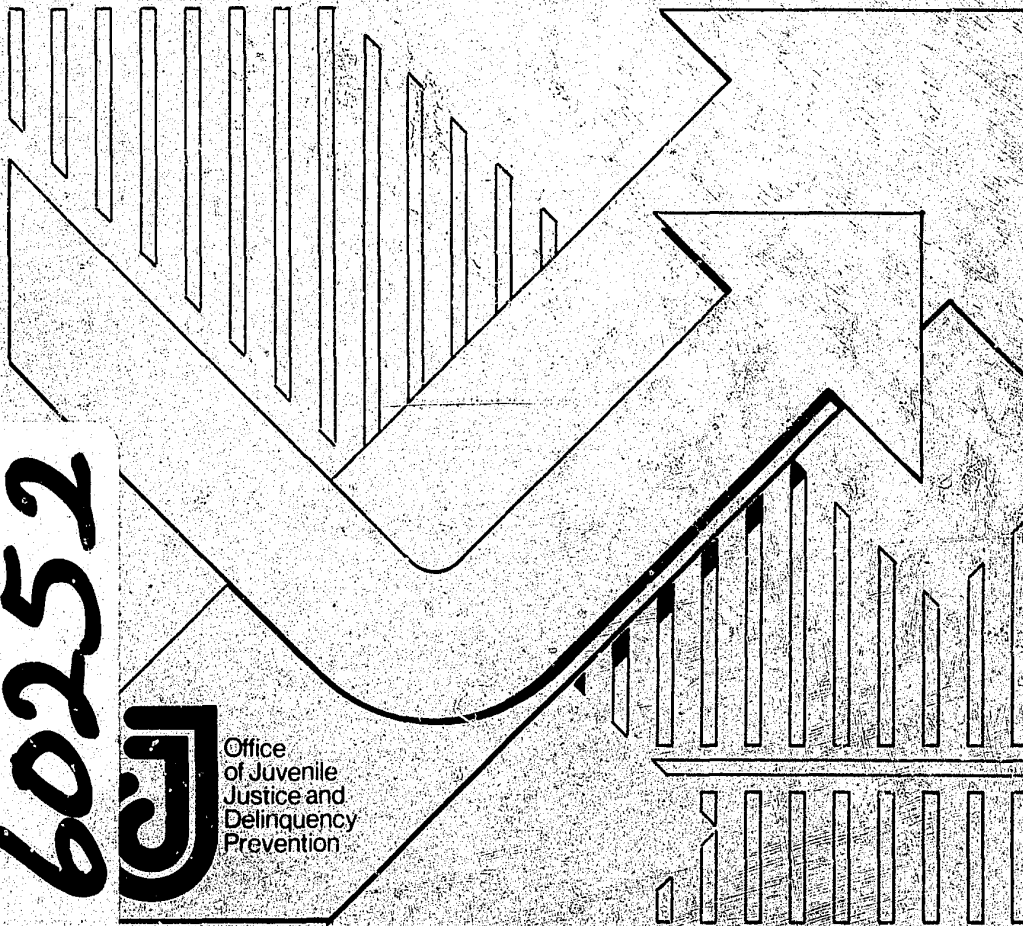
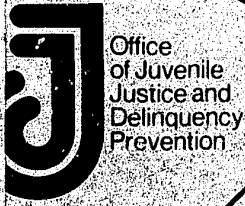


**PROGRAM  
ANNOUNCEMENT**

**RESTITUTION  
BY JUVENILE OFFENDERS:  
AN ALTERNATIVE TO  
INCARCERATION**



60251-  
60252



Office  
of Juvenile  
Justice and  
Delinquency  
Prevention

APPENDIX I

JUVENILE RESTITUTION

INTRODUCTION

This paper reviews current knowledge of restitution programs and their results in the juvenile justice system. The concept is viewed herein as a positive sanction, with particular reference to juvenile justice offenders. Although restitution is far from being a new or an innovative concept, it is currently receiving renewed interest and attention. The contemporary focus on restitution arises in part from a greater concern for the victims of offenses and also as a consequence of the increasing importance attached to establishing a much closer link between the offense and the sanction. This paper outlines the meaning of restitution within the criminal and juvenile justice process, and briefly discusses its historical development. It also sets forth the rationale for restitution programs, and reviews both their evaluations and problems of implementation.

1. STATEMENT OF THE PROBLEM

(a) Definition and Scope

Restitution may be defined as payments by an offender in cash (to the victim) or service (either to the victim or the general community), when such payments are made within the jurisdiction of the juvenile and criminal justice process. By this definition the victim of the offense is not necessarily the recipient of the payment, although under narrower definitions that would usually be the case. The definition restricts restitution to actions taken within the jurisdiction of the juvenile and criminal justice process, thereby excluding private settlements reached between parties involved in an offense.

Restitution should be distinguished from victim compensation. One observer has written that compensation is "an indication of the responsibility of society to the victim, whereas restitution, while restoring the victim, is also therapeutic and aids in the rehabilitation of the criminal." (Laster, 1970:80). It should be noted that restitution is penal in nature with correctional goals while compensation represents the state's attempt to offset the victim's losses. The connections that may exist between restitution and compensation schemes are discussed below, but conceptually they should be viewed as separate and distinct. (For a further discussion of victim compensation schemes see: Edelhertz and Geis, 1974.)

(b) Historical development

The origins of restitution can be traced to penal law of the Middle Ages which was more a law of torts than of crimes. Many historians now believe that the utility of restitution was that it provided a more rational means of dispute settlement among parties than did traditional retaliation, violence, and vengeance. A scholar of the history of restitution has noted that as the state control over compensation\* gradually increased, together with its share in the compensation, there occurred a "slow separation of the rights of the victim from the penal law, and compensation became a special field of civil law." (Schafer, 1974:608). Some observers argue that renewed interest in the role of the victim in the criminal process has fostered a similar upsurge of interest in restitution. Others have been skeptical of the notion that the recent interest in restitution represents a turning of the full historical circle in terms of the victim's role in criminal proceedings, and have argued that both ancient and modern rationales for restitution have rested more with the interests of society (and indeed the offender) than with the victims of crime (Edelhertz, et al., 1975:14). The contemporary movement from an individualized model of sentencing to an emphasis on matching penalties to the severity of the offense (von Hirsch, 1976) is probably giving further impetus to the revival of interest in restitution. Although the impact of this movement is greatest in the criminal justice process its effect on juvenile justice is by no means negligible, as evidenced by decisions reached by the Commission members of the Juvenile Justice Standards Project during 1975 - 1976. They recommend restitution as one viable dispositional alternative.

(c) Stages in juvenile justice at which restitution might occur

There are several stages following the commission of an offense when decisions concerning restitution might be made. These stages, reviewed in some detail by Laster (1970:83-98), can be usefully located between the point of commission of the offense and the dispositional decisions made after adjudication.

---

\*Black's Law Dictionary (4th Edition) defines the term compensation as applied in ancient law as follows: Among the Franks, Goths, Burgundians, and other barbarous peoples, this was the name given to a sum of money paid, as satisfaction for a wrong or personal injury, to the person harmed, or to his family if he died, by the aggressor. It was originally made by mutual agreement of the parties, but afterwards established by law, and took the place of private physical vengeance.

(i) Pre-administrative stage. Restitution can occur prior to police intervention. Although intervention at this stage happens outside the justice process, it appears to do so frequently. It includes, for instance, payment of restitution by parents to store owners to avoid prosecution of their children. No systematic appraisal appears to have been made of the extent or outcomes of these quasi-judicial measures.

(ii) Administrative stage. Restitution at this stage results from the mainly informal decisions made by officials of the justice process, such as police, intake officers, and prosecutors. It occurs within the context of the very considerable discretion held by such officials. At this stage restitution can also be an important component of a diversion process. Pre-administrative decisions on restitution are characteristically made without the structure of formal, written guidelines. They almost never involve the possibility of further review. Restitution as a diversion strategy is in fairly widespread use by police (Laster, 1970:85; Edelhertz et al., 1975:30) and probation officials (Larom, 1976). There are, however, serious legal issues involved with this approach (see the following section).

The problems associated with restitution decisions at this stage reflect those that characterize the diversion process. Decision-making tends to be generally unstructured and is open to unfair administration. Restitution arrangements, therefore, in many instances do not carry legal force.

(iii) Adjudication stage. Restitution is probably most often located at this stage, after a finding of involvement or guilt. It generally takes the form of a condition of probation (Best and Burzon, 1963:809; Chesney, 1975). Statutory provision also specifically authorizes the court in some jurisdictions to order restitution directly as part of a final disposition (Levin and Sarri, 1970:88-99). A recent study of court ordered restitution in 87 Minnesota counties found that it was used as a condition of probation in 19 percent of all juvenile probation cases (Chesney, 1975:150). As with the pre-adjudication stage, a wide variety of programs exist, providing for both monetary and community-service restitution.

(iv) Post-adjudication stage. Restitution decisions may also be made after the adjudication stage, with the initiative being taken by the corrections agency or paroling authority. There has been some experience with restitution programs for adults at this stage (Fogel, Galaway, and Hudson, 1972; Read, 1975) but apparently not for juveniles. Adult programs such as the Minnesota Restitution scheme (Fogel, Galaway, and Hudson, 1972) have usually made the restitution agreement a condition of parole from prison.

Given contemporary concerns regarding the negative aspects of many parole conditions (e.g., Kassebaum, Ward and Wilner, 1971) it is questionable whether it is a sound practice to locate restitution decisions at this stage.

In recent survey of juvenile restitution projects, conducted in conjunction with the development of this paper (Bryson, 1976)\*, it was found that each juvenile program was confined to one stage. This was not the case in a recent survey of adult and juvenile programs in the United States and Canada, with twelve of nineteen programs located at more than one stage (Hudson, 1976:2-3). It should also be noted that most programs address either adults or juveniles, but not both. The eleven programs surveyed by Bryson were exclusively for juvenile offenders (Bryson, 1976), whereas three of the nineteen programs in Hudson's survey admitted both adults and juveniles (Hudson, 1976:2).

(d) Offense and offender types

Restitution is primarily used in connection with offenses against property (Hudson, 1976; 6). There is, however, no research evidence on which types of offenders or offenses are most appropriate for restitution programs. Most judicial and programmatic decisions have been based on ad hoc determinations that offer no evidence of differential effectiveness (Edelhertz et al, 1975:77).

One important issue regarding offender types is the extent to which the offender's perceived ability to pay (socio-economic status) is an important factor in ordering restitution. In this regard, observers have noted that some restitution programs are not operated in a manner fair to all segments of the community due to failure to develop provisions for community service restitution or for jobs that would permit offenders to fulfill monetary restitution requirements.

(e) Victim types

One premise of restitution programs is that the victims of crime should not be ignored, and selection of the target population is likely to have important implications in this regard. Contemporary perspectives of the

\*The survey included a telephone interview of twelve juvenile restitution projects identified by American Institutes for Research through consultation with researchers and practitioners. Basic information on program operations and the population served was requested.

the criminal and juvenile justice processes strongly reflect the view that the victims of crimes have been all but forgotten. A particularly significant aspect of restitution is its potential for offsetting the problems created by an undue focus on offender-oriented programs which rarely take into account the circumstances and needs of victims.

## 2. RATIONALE FOR JUVENILE RESTITUTION PROGRAMS

The rationale for juvenile restitution programs is discussed in this section under four headings: the juvenile offender, the victim of juvenile offenses, the general community, and the juvenile justice process.

### (a) Impact on the juvenile offender

Much of the rationale for restitution programs has been based on their intended impact upon the offender. Schafer has argued that through involvement in restitution the offender can be made to recognize his responsibility to the victim (Schafer, 1965:249-250); and Eglash concluded that restitution provides "a form of psychological exercise, building the muscles of the self, developing a healthy ego" (Eglash, 1958:622). It has been argued that restitution "protects the essential dignity (of the offender) by supporting a view of him as an individual capable of making decisions" (Fry, 1957). In two recent surveys of restitution programs, staff persons generally gave priority to the beneficial impact of their programs on the offender. Hudson, for example, found that in ten out of nineteen programs staff indicated that rehabilitation of the offender was the primary purpose (Hudson, 1976:3-4; see also, Bryson, 1976:11-14).

### (b) Provision of victim redress

Restitution is less efficient than compensation schemes for providing victim redress. It does, however, allow for the provision of monetary reimbursement or other forms of satisfaction to the victim. In addition, restitution programs may compensate victims for burdens placed on them by the criminal justice system itself such as court time and emotional stress related to confronting an alleged offender. It has been suggested that restitution should go beyond tangible payments and reinforce the victim's sense of vindication (Goldfarb and Singer, 1973:141).

The restitution is not always made to the victim directly; many programs provide for "symbolic" restitution through community service or other work programs. Some observers feel that the more successful programs are those that inform the victims about symbolic restitution, thus allaying

some of the dissatisfaction that is likely to occur when victims are not the recipients of the restitution. A recent survey of juvenile restitution programs found that most victims had no knowledge of the symbolic restitution (Bryson, 1976:11-14).

(c) Enhancement of the public's sense of justice

Restitution programs can also make the juvenile justice process more visible to the general community and as a result may serve to increase public confidence in its administration. Meeting these objectives requires informing and involving the public. In Rapid City, South Dakota, the victim assistance officer acts as an advocate for both the offender and the victim. Additionally, victims are provided with information describing their rights, the juvenile justice process, and civil remedies as a recourse if restitution is unsuccessful (Bryson, 1976:5).

(d) Increasing the effectiveness of the juvenile justice process

Restitution programs may also serve to increase the effectiveness of the juvenile justice process. At the pre-adjudication stage restitution provides a means of diverting juveniles from the justice process, allowing the adjudicatory stage to be focused on more serious offenders. At the post-adjudication stage it serves as an alternative to incarceration, thereby reducing the number of youths confined in training schools. Sensing that this purpose may not be served, the Committee for the Study of Incarceration has warned: "Once criminal sanctions are given a semblance of beneficence they have a tendency to escalate: if, in punishing, one is supposedly doing good, why not do more?" (von Hirsch, 1976:121). Likewise, a report by the National Assessment of Juvenile Corrections has added: "One of the most provocative questions surrounding the general movement toward community corrections is whether the states that develop community programs use them to replace training schools or use them in addition to training schools" (Sarri and Selo, 1975:14). Similar concerns are also appropriate when considering restitution as a diversion device. An unanticipated consequence may be the widening rather than the reduction of the juvenile justice network of control (See generally, Lerman, 1975).

(e) Potential cost savings

Restitution programs may represent a cost savings to the criminal justice system. This would include savings which result from a reduction in the number of youths who would have been incarcerated or placed with community agencies, as well as a reduction in probation costs.

On the other hand, such programs may increase costs in terms of staff time required to determine the amount of restitution and to supervise the youth assigned to make restitution.

### 3. EVALUATION OF RESTITUTION PROGRAMS

Previous research and evaluations of juvenile restitution programs have been so limited and inconclusive that virtually no scientific knowledge exists concerning the impact of restitution on the offender, victim, community, or costs of the criminal justice system.

Three of the better-known juvenile restitution programs (Seattle, Maryland, and Las Vegas) have had relatively sophisticated evaluations. The Seattle program consists of three community accountability boards operating in certain sections of the city. Each board includes persons from the neighborhood who develop a restitution plan for the youths. Evaluations of the three Seattle components indicated that two of them almost certainly have reduced juvenile recidivism and lowered the overall crime rate in the program areas compared with the rest of the city. The Seattle studies, however, were not able to distinguish conclusively the impact of restitution from the impact of other "treatments" received simultaneously by the youths. Preliminary evidence suggests that those youths in the programs which dealt strictly with restitution would do better than youths in any of the other available programs.

The Maryland program involves an arbitration officer who negotiates a restitution agreement between the juvenile and the victim. Comparisons of the arbitration program with pre-program youths and with a concurrent group of juveniles handled through normal intake procedures show no difference in recidivism rates. The study, however, did not examine costs and there is no way to determine whether any one approach could be judged "superior" due to lower costs without any increase in recidivism. The evaluation of the Maryland program indicated that victim involvement generally had no negative impact except that victims tended to view the offender and the offender's family in a somewhat more negative perspective after the arbitration hearing.

An evaluation of the Las Vegas restitution program focused on characteristics of youths who were most likely to make restitution payments. A similar study was made of the Minnesota restitution program which included some juveniles as well as adults (Chesney, 1975). In addition, there have been several studies examining characteristics of juveniles who are most likely to be "successful" in paying court-ordered fines. (Although simply paying a fine is quite different from the restitution concept, the difference may not be particularly marked for the juvenile especially if he is required to perform community service in order to pay the fine.) The Las Vegas study suggests that a positive self-image, parents who view the youth as essentially "good", and prior employment of the youth are the three most important factors in determining whether the youth will be able



to complete the restitution program. The Minnesota study identified five factors of importance to successful restitution: older age, higher socioeconomic status, smaller amounts to pay, not having a probation officer as the intermediary for payment, and a payment period that corresponds to the full length of probation. One study suggests that youths who perform community work in order to pay fines will work more hours if a contingency contract is negotiated with them. Youths who were able to "purchase" special activities each week with hours of work put in more time than youths who were able to "purchase" time off of probation. Juveniles who could earn special activities and time off probation worked more hours than either of the two other groups. (Fitzgerald, 1974):

Studies of the impact on juvenile recidivism of fines vs. probation are inconclusive. Some suggest that fines are more effective in reducing recidivism; others argue for probation. Many studies agree, however, that fines are more effective than probation in reducing recidivism among first offenders.

The studies generally focused on only one type of restitution program, operating in only one way, and therefore provide very little information that is useful as a guide for program managers attempting to structure and implement restitution programs. In addition, the studies have not determined whether restitution is effective in relation to juvenile recidivism or victim attitudes; or if it is a less costly yet equally effective type of treatment.

The purpose of conducting an intensive evaluation for the restitution programs funded under this initiative is to provide information that will be useful to program managers and funding agencies concerning the characteristics and impact of different types of restitution programs. More specifically, the major objectives of the evaluation are to determine whether restitution is more effective than other types of treatment or court procedures and/or whether it is equally effective but less costly. Effectiveness is to be measured in terms of juvenile recidivism, juvenile and victim attitudes toward the system, and the sense of "justice" held by major participants in the system.

#### 4. PROGRAMMATIC ISSUES AND PROBLEMS

A number of important programmatic issues arise in the implementation of the restitution concept.

##### (a) Monetary versus service restitution

Restitution, as we have defined it, can be made in money, service, or a combination of the two, either directly to the victim or to the community in general. The choice, and the mechanisms for its administration, must address special problems when juveniles are to be the providers. What part should be played by parents in financial restitution ordered against

their children? How is employment for juveniles to be secured and adequate supervision of work tasks to be provided? How can the work be scheduled around school commitments? How is transportation to and from work sites to be arranged?

A variety of alternatives have been tried. Some unpaid community service projects have developed because of the difficulties in securing paid openings for juveniles (Bryson, 1976:8). Ann Arundel County, Maryland's Community Arbitration program has been successful in combining volunteer work assignments with minimal utilization of monetary restitution. Other projects, such as the one in Multnomah County, Oregon, have attempted to place juveniles in volunteer agencies where tasks may be related to the offense (e.g., vandals repair damaged property).

When restitution is used as a condition of probation it generally takes the form of monetary payments to the victim, with the probation officer acting as the intermediary (Chesney, 1975:153). Current efforts apparently place more emphasis on monetary restitution than upon restitution in the form of services to either the victim or the community, although several of the projects reported that both forms were ordered in many cases. When service restitution was ordered it was more often directed at the community than at the victim. (Hudson, 1976:4,5). A survey of juvenile restitution programs found a varied picture ranging from direct monetary restitution to the victim to work programs in which the offender was allowed to retain some of the money earned. (Bryson, 1976:8).

A study of monetary restitution in Minnesota indicated that its use by juvenile courts favored white, middle class offenders. The author commented: "It is clear that the most important determinant of whether an otherwise eligible defendant was ordered to make restitution was his presumed 'ability to pay'.... Clearly, a large group of offenders, in whom the courts had little faith that restitution would be completed, were not ordered to make restitution." (Chesney, 1976:28). This finding points to the more equitable possibilities for restitution through service programs in those situations where it is not possible to extend monetary restitution to all offenders. Service and monetary programs may sometimes be closely integrated. The program may facilitate earning opportunities for the juvenile so that the victim might receive monetary restitution. Alternatively the earnings of offenders in such programs might be used to supplement the cost of a victim's compensation scheme.

#### (b) Full or partial restitution

Restitution may involve full or partial payment (in money or in kind) by the offender. Arguments for partial restitution have been voiced by the President's Commission on Law Enforcement and Administration of Justice, which recommended: "Perhaps the best approach is for the probation officer to include in his pre-sentence report an analysis of the financial situation

of the defendant, an estimate of a full amount of the restitution for the victim, and a recommended plan for payment" (Task Force on Corrections, 1967:35). The American Bar Association (Standards Relating to Probation, 1970:49) has urged that "restitution... should not go beyond the probationer's ability to pay."

However, Galaway and Hudson have countered that: "Full restitution would seem preferable to partial or symbolic payment. Since restitution provides the offender with an opportunity to undo, to some extent, the wrong he has done, the more complete the restitution, the more complete the sense of accomplishment the offender gains" (Galaway and Hudson, 1972:405).

A survey of juvenile restitution programs found that something less than full restitution was generally required (Bryson, 1976:7). In a recent survey of nineteen programs, most of which involved adults, it was found that thirteen stated that full restitution was obligated for over 80 percent of the cases. The author noted that this was somewhat surprising given the national policy statements in favor of partial restitution tailored to the offender's ability to pay (Hudson, 1976:6).

(c) The need for guidelines and procedures to structure discretion

In many instances, considerable discretion is exercised by officials at the various stages of the juvenile justice process where restitution decisions are made. One observer has noted: "The disadvantages of restitution at the police level pertain to the entire system of criminal justice. Allowing a policeman to mediate a dispute places too much discretion in untrained hands. There are no criteria to guide the policeman in determining when or what kind of restitution should be ordered, nor is there an adversary proceeding to determine the exact amount of the victim's loss" (Laster, 1970:85).

Although this problem is especially acute at the pre-adjudication stage, it is of importance also at the adjudication stage, where guidelines concerning its use are required if fairness is to prevail. An issue that may arise, depending upon program design, is the possibility of veto power by the victim over the offender's participation. Hudson found this to be a possibility in six out of nineteen programs surveyed (Hudson, 1976:8).

(d) Relationship of the victim to restitution programs.

The victim of the offense is not necessarily the recipient of the restitution payment. As stated earlier, restitution may take the form of community service resulting in no direct benefit to the victim.

When the victim is the recipient of restitution, several considerations arise:

- (i) Identification of the victim. This is not always a simple task.

In many cases the victim is not an individual but a corporate entity (AIR, 1976:6). A further complication arises when the victim was covered by insurance and has already collected. A recent survey of mainly adult programs found that the usual pattern was for third-party victims to be recompensed in the same manner as direct victims (Hudson, 1976:8).

(ii) Involvement of the victim in determination of the restitution.

Victim involvement at this stage of the process takes several forms. Some pre-adjudication programs have involved the victim in an arbitration hearing which took place in lieu of a juvenile court adjudication. Direct offender-victim contact, however, is unusual, possibly because of victim anxiety. Five of the adult programs surveyed directly and personally involved the victim and offender in most cases; in nine cases, this happened infrequently; in the remaining five programs, such involvement never occurred (Hudson, 1976:6).

One concern expressed by program personnel is that victims sometimes over-estimate the loss suffered in the offense or the extent of the damage incurred (Bryson, 1976:7,6). One program director commented on another problem: "... Some victims reacted negatively when the juvenile was not directed to make monetary restitution. By virtue of the fact that they were interviewed regarding their losses or damages, they assumed that they would be reimbursed. When monetary restitution was not considered or ordered, they became aggravated. Therefore, careful attention had to be given to a clear understanding on the part of the victim regarding what could be expected from the juvenile and the court" (Bryson, 1976:17).

(iii) Nature of the victim-offender relationship during the restitution process

There is no ready agreement in the literature as to the extent that the victim-offender relationship should be personalized and the two parties brought into direct contact with each other. On one side, Eglash has stated: "Reconciliation with the victim of an offense creates a healthy, giving relationship" (Eglash, 1958:620); while it has also been argued that: "It seems questionable whether a victim should be twice penalized; first by the crime and then by being asked to assume a burden because he has already been wronged. In addition, however, it may force the victim into a situation which is uncomfortable, or even fear-producing" (Edelhertz et al., 1975:79).

Galaway and Hudson, who were involved in the Minnesota Restitution Center (for adult offenders), which did attempt to achieve victim-offender interaction, have cautioned that for the present, an open mind should be kept with regard to the issue (Galaway and Hudson, 1972:409). In the AIR survey it was found that victim participation was limited to some involvement in the determination of the restitution due; no programs involved victims in the later stages of the restitution process (Bryson, 1976:7). In another survey it was reported that when written agreements are enter-

ed into by the offender, the victim is rarely involved (Hudson, 1976:6).

There may be cases where the victim does not wish to be involved in any aspect of the restitution process; others where the victim desires no involvement beyond the receiving of restitution through a third party. The personal views of the victim should be an important determinant in the shaping of restitution programs. Chesney, in his study of the use of restitution as a probation condition in Minnesota, reported: "It is (also) recommended that victims be offered greater involvement with the process of restitution. Victims who have been involved with the determination of whether restitution should be ordered or in the determination of its amount and form were more likely to be satisfied with the restitution as ordered by the court. The victims who were least satisfied with the restitution as ordered, regardless of whether it had been completed, were those who were not notified whether restitution was ordered, and those who felt that the police, court, or probation officer had not adequately communicated with them... Victim involvement was also positively associated with the successful completion of restitution." (Chesney, 1976:29; emphasis in original).

(e) Informing the public of the work of restitution programs

In addition to informing the victim, it is also important that the public be informed as to the operation of restitution programs. In the AIR survey, at least one program acknowledged that not enough was done in this regard (Bryson, 1976:13). One study of a pre-adjudication arbitration scheme (which has a large restitution component) found that police administrators were generally unaware of how the program worked and were left with the impression "that absolutely nothing is done to a youth besides a simple warning in a majority of cases" (Morash, 1976:10).

(f) Level of offender involvement in shaping the restitution program

To the extent that restitution has a rehabilitative purpose, the issue of juvenile involvement in the shaping of the program is important. Eglash appears to assume that the offender voluntarily enters into "creative restitution" arrangements. He comments: "Although restitution is a voluntary act, an offender needs guidance.... A man, who, as a result of guidance, finds the zestful satisfaction which comes from creative restitution, will continue this process" (Eglash, 1968:621). Entering into a restitution arrangement within the criminal justice process is, however, not likely to be a totally voluntary act on the part of the offender. Even at the pre-adjudication stage when the program may be without formal sanctions, the offender will usually be influenced by the alternative courses of action that may be taken. In the AIR survey, one program located at the pre-adjudication stage reported that it relied heavily on "bluffing" juveniles into participation (Bryson, 1976:11).

The most appropriate course is probably to make explicit the coercive

aspect of the restitution arrangement, and thereafter to maximize offender involvement in the shaping of the actual program. This approach is consistent with the extensive literature which holds on both ethical and pragmatic grounds that offender participation in rehabilitation programs should be voluntary. (See e.g., American Friends Service Committee, 1971:98-99; von Hirsch, 1976:11-18.) In addition, it should be noted that restitution planning which does not involve the offender may further embitter and alienate him, rather than provide for his rehabilitation (Edelhertz and Geis, 1974:6).

In Hudson's survey of nineteen programs, it was reported that in fourteen there was some degree of choice in being referred or admitted to the program. Hudson notes, however, that choice in this context is substantively meaningless (Hudson, 1976:7). The AIR survey found that the offender had little say in the development of the restitution plan in any of the programs (Bryson, 1976:8).

#### (g) Administration of restitution and manpower problems

A number of problems arise in the administration of restitution programs. Many of these surface in relation to the utilization of service programs: the finding of jobs relative to the skills of the people involved, maintaining the employment situation, and supervision of the work program (Hudson, 1976:9; Bryson, 1976:9). The survey of juvenile programs found that seven of the eleven programs reported the use of volunteers (both to offset manpower shortages and to enhance community involvement and awareness of the program). The recruitment and training of volunteers makes demands on the time of the professional staff, and at least one program reported that the regular probation staff resented the extra work demands created by the restitution program (Bryson, 1976:11-14).

The program announcement attaches importance to program designs taking into account the danger of over-extension of available resources in the establishment of restitution programs. Both surveys reported that the expectations of victims can be raised to an unrealistic degree, and that victim dissatisfaction can result (Hudson, 1976:9; Bryson, 1976:10). One juvenile program provided this advice in its response to the survey: "If social service for the victims of juvenile offenses is to be the focus of a planned victim assistance program, then a detailed analysis of anticipated volume, priorities for limiting that volume, and sufficient staff to render the proposed service should be made. Further, the staff should have a good working knowledge of community resources and needs" (Bryson, 1976:15).

#### (h) Scope of Restitution

Determining the scope of restitution raises several important questions, not the least of which is, should the amount of restitution be limited to the specific petitioned offense or should it include other petitioned or unpensioned offenses?

Under Federal law, 18 U.S.C. 3651, restitution is limited, when applied as a condition of probation, to "actual damage or loss caused by the offense for which the conviction was had." In addition, Federal appeals courts have usually required that a probation condition calling for restitution be related to the offense and limited to the actual amount suffered (Laster, 1970: 90-96; Best and Burzon, 1963: 809; Fisher, 1975: 68-69). Moreover "most formal and informal programs provide restitution only for actual damages, and not for common-law damages such as pain and suffering." (Edelhertz, 76:65)

Once a determination is made on how to relate the amount of restitution required to the offense, it then becomes necessary to determine the amount of damage associated with the offense. Attaching monetary or in-kind (e.g., community service) value to criminal offense events poses problems but these are no more complex than those addressed when determining civil damages. In most instances the concepts and procedures for establishing out-of-pocket civil damages can serve as a guide for determining the value of damages related to criminal offenses. Projects should be aware that in many instances victims tend to overstate damages and offenders tend to understate them (Hudson, Galaway, Chesney, 77: 316). It is important to develop clear criteria for establishing damages that are fair to both parties. Failure to do so may lead to victim dissatisfaction and offender disillusionment with the program (Hudson, 77: 316).

Some of the issues that may be encountered in arriving at the amount of damages are:

- (i) Insurance coverage, damages sought in civil court, or the decisions of a victim's compensation scheme;
- (ii) Relative amount of restitution due when more than one offender was involved in the offense;
- (iii) Findings against co-defendants when dealt with by another court;
- (iv) Degree to which the offense was precipitated by the victim (see Fooner, 1966). Hudson found that only two out of nineteen programs attempted to take this consideration into account (Hudson, 1976:7).
- (v) Any awards made under workmen's compensation schemes.

(i) The Combination of Restitution and Other penalties

Restitution may be imposed as a sole sanction or in combination with other measures. Schafer has written: "While it appears reasonable to use correctional restitution as one method of dealing with criminals, if it were the only punishment available for crime, it could weaken the sense of wrong-doing attached to the crime -- besides reducing the deterrent effect

and potential. The social and penal value of correctional restitution might be destroyed if individuals were permitted to compromise crimes by making restitution: thus punishment should not be replaced by restitution." (Schafer, 1974:634-35).

It has also been suggested that restitution adds a "constructive aspect" when used as part of the probation process (Cohen, 1944) and provides a rationale for work programs within the correctional institution (Jacob, 1970:164-65). A recent survey of courts by the Institute for Policy Analysis revealed that 95 percent of the 114 courts that responded use restitution in conjunction with probation (Institute of Policy Analysis, 1977)\*.

Moreover, in the survey of nineteen restitution programs it was found that ten programs required offenders to also be involved in various forms of individual or group counseling (Hudson, 1976:8). The impact of these additional requirements is unclear at this time and should be a focus of further study.

#### (j) Enforcement Issues

Restitution orders or agreements are generally bolstered by the threat of a further sanction should the individual default, e.g. probation may be revoked. The previously cited survey by IPA where 114 courts reported they used some form of restitution, indicates that 39 percent (42) of the cases are handled by probation officers in an informal manner; 24 percent (26) were handled by the court. Twenty-five percent of the restitution probationers had their probation revoked; 20 percent (21) had their probation extended and 10 percent (11) were incarcerated (I.P.A. 1977).

In the survey conducted by Bryson for AIR, three of six programs located at the adjudication stage reported difficulties related to enforcement and sanctions (Bryson:9). Respondents indicated that there were insufficient sanctions for noncompliance and in some instances probation officers resisted initiating revocation proceedings because of the additional workload (Bryson:9). To avoid some of the enforcement issues, it is important to set forth precisely what the restitution contract or order involves so that the offender and other parties involved are certain as to what is required and what the consequences are for failure to complete the restitution.

When sanctions are applied for failure to complete restitution, such as revocation of probation, it is important to recognize that there is

\*Two hundred juvenile courts were randomly selected from the total number of juvenile courts to receive mailed questionnaires. One hundred thirty six responses were received, of which 114 indicated they use some restitution. Basic descriptive information and limited attitudinal data were collected.



need for due process protections. This has been underlined by case law developments with regard to revocation proceedings. (See Gagnon v. Scarpelli, 411 U.S. 778 (1973)).

(k) Termination of the restitution process

Restitution programs vary as to whether the time span of the restitution arrangements is carefully prescribed at the outset, or whether the offender is able to carry it out at his own pace. When the restitution process is one of several program components the duration of the offender's involvement may well be determined by these other considerations (Mowatt, 1975:207). It has been forcefully argued by some observers that the sanction be terminated on completion of the payment or the work program (Smith, 1965:48-49). In Hudson's survey it was reported that in ten of the nineteen programs the offender was sometimes discharged from the program on completion of the restitution obligation. In seven programs such discharge was universal and automatic. Seven programs indicated that it was highly important for restitution to be completed for the offender to be discharged (Hudson, 1976:8). The survey of eleven juvenile restitution programs found a varied pattern in terms of termination. In one program the amount of restitution was divided by the number of months of probation to determine monthly payments due. It was found that in some programs scheduling and transportation problems affected the length of time in the restitution program (Bryson, 1976:9).

## REFERENCES

- American Bar Association, (1970) Standards Relating to Probation, New York: Institute of Judicial Administration.
- American Friends Service Committee, (1971) Struggle for Justice, New York: Hill and Wang.
- Best, J. and Birzon, P. (1963) "Conditions of Probation: 51, Georgetown L.J. 809-836.
- Bryson, J. (1976) Survey of Juvenile Restitution Programs. Mimeo report on file with OJJDP.
- Chesney, S. (1975) The Assessment of Restitution in the Minnesota Probation Services' in Hudson J. (ed.) Restitution in Criminal Justice, St. Paul, Minnesota: Minnesota Department of Corrections.
- Chesney, S. (1976) The Assessment of Restitution in the Minnesota Probation Service. Mimeo report prepared for the Minnesota Governor's Commission on Crime Prevention and Control.
- Cohen, I. (1944) "The Integration of Restitution in the Probation Services" J. Crim. L. Criminol. Police Science 315-321.
- Edelhertz, H. and Geis, G. (1974) Public Compensation to Victims of Crime. New York: Praeger.
- Edelhertz, H. et al. (1975) Restitutive Justice: A General Survey and Analysis, Seattle: Battelle Institute.
- Eglash, A. (1958) "Creative Restitution: A Broader Meaning for an Old Term" 48 J. Crim. L. Criminol. Police Science 619-622.
- Fooner, M. (1966) "Victim-Induced, Victim-Invited and Victim-Precipitated Criminality: Some Problems in Evaluation of Proposals for Victim Compensation" 153 Science 1080-1083.
- Fisher, D. (1975) "Creative Punishment: A Study of Effective Sentencing Alternatives" 14 Washburn L. J. 57-75.
- Fogel, D., Galaway, B., and Hudson, J. (1972) "Restitution on Criminal Justice: A Minnesota Experiment" 8 Crim. L. Bull. 681-691.
- Galaway, B. and Hudson, J. (1972) "Restitution and Rehabilitation: Some Central Issues" 18 Crime and Delinquency 403-410.

- Geis, G. (1975) "Restitution by Criminal Offenders: A Summary and Overview in Hudson, J. (ed.) Restitution in Criminal Justice, St. Paul, Minnesota: Minnesota Department of Corrections.
- Goldfarb, R. and Singer, L. (1973) After Conviction, New York: Simon and Schuster
- Harding (1975), "Community Service Restitution by Offenders" in Hudson, J. (ed.) Restitution in Criminal Justice, St. Paul, Minnesota: Minnesota Department of Corrections.
- Hudson, J. (1976) Preliminary Survey Findings of Restitution Programs for Adults in the United States. (unpublished).
- Jacob, B. (1970) "Reparation or Restitution by the Criminal Offender to his Victim: Applicability of an Ancient Concept in the Modern Correctional Process" 61 J. Crim. Law, Criminol. Police Science 152-167.
- Kassebaum, G., Ward, D. and Wilner, D. (1971) Prison Treatment and Parole Survival: An Empirical Assessment. New York: Wiley.
- Larom, D. (1976) "The Arbitration Experience: Improving the Process of Intake Taking" Juvenile Justice 13-17.
- Laster, R. (1970) "Criminal Restitution: A Survey of its Past History and an Analysis of its Present Usefulness" 5-Univ. Richmond L. Rev. 71-98
- Levin, M. and Sarri, R. (1974) Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States, University of Michigan: National Assessment of Juvenile Corrections.
- Morash, M. (1976) The Impact of the Community Arbitration Program on the Police. Mimeo report on file with OJJDP.
- Mowatt, O. (1975) "The Minnesota Restitution Center: Paying Off the Ripped Off" in Hudson, J. (ed.) Restitution Criminal Justice, St. Paul, Minnesota: Minnesota Department of Corrections.
- President's Commission on Law Enforcement and the Administration of Justice (1967) Corrections, Washington, D.C.: Government Printing Office.
- Read, B. (1975) "The Georgia Restitution Program" in Hudson, J. (ed.) Restitution in Criminal Justice, St. Paul, Minnesota: Minnesota Department of Corrections.
- Sarri, R. and Sello, E. (1975) "Evaluation in Juvenile Corrections: Some Selected Findings" National Assessment of Juvenile Corrections,

Schafer, S. (1974) "Compensation to Victims of Criminal Offenders" 10  
Crim. L. Bull. 605-636.

Smith, K. (1965) A Cure for Crime: The Case for the Self-Determinate  
Prison Sentence, London.

Von Hirsch, A. (1976) Doing Justice: The Choice of Punishments, New York:  
Hill and Wang.

Wolfgang, M. (1965) "Victim Compensation in Crimes of Personal Violence"  
50 Minn. L. Rev. 230-244

## APPENDIX II

### EDITOR'S NOTE

The following paper is intended to be a general discussion of legal issues involved in the implementation of a restitution program for juvenile offenders, and not specific legal advice for a program in a given jurisdiction. For such legal advice consult with counsel for your agency.

**END**