restitution, the control function inherent in accounting and disbursement is fragmented and must be replicated in the district offices. An alternative would have supervision continue at the sub-offices, but payments mailed directly to a central office for processing. The supervision service would remain intact, but without the officer's immediate knowledge of compliance with the restitution order. This alternative reduces direct control while failing to achieve the full benefits of centralization.

B. A Recommended Approach for Connecticut

The third alternative, that recommended for Connecticut, would continue supervision and payment of the restitution (still by certified check or money order) at the sub-offices. In this procedure, however, checks would be payable, not to district supervisors, but to a restitution supervisor at the central office. The benefits of this approach can be

summarized as follows:

- A. local supervision of probationers will continue;
- B. the supervising officer can monitor payment;
- C. maintenance of separate accounting and disbursement services at the district offices is avoided;
- D. a central office capable of monitoring of accounting and disbursing payments is created; economies of scale can be expected.

As the system of restitution is now operating, instruments of payment must be processed by deposit in accounts in each of the four districts and new instruments prepared for disbursement to the victim. While this is a sound method offering good control over the process, the replication in each region can be avoided by the creation of a centralized restitution unit. With the central processing of all restitution accounts, consideration should be given as to whether the present probation division blanket bond of \$5,000 per incident should be increased.

A centralized unit will also allow for the examination in greater detail of the workings of the system. A pilot locality should be selected for test purposes. Procedures can be designed, tested and expanded as the central staff becomes more proficient. It has been suggested that Stamford (part of judicial district 1) and judicial district 12 (East Hartford, Manchester, Glastonbury, South Windsor and Marlborough) would serve well as pilot areas.

Procedure

At the time of ordering a pre-sentence investigation, the court may wish to direct the probation division to conduct the investigation as though restitution were a likely dispositional alternative. Since Connecticut does not have a statutory victim compensation act (relying upon appropriated funds to compensate victims of crime) the courts may wish to expand the scope of cases in which restitution may be ordered. In any event, the probation division should undertake to provide in any investigation such financial information as would be needed by the court in assessing the ability of the defendant to pay restitution as well as the harm (for restitution purposes) suffered by the victim.

Investigation of a defendant's financial status is a difficult task, particularly where confidential records must be examined. Standards applied in determining indigency for the provision of counsel may be useful in the financial segment of the report. As an alternative the division may rely upon an affidavit by the defendant in seeking disclosure of financial assets and liabilities.

The conditions of any sentence should be clearly communicated to the defendant and the probation division. At sentencing, the defendant (if placed on probation) should be directed to report immediately to the division for instructions as to any special terms and conditions imposed by the court or as approved by the court as general conditions. It is especially important where restitution is ordered that the salient facts of the order be accurately communicated to the division. A form of notice (see sample, Appendix A) should be prepared by the clerk and directed to the probationer, the supervising probation sub-office, the central restitution (accounting) unit, and the court file. Based upon this notice, the probation division should discuss with the probationer the method of payment. The notice should also serve as a document upon which to open an account ledger in the case.

Depending upon the schedule and nature of supervision contacts, the probationer may be instructed to deliver or mail a certified check or money order (payable to a central restitution unit) to the supervising officer. Upon receipt, the payment should be noted by the officer who thereafter should transmit the instrument to the central office. The central

office should then deposit the check, reduce the outstanding restitution balance and draw a new check to the payee/victim. The frequency of these checks to the victim should depend upon the amount of payment. It may be decided that smaller amounts may be aggregated for monthly disbursement while more substantial payments may be disbursed weekly. This method is suggested to reduce the processing expense which will be incurred at the central unit.

Since the supervising officer will be in constant contact with the probationer, he should be generally familiar with the payment record. However, to insure adequate control, the central unit should post to the individual officers periodic summaries of payments made by probationers under their supervision. Such monitoring will enable the probation officer to advise the court of any necessity to alter the schedule or amount of payment. In addition, reports should be made to the court upon the successful discharge of the restitution obligation or upon the failure of the probationer to pay.

Were the recommendation for a centralized restitution unit to be adopted, that office should be expected to provide the following services: payment records, accounting and disbursement, periodic summaries of individual account activities, periodic statistical reports, and evaluation of restitution practices.

Finally, were the Connecticut Adult Probation Division to adopt the central recommendation of this report--that a central restitution unit be established--it can be expected that a specialty in the investigation and processing of restitution will develop.

Appendix

Sample Case Processing Form

NAME: _____ <small>LAST NAME, FIRST NAME, MIDDLE INITIAL</small>		JUDGE: _____	
<input type="checkbox"/> INDICTMENT # _____ COUNT: _____	<input type="checkbox"/> FINE \$ _____ TO: _____	<small>METHOD & RATE OF PAYMENT</small>	
<input type="checkbox"/> ACCUSATION # _____ COUNT: _____	<input type="checkbox"/> RESTITUTION \$ _____ TO: _____	<input type="checkbox"/> THROUGH PROBATION DEPARTMENT TOTAL AMOUNT: \$ _____	
<input type="checkbox"/> COMPLAINT # _____	<input type="checkbox"/> COSTS \$ _____ TO: _____	<input type="checkbox"/> AT: \$ _____ PER WEEK & COMMENCING: ____/____/____	
<input type="checkbox"/> PETITION # _____	<input type="checkbox"/> SUPPORT/ ALIMONY \$ _____ TO: _____	<input type="checkbox"/> AT ONCE	
<input type="checkbox"/> DECREE # _____		<input type="checkbox"/> DIRECT <input type="checkbox"/> OTHER (SPECIFY) _____	

One form set must be prepared on EACH Indictment & Count, Accusation & Count, Complaint, Petition, Decree, or Order on which a Fine, Restitution, Costs, or Support/Alimony is imposed.

SIGNATURE OF COURT CLERK _____
DATE ____/____/____

FC-CA-1-3/73

The above form was designed by S.D. Conti for use as part of the Hudson County (N.J.) Automated Criminal Case Processing System. The form is suggested for modification and use in Connecticut by the inclusion of the name and address of the payee. Deletion of categories of payments not made through the court or probation division should also be considered. The form should be completed by the court clerk and copies should be given to the probationer and sent to the supervising probation sub-office, the central restitution unit and the court file.

END

7/2/1944