

# Probation

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Parole and the Public: A Look at Attitudes in  
California..... Walter L. Barkdull

Long-Term Inmates: Special Need and Management  
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SEPTEMBER 1988

U.S. Department of Justice  
National Institute of Justice

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# Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LII

SEPTEMBER 1988

NUMBER 3

## This Issue in Brief

**Restitution As Innovation or Unfilled Promise?**—Author Burt Galaway discusses what we have learned about restitution since the establishment of the Minnesota Restitution Center in 1972 and in light of the early theory and work of Stephen Schafer. Noting that restitution meets both retributive and utilitarian goals for punishment, the author finds considerable public and victim support for restitution, including using restitution in place of more restrictive penalties. He cautions, however, that we must clarify the difference between restitution and community service sentencing and discusses challenges which exist for future restitution programming.

**Parole and the Public: A Look at Attitudes in California.**—Describing recent events in California, Author Walter L. Barkdull stresses the need for parole authorities to develop community support for the concept of parole. Public attitudes hostile to parole have been crystalized by the release of several notorious offenders at the end of determinate sentences. Community groups have discovered the power of organized action to thwart the state's ability to locate facilities and place parolees. Resulting court decisions have provided both the public and parole authorities with new rights, while legislation has imposed severe operating limitations.

**Long-Term Inmates: Special Needs and Management Considerations.**—Society's response to crime has contributed to a number of trends which have resulted in longer terms of incarceration for convicted felons. Determinant sentencing, modifications in parole eligibility criteria, enhanced sentences for repeat offenders, and longer terms for violent offenders have resulted in an increase in time served and a subsequent increase in the proportion of long-term inmates in state facilities. The incar-

ceration of greater numbers of long-term inmates brings a number of programmatic and management concerns to correctional administrators which must be addressed. Using data on Kentucky inmates incarcerated as "persistent felony offenders," authors Deborah G. Wilson and Gennaro F. Vito identify the programmatic and management needs of long-term inmates and delineate some possible strategies to address this "special needs" group.

**The Use of Counsel Substitutes: Prison Discipline in Texas.**—Although prison discipline has changed significantly through internally and externally initiated reforms, it remains a critical aspect

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# Fulfilling Juvenile Restitution Requirements in Community Correctional Programs

BY H. TED RUBIN\*

A REQUIREMENT for juvenile offenders to pay back their victims for losses or damages occasioned has become a frequent sanction in American juvenile courts. An alternative sanction, to require juvenile offenders to perform community work service hours to pay back the community for injuries sustained to its human or physical environment from delinquent offenses is also a commonly invoked penalty. Community work service may be compelled with victimless crimes or as an added sanction to financial restitution and victim reimbursement mandates. The concept of restitution that is used here encompasses these several forms of requirements, although in some jurisdictions, at present, the term restitution applies to financial requirements only.

Both forms of juvenile restitution are used by certain police agencies in approving diversion from further penetration into the juvenile justice system (Rubin, 1987). They are used at the intake stage of juvenile court processing in conjunction with diversion or informal probation determinations (Ariz. Rev. Stat. Ann § 8-230-.01; Tex. Fam. Code Ann § 53.03). They are most commonly applied at the juvenile court dispositional stage, typically as a condition of probation but also as a sole sanction (Schneider and Bazemore, 1985; Juvenile Restitution Program, 1987). Restitution may be ordered by a juvenile parole authority, for example, when a juvenile on aftercare status re-offends and this offense is handled not through a court system but as a revocation or as the basis of additional requirements in retaining the aftercare status (Utah Code Ann. § 55-11b-23; Tex. Hum. Res. Code § 61.081).

This article focuses on the carryover of judicially ordered restitution requirements into community

correctional settings. These settings include day treatment programs, non-secure residential programs both public and private, drug and alcohol treatment settings, and local or regional secure pre-trial detention facilities following a disposition or sentence of confinement.

Several approaches to restitution are followed with these placements. One is to order financial restitution for the offense that prompts placement but to avoid consideration of payment for this and any prior restitution requirements until the youth completes the program and returns home on regular probation status. A second rejects adding community work service hours to the placement disposition, reasoning that the placement is a sufficient sanction and the court should not enter mandates which may interfere with the facility's program of correctional treatment. Consistent with this approach, community work service hours ordered with prior offenses also go on hold during the placement period.

There are other models which better fit the accountability precept of restitution. Financial and community work service restitution are ordered in conjunction with the offense that leads to placement; placement agency administrators have designed into their program opportunities for juveniles to earn money to pay back victims and perform unpaid work tasks that assist their agency or other non-profit or governmental agencies nearby. It is the author's contention that this latter approach is more beneficial to the victim, the community, and the juvenile, and that each juvenile court system should close any gaps in its continuum of restitution expectations and enhance its collaboration with placement settings to maximize restitution compliance.

The following sections present program models of these different types of placement resources and then discuss a range of issues related to implementing restitution in these settings.

## *Day Treatment Settings*

These programs consist of all day or much of the day alternative education and psychologically oriented treatment. They may include recreation, cultural enrichment, and job skills orientation. An example is New Pride, Inc. in Denver, Colorado, that serves 12- to 18-year-old delinquent youths referred

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Funding for this research was provided by the Office of Juvenile Justice and Delinquency Prevention. The views and opinions expressed here are those of the author and do not necessarily express the opinions or policies of the U. S. Department of Justice. The author wishes to acknowledge the cooperation of juvenile justice officials in Denver, Sonoma County, California, and Erie, Pennsylvania, where site visits were conducted, and others, elsewhere, who responded to telephone-administered questionnaires.

by the court as an alternative to residential or institutional placement. The program includes a learning center designed to remediate educational deficiencies and develop basic academic skills leading to a G.E.D., a high school diploma, or entry into vocational training. It is also in partnership with Midtown Services, a for-profit small business spinoff that trains and employs New Pride clients in property maintenance and business services jobs. The former includes janitorial work, building maintenance, snow shoveling, landscaping, and the setting up of and cleaning up after community events. The latter involves a variety of tasks in conjunction with bulk mailings. Virtually all juveniles enrolled in New Pride come with financial restitution requirements. Community work service hours are not assigned to these juveniles. All juveniles have significant records of law violations. The juveniles are paid for both training and work during the 4-month job component of the overall 6-month New Pride program. Enrollment in the learning center is a requisite for enrollment in the job component. Midtown Services provides an 80-hour pre-work vocational training program, knowing that an investment in training will achieve better contract performance with the businesses and organizations it serves. Juveniles begin at \$3.35 an hour. They typically work 20 hours a week and must make restitution payment from their weekly pay. Restitution fulfillment is central to the New Pride accountability philosophy.

### *Residential Settings*

The Sonoma County Probation Camp, Healdsburg, California, serves 20 delinquent juveniles ages 16 through 18 years. Most are repetitive property offenders. All juveniles are under court commitment and remain at the camp 7 to 8 months. A school program consists of one-half day academic education and one-half day industrial education. The latter features welding, carpentry, cooking, gardening and landscaping, and janitorial training. Through contracts with the state parks department, residents make picnic tables, food lockers, outdoor toilets, road and parking barricades, garbage cans, and picnic camp stoves that must meet quality control standards. Income generated through contracts is used to improve vocational equipment and tools, enable recreational and wilderness experiences, and, in special cases, assist in the independent living of a camp graduate when no parental support is available. On weekends or on an afternoon in lieu of industrial education, camp residents have done landscaping at boys' clubs, constructed and installed a sand table and storage shed at a school for developmentally

disabled children, and painted nursery school buildings.

Approximately 75 percent of camp residents bring financial restitution requirements with them; community work service hours are not part of the judicial order, possibly, the camp superintendent says, because the court knows that residents perform community service projects as part of the camp's program.

The camp has a written rule that each juvenile ordered to pay restitution, fines, or court costs must earn \$50 a month for payment. To implement the rule, the camp's administration takes responsibility for creating earning opportunities for these youths. At the time of the author's site visit, the earning opportunity enabled juveniles to place kiln dried walnut wood scraps into a duffel bag for sale to the public. The wood is obtained at no cost from a company whose personnel manager sits on the 24-member camp advisory committee. County employees and the public are notified they can pick up the kindling wood for \$1 a bag at the camp. The juveniles are paid 75 cents per bag, the sack costing 25 cents. With effort, residents can earn \$7.50 an hour for restitution payment. Other restitution earning projects have been to make concrete foundation blocks, engineer's stakes that were sold to lumber yards for resale, and metal crossing signs of a goose or a chicken that were sold to the public. During fiscal year 1987, residents paid back \$2,372 to victims.

The administration has the flexibility, if it is unable to come up with similar restitution-earning jobs, of converting certain of its contract wood and metal products efforts into a post-school hours or weekend time shift and then to stipend the juveniles from the contract income to make restitution payments. Camp staff members also serve as aftercare counselors; the same monthly restitution requirement is mandated following release, when there is a balance. A pre-release job-obtainment skills program facilitates community employment achievement.

Harborcreek Youth Services, Erie, Pennsylvania, is a multidimensional agency that serves 50 delinquent and dependent juveniles in its residence that has a school on the grounds; it provides a day treatment program that is also on the grounds and maintains specialized foster homes and six group homes at different locations in the area.

The residential facility includes a structured Work Experience Program for juveniles, 15 through 17 years, who are not seen as capable of completing high school. The program begins with aptitude and occupational interest testing, shifts into a 2-week orientation to the world of work, and then progresses to a 5-month evaluated work experience.

The work includes building maintenance, food and laundry service, vehicle maintenance, serving as aids to health, clerical, and educational staff, and other on-grounds tasks. The three steps in this phase move from observation to responsibilities without pay to responsibilities with pay. A successful evaluation leads to off-campus jobs doing maintenance, pressure cleaning, and truck cleaning at a bakery, washing cars at the nearby state police barracks, and work for other off-campus businesses. Classes at a nearby technical school may be arranged. Youths from other Harborcreek components may participate in the Work Experience Program. Over time, pay can increase to the minimum wage. The Harborcreek administration is committed to juvenile payment of financial restitution and any court fines or costs during a juvenile's residence. During the first 10 months of 1987, \$7,243 was paid back for these purposes, mostly for financial restitution. Reportedly, approximately 80 percent of juveniles clear up financial restitution requirements while in residence.

Community work service orders are rarely included in an order of placement, although they do accompany children placed by the court into an agency foster home. Residential staff are not particularly attentive to any community work service requirements.

Perseus House, Inc., Erie, Pennsylvania, maintains four group residences for delinquent and dependent youths placed in its care by the local juvenile court. In 1981, it added an employment preparation program when it opened a gasoline service station. The agency's commitment to financial restitution requirements is clear. The juveniles may earn these funds in the summer time through participation in Job Training Partnership Act employment or year round at the gas station. Perseus House emphasizes that the objective of the gas station experience is that juveniles will go on to jobs and not only to gas station jobs. Further, the method used is training and not work. This training program requires from 5 to 8 months. It is for 16- and 17-year-olds, mostly boys, is an alternative educational setting, and supplements the residential program. Youths are at the station from 3 to 5 days a week.

There are five stages to the training that is based on the development of a productive work ethic, a "proper employment attitude," and the application of "performance aptitudes as well as verbal skills." There is an initial orientation phase where youngsters are instructed in an employment manual and in how to serve customers at the gasoline dispensing islands. In the second phase, they move more into an employee position, are paid, are given their own

key to the cash register, pump gas regularly, are introduced to the tire changing machine and limited mechanics' duties, and receive further instruction on work habits and employers' expectations. In the third stage, youths both pump gas and work under instruction at mechanics' chores such as tune ups and engine and transmission repairs. Phase four includes limited gasoline pumping, major work in the auto repair shop, and instruction on how to look for jobs. In the final phase, juveniles prepare resumes, obtain references, and go out for job interviews. They continue to work at the station until they secure employment.

The youths are paid for pumping gas, working up to the minimum wage over a 9-week period. Typically, they work 20 hours a week at the station. They are not paid for garage repair work which is seen as strictly educational. G.E.D. training, provided concurrently with the gas station training experience, normally is completed about the time a youth seeks employment. An estimated \$4,500 is paid in restitution through juveniles' gas station earnings annually; 80 percent of these youths pay their requirements in full during the training period. Further, the program cooperates with any community work service requirements that juveniles bring to placement. The work is performed at such local non-profit agencies as the Boys' Club, the Florence Crittenton Home, the YMCA, and at nursing homes.

There are other examples of fulfillment of restitution requirements while in placement. Northwest Passages, Webster, Wisconsin, is a 20-bed facility for delinquent boys located in a town of 600 population within a county of 14,000 residents. Its director acknowledges, "because we always facilitate restitution achievement, the system expects it from us." The agency provides earning opportunities and unpaid community work service on the grounds of this facility. Work is done after school and when one is not otherwise engaged in an agency program. The work includes cutting and stacking firewood, cutting the lawn, painting, putting in shrubs, and assisting the maintenance man with minor construction jobs. Approximately 10 percent of youngsters come to the residential program with a restitution requirement. During later stages of their stay, juveniles, restitution-owing or not, may obtain jobs in the community. For the former, any outstanding restitution requirements must be paid from earnings. A few residents have completed their community work service through placement with the county road maintenance agency.

The Sanctuary, Mercer, Pennsylvania, is a 12-bed group home for delinquent boys 13 through 18 years



of age. During the first month of residence, a treatment plan is developed with the juvenile, his parents, probation officer, and the staff. Any outstanding financial or community work service restitution obligation is routinely included in the treatment plan. More than 80 percent of the boys owe restitution or court fines or costs; 50 percent owe just financial restitution.

The Sanctuary emphasizes a youth's fulfillment of his responsibilities, believing this increases one's feeling of self worth. All residents undertake a job orientation workshop geared to finding an off-grounds job. Those owing financial restitution must make installment payments from their earnings. Community work service requirements are performed at the group home, at nearby nursing homes, or with Meals on Wheels where juveniles prepare and deliver food preparations to senior citizens. On grounds, juveniles in their free time perform work service hours by helping repair the group home, remodeling a garage into a storage facility, and other projects in which staff members work with the youngsters on planning and supervising the tasks.

The Idaho Boys Ranch, Boise, Idaho, also a non-profit organization, serves 36 boys at its main campus facility and operates a 12-bed group home in another community and a 9-bed independent living unit in Boise. Approximately 15 percent of boys come with an outstanding financial or community work service restitution obligation. During the average 9-month ranch experience, all residents have paid job opportunities: table waiting, dishwashing, and yard crew work. They earn allowances based on performance in the overall program which can also be allocated to financial restitution requirements; some participate in summer Job Training Partnership Act jobs and make restitution payments from these earnings. Several boys have completed financial restitution through participation in a 4-H program. The ranch provides the boy with a calf. The boy raises the calf, grooms the calf, and then shows it at the county fair. The animal is sold at the fair's 4-H auction. The ranch takes 50 percent of the proceeds to pay for the original cost of the calf and feed while the remaining 50 percent goes to the juvenile. Several boys have paid off restitution of \$500-\$600 from their share of the proceeds.

Juveniles perform community work service at the ranch by digging and raking weeds, washing cars, and accomplishing other menial tasks. The agency also maintains thrift stores in four Idaho communities. Ranch and group home juveniles can complete their hours in various tasks at a store. The thrift stores are also community work service sites for ju-

venile probationers in the four communities.

The Lucas County Juvenile Court, Toledo, Ohio, utilizes approximately \$90,000 of its state subsidy program money to pay restitution-owing juveniles to perform community work service for repayment to victims. Work crews are used, rather than individualized agency placements. Juveniles placed by the court at Circle C group homes, 20 miles away, and at the Timberville Boys' Ranch, 30 miles away, perform their paid community work service on the grounds of the residential agency rather than coming to Toledo for the work crew experience. The directors of these agencies regularly advise the director of the Lucas County Juvenile Restitution Program of the number of hours worked; funds are then released to victims.

Despite these constructive forms of restitution fulfillment during residential placement, the author's inquiries have found numerous respondents who indicated that restitution compliance was not a consideration with residential placement. Apparently, the carryover of restitution requirements into drug and alcohol treatment facilities carries still fewer expectations.

#### *Drug and Alcohol Treatment Programs*

Abraxas II, Erie, Pennsylvania, is a community-based residential program for drug and alcohol dependent persons 16 to 25 years of age, male and female. The main Abraxas facility is at Marienville, Pennsylvania, and involves a 6- to 9-month residential stay. Re-entry houses are maintained in Erie, Pittsburgh, and Philadelphia, where the stay averages 3 to 6 months. Residents move from the Marienville site to one of these three Re-entry residences. The third and final phase of the program takes place in each of these three communities and is an Out-Client program that helps participants through the early weeks of independent living and seeks to assure continuance of a chemical-free lifestyle. There is also a three-phase shorter program, Assist, that is provided in Erie, Pittsburgh, and Philadelphia for juveniles whose drug dependency is less severe and whose families will participate actively in counseling. Abraxas, Erie, then, has in residence both Re-entry and Assist juveniles.

During the Re-entry phase, juveniles phase back into school or find employment in the community. There is educational and vocational guidance, individual treatment planning, individual and group counseling, and family counseling. There is job orientation training and a life management skills course. Resident juveniles who become employed are required to contribute to a restitution requirement with

the second and subsequent paychecks. This continues during the third Out-Client program when clients return to their homes or move into an independent living arrangement. During these two phases, Abraxas' juvenile clients who owe restitution may participate in the Erie Earn-It Janitorial Services, Inc., the non-profit affiliate of the juvenile probation department that has a contract to clean up the courthouse each night and also performs janitorial services at a public library and public social services agency.

Obstacles to fulfilling restitution requirements for residents of drug and alcohol facilities can be overcome. Similarly, earning restitution monies can become a focus of re-entry and out-client phases of specialized residential programs for juvenile sex offenders. Community work service requirements can be completed during residential phases of drug and alcohol or sex offender programs. Restitution opportunities can also be developed when courts confine juveniles to secure detention facilities as a sanction.

### *Sentences to Detention*

California and approximately 13 other states authorize juvenile court judges to use a sentence to a pretrial secure detention facility as a dispositional option. The confinement period may be for several weekends, up to 45 days or 3 months, or longer. Often, sentenced juveniles are mixed with pretrial juveniles in the same facility, and there is no specialized program, restitution-wise or otherwise, for sentenced youngsters. This is true in the juvenile detention center in Chicago where 10 percent of its 390-400 residents have been sentenced for from 3 days to 60 days. It is true in Denver and other communities. There are more positive program models.

Sonoma County, California, maintains a Juvenile Correctional Program for up to 12 delinquent youths at its Juvenile Hall in Santa Rose. This minimum 6-month program is located in the sprawling detention center complex certified for a 118-bed capacity, but which averages 65 juveniles including those sentenced to the program. More typically, it takes from 8 to 10 months to earn release from the program. Residents frequently have a significant offense history. Some residents had earlier run away from the Sonoma County Probation Camp or otherwise failed that program. Other juveniles may be sentenced briefly to the facility but not into the Juvenile Correctional Program. These dispositions tend to be for 2 to 5 days.

Program participants attend school on the grounds and may prepare for a G.E.D. examination. They are engaged in individual and group counseling sessions

and also participate in a work program. They are graded weekly on a series of requirements. Specified grade scores are necessary to move through the various steps of the program and to move toward furloughs and ultimate release. The work component, which emphasizes work attitudes, habits, and skills, allows for restitution payments.

Program juveniles attend school each morning. They work 2 hours daily, one evening, and 8 hours each Saturday and Sunday on one of four projects. One is a furniture refinishing program that began with county employee clients but has spread to the community. A second project is bicycle repair and sales. The program obtains unclaimed bicycles from the police department, fixes them up, and sells them at flea markets or to county employees through a newsletter notice. A third is picture framing, and a fourth is an animal husbandry project that raises pigs and sells them. From the earnings, a maximum of \$300 may be paid to a juvenile's restitution account.

Program juveniles not owing restitution do not share in the earnings unless, on a case-by-case basis, funds are seen as necessary for a youth to enter into independent living. Also, when close to graduation from the program, juveniles may obtain jobs in the community. From their earnings, money is diverted to victim payments when there is an unfulfilled restitution requirement. The court attaches financial restitution but not community work service requirements with this disposition. However, the program makes community contributions in the form of building or refinishing county furniture at no cost, constructing storage boxes for a battered women's shelter, and raising and providing fresh vegetables for the detention facility and a senior citizens' center.

In Washington State, under its justice model juvenile code, juvenile court judges may sentence juveniles to secure detention facilities for up to 6 months and even longer. The duration of stay is related to one's age, present offense and offense history, and elapsed time between offenses. State funding subsidizes long-term detention sentences. Here, too, the sentence is to a program and not just to a facility. In Spokane County, a 6-month sentence is divided into three phases. The first 2 months involve school in the facility, life skills and social skills training, and job orientation. During the next 2 months, juveniles are furloughed on work or school release, returning to the facility at night. Those who obtain jobs must, if they owe restitution, make payments to victims from their earnings. Payments are also made during the final 2 months where juveniles live at home, attend school, or are employed, and come



into a detention center for one overnight stay per week. Earlier that evening, the parents and juvenile meet with probation and detention staff members to review progress and problems.

A similar approach is taken in Pierce County (Tacoma), Washington. The center's director noted that there is no difficulty obtaining jobs for juveniles during phases two and three through the assistance of the state employment service, since program juveniles qualify for this service. Also, here, juveniles sentenced to the program who carry community work service requirements from past orders must perform their hours on their own time, working on maintenance and related tasks on center grounds. The court does not order community work service requirements with juveniles sentenced to longer terms for an offense that prompted this disposition. Additionally, about 10 juveniles are sentenced annually for about 5 days each for failure to fulfill restitution obligations in the community. The number of days served in these cases is prorated to the amount of money unpaid or number of hours not performed. These youths do not perform special work tasks at the center to accomplish the original order. The detention sentence is a substitute, then, for the original order.

Judges in Orange County, California, utilize community work service as an alternative to a short detention sentence. This may be invoked with a willful failure to comply with a financial restitution or with a less severe repeat offense. These juveniles may work four weekends with a probation department work crew instead of spending four weekends of "dead time" in the detention center.

The fulfillment or restitution requirements is not a prominent consideration with lengthier detention sentences in this jurisdiction. But a small number of these juveniles may be released on work furlough, toward the end of their stay, to a former job if they had one or to a new job if a probation officer can help them find one. Partial earnings, if restitution is owed, are directed to victims.

New Jersey statutes authorize sentences to detention not to exceed 60 continuous days, but the physical and program standards of the local detention facility must meet Department of Corrections requirements. The department specifies the capacity of the facility for sentenced juveniles, which may not exceed 50 percent of the maximum capacity. Between 30 and 40 juveniles are sentenced annually to the Ocean County Juvenile Detention Center at Toms River, some for non-compliance with restitution requirements. A typical sentence is 30 days, and a youth can earn up to 5 days of good time performing

additional work assignments, during free time, at the center. Sentenced juveniles with unperformed work hours can perform these at the facility painting walls, cutting lawns, maintaining outside gardens, and doing general clean up, all on their own time. During good weather months, an arrangement with the local buildings and grounds department results in juveniles doing lawn maintenance, raking leaves, and assisting a carpenter. These youths are picked up daily at the center by buildings and grounds staff and returned to the center following the work experience. Financial restitution obligations cannot be earned at the center, but juveniles who had employment when sentenced may be work-furloughed to their former position, with certain earnings directed to victim payment. The center also arranges jobs for these juveniles at a local cinema, in other private sector settings, and in conjunction with the Job Training Partnership Act.

Through a different legal procedure, a deferred plea, juveniles are held in a detention facility at Clarksboro, New Jersey, for failure to comply with restitution requirements. A juvenile may be driven by a staff social worker to a paid job that was held prior to confinement so that victim payments may be reinitiated. Juveniles failing to comply with community work service requirements may complete their hours by working at the center or be taken back and forth by the staff social worker to a probation department work site to complete their hours.

The fulfillment of restitution requirements in community correctional settings requires resolution of a series of policy and implementation issues.

### *The Need for Review and Clarification of Court Policy Regarding the Carryover of Restitution Orders into Community Placement*

Community agencies receiving court juveniles look to the court's policies, requirements, and the messages it communicates. Any number of juvenile courts, in general, assess financial restitution without high expectations of full payment and lack a program to facilitate earnings and compliance. In effect, these courts have not been accountable to victims. Even outstanding restitution programs have not always clearly assessed, thought through, and implemented a consistent policy regarding carryover of restitution requirements to community placements.

The preceding review indicates that financial restitution is typically ordered by the courts in conjunction with an offense that prompts placement, but that community work service hours are often avoided with such a placement, even though when a juvenile previously has been before the court with a lesser

offense, community work service may have been ordered. There is also evidence that a court's practices may be to wait until a juvenile leaves placement to begin pressuring for collection of financial restitution. Yet the program models cited earlier suggest that ways can be found to implement both financial and community work service restitution during placement or, at least, in the latter stages of placement.

It would seem advisable for all courts and their restitution components to treat a placement-prompting offense no differently than any other offense as to restitution requirements and to expect their fulfillment during placement unless the facility's program is able to convince the court that fulfillment is fundamentally incongruous with the constraints of its program.

The restitution policy of the Court of Common Pleas, Juvenile Section, Allegheny County (Pittsburgh), Pennsylvania (1986, p. 142), is a useful reference with financial restitution carryover:

At the initial institutional contact when treatment goals and objectives are reviewed, the issue of restitution is to be incorporated. The probation officer should encourage the development of a restitution payment schedule while the child is in placement. At all review hearings the probation officer will address efforts made to satisfy the restitution order . . .

The mission statement of a juvenile court or restitution agency is another policy foundation. For example, the mission statement of the Santa Clara County (San Jose), California, Probation Department (1987, p. 4) states that "[o]ffenders will be held responsible to the community and to themselves through personal accountability and restitution as a part of any sanction whether or not it involves custody."

#### ***The Need for Community Placement Agencies To Incorporate Fulfillment of Restitution Requirements into Their Program Purposes***

Many community agencies that work with juvenile court youths may prefer not to accept responsibility for assisting with the fulfillment of restitution requirements during placement. They have developed their own program design and treatment methods and usually have structured the time of these juveniles quite extensively. Some will contend that their treatment regimens or facility limitations provide no opportunity for restitution fulfillment. Yet, an accountability precept is consistent with how these agencies usually approach a juvenile's errant past and behavioral present. They use levels or steps, allow privileges to be earned or withdrawn, and through various means require juveniles to accept

responsibility for their actions. Further, these agencies are dependent on the court and probation department for many of their referrals.

The program models, described earlier, indicate that such agencies can, and often enthusiastically do, incorporate restitution requirements into their programs, on grounds and off grounds. In other communities, this issue may be ignored.

Community work service hours appear to be relatively easy to arrange on grounds. Further, some placement agencies are able to build payments for work performed by juveniles owing restitution into their fee schedule or educational budget. Others can innovate earning opportunities with the assistance of governmental and private sector organizations and interested citizens. Placement agencies should recognize that it is instructive for other juveniles in the program, not required to perform such work or earn restitution, to observe their peers fulfilling their requirements during non-program time.

It is largely an educational and negotiation process that bridges this gap. Juvenile courts and probation agencies should take the initiative in working out clear expectations but flexible approaches for placement agencies in this regard. In some cases, they may need to assist these agencies by helping arrange in-the-community job earning and community work service opportunities for those who can be released from their settings.

#### ***The Need for Placement Agency Awareness of Restitution Requirements***

Harborcreek Youth Services serves juveniles from a number of Pennsylvania counties in its residential program. The agency reports that placement orders received from some counties do not always specify restitution requirements, though restitution may have been ordered. Further, some of these directives fail to clarify whether restitution payments should be made to the county, the clerk of court, or the victim. It is likely that private placement agencies have more difficulty receiving full information on restitution obligations than do court-related governmental organizations.

The statewide Utah Juvenile Court and the Utah Division of Corrections share a computerized information system that enables the division to obtain an instant printout of factual information, including restitution requirements, when a court commits a youth to the custody of the division for either community correctional or state institutional placement. A division case manager who works with juveniles in proctor homes or contract residential facilities has the information to communicate to the youth and

the residential staff the amount of money or work service hours that need to be paid or performed. State institutional staff also have this information. Utah statutes provide that parents must pay toward the costs of their children's out-of-home placements and specify this money is to be used to pay division juveniles to perform paid community work service, with payments directed to victims.

Other public facilities, the secure detention center in Tacoma, Washington, and the probation camp in Sonoma County, California, reported that court orders accompany commitments to their programs, and the orders specify restitution requirements.

It is incumbent upon court and probation officials to inform placement agencies speedily and fully as to outstanding restitution obligations concerning juveniles placed in their care.

***The Need for Appropriate Restitution Requirements, Consistently Administered, To Assist Placement Agencies' Collaboration with Fulfillment***

"Before ordering monetary restitution, the court must determine that a youth has a present ability to pay, or is likely in the near future to obtain the ability to pay" (Feinman, 1985). This is the law in most states, but the law is not always meticulously adhered to by judges. Instead, some judges may order whatever the victim claims and place the burden on the juvenile, at a contempt or revocation of probation proceeding, to demonstrate that a failure to comply with the order was not willful. A related defect involves juvenile court orders of community work service hours. A number of juvenile courts still set these hours on an individualized basis determined by perceptions of a juvenile's offense, offense record, and attitude without regard to consistency in the requirement of the number of hours among offenders. Different probation officers may recommend differently, and different judges may enter disparate orders with juveniles who have similar offenses or offense histories. Alternatively, a court approved grid or matrix guideline better assures equal and proportional justice among offenders (Rubin, 1986).

Placement agencies must deal with the consequences of incorrect, excessive, and inconsistent requirements. Several agencies have complained that their juveniles talk with other juveniles about restitution requirements and feel their orders were set unfairly in comparison with others. Further, excessive orders, some reaching \$6,000-\$7,000, are unable to be complied with even by motivated juveniles and constitute a negative factor in the rehabilitation efforts of placement agencies.

Harborcreek Youth Services reports that some judges order juveniles to repay insurance companies over and above monies they are ordered to pay for the cost of an insurance company deductible. Judges from other courts limit the requirement to the cost of the insurance company deductible. It is desirable that a common policy as to monetary restitution provisions be mandated statewide.

Denver's New Pride agency reported that juvenile court youths it places in paid jobs with its employment affiliate, Midtown Services, work side-by-side with committed juveniles, on parole status, placed with Midtown Services for job training and paid employment by the Colorado Division of Youth Services. The court requires victim restitution payments from monies earned by its juveniles; the state agency discourages the payment of restitution requirements, wanting its youths to use earnings toward independent living costs.

A restitution objective is to reimburse victims as fully and as speedily as possible. When a placement agency has designed a program to facilitate financial restitution and a juvenile is targeted for this program, the court can, within the law, set a higher rather than a lower amount since there is a likelihood of obtaining the ability to pay. Also, when a placement agency has designed a program to facilitate community work service restitution and a juvenile is targeted for this program, the court can order work service hours knowing they can be fulfilled.

***Placement Agencies Need To Review Their Insurance Coverage for Juveniles Fulfilling Restitution Requirements***

There are three types of insurance coverage for community work service that are desirable and also superior to the practice that obtains from a juvenile and the parents a waiver of liability that, as has often been said, may not be worth the paper it is written on:

- for juveniles who may become injured while performing paid or unpaid community work service.
- for juveniles who may injure the person or property of others while performing paid or unpaid community work service.
- for staff members who make work arrangements for juveniles that lead to injury or liability.

A state may, by statute, cover court youths for community work service injuries through workmen's compensation (Fla. Stat. Ann. § 39.04) or may expressly provide that juveniles are not covered by these

provisions (Colo. Rev. Stat. § 19-2-706). An agency, nonetheless, may buy this coverage or buy private insurance for the first of these coverages or all three.

Juveniles who obtain paid jobs in the private sector are employees, like other employees, protected by an employer's workmen's compensation coverage. Juveniles who obtain paid jobs with governmental agencies are employees, like other employees, and protected by workmen's compensation or a governmental self-insurance program. Juveniles who perform community work service hours at non-profit or governmental agencies may be protected under these organizations' policies or self insurance programs.

The insurance concern is one that private agencies need to deal with more than governmental placement agencies. Their present policies may or may not cover juveniles working on the grounds or staff members who place juveniles in inappropriate work settings or tasks that may lead to injury. The liability issue is one that has been successfully handled by hundreds of restitution programs. It should not forestall restitution implementation, but it requires review and resolution by all placement agencies, private and public. The reality has been that liability claims are few.

Some agencies require juveniles to contribute a small sum to insurance coverage costs from their earnings. Conditions of an insurance policy, such as prohibiting payment for injuries due to power tool use, need to regulate the work youths may or may not perform. Further, child labor laws need to be observed. Comprehensive insurance coverage may be a significant budget item, and placement agencies may want to build these costs into their rate structures.

#### ***Placement Agencies Need To Review What Deductions May Be Required To Be Made From Restitution Earnings***

Deduction practices vary considerably among placement agencies that provide payments to juveniles for work that is performed in order to pay victim restitution. Some deduct Federal and state withholding taxes and social security. One agency also deducts a worker's compensation contribution. Several deduct only the social security tax and contend that the earnings are too low to require withholding tax deductions. Others deduct nothing and consider payment to be some form of stipend that does not merit any deductions. Some, where 100 percent of earnings are paid over to victims, also take a view that this procedure requires no deductions.

While some agencies may be very cautious in their reading of legal deduction requirements, more typ-

ically the agencies slant toward minimizing deductions. It is desirable that placement agencies seek informed opinions to guide them on this issue.

#### ***Placement Agencies Need To Have Procedures for Obtaining Restitution Monies from Juveniles' Earnings***

Three approaches to this issue have been discerned:

1. Where placement agencies control job earnings, they make payments to the court or restitution program for the juveniles' victim accounts. If the policy provides that 100 percent of earnings shall be paid to victims, no partial payment is made to the juvenile. By policy or negotiated agreement, placement agencies may pay a percentage of earnings to a juvenile as a work or compliance incentive or to cover transportation and other expenses incidental to the work. The agency control of job earnings or public subsidy funds is the simplest and most efficient procedure.
2. An agency may control job earnings but make full payment to a juvenile expecting the juvenile to cash the check and return an agreed upon percentage of payment to the placement agency for remission to a victim account. Underpinning this approach is the viewpoint that juveniles should be given responsibility to cash their checks and pay their bills. Through a life skills training course, juveniles have been taught the rudiments of a bank account. Staff members have helped them open their account. Reportedly, occasional difficulties arise when a juvenile cashes the check but expends his earnings for other purposes and fails to honor the restitution requirement. A placement agency may have a staff person accompany the juvenile to the bank, oversee the cashing of the check, and then accompany the youth to the court to witness payment to the officially designated recipient. Alternatively, juveniles may be provided with envelopes and encouraged to write their own checks and mail them to their victim accounts. This overall approach has clear merit, but is far from fool-proof and makes it more difficult for the placement agency to be certain that payments are made and to obtain accurate figures on how much victim restitution is facilitated during a year's period.
3. The final method involves obtaining restitution payments from juveniles whose jobs are in the community and job earnings are con-

trolled by an employer who makes direct compensation to the youth. A common control approach used by placement agencies is to require that pay stubs be submitted to staff members for review each pay period, along with evidence that restitution has been paid by way of a money order or cashier's check receipt.

One placement agency commented that in facilitating jobs for juveniles in a Job Training Partnership Act program, it did not believe it had authority to pick up the juvenile's check, go with the youth to the bank, have the youth cash the check, and then have the youth pay over the restitution percentage for transmission. Instead, the agency would inform the probation department of the job and of scheduled pay days and ask that the probation officer meet with the youth to ensure payments were made to the restitution account. Regrettably, probation officers were not responsive to these requests and restitution payments were not made.

It is important that placement agencies have procedures that prioritize restitution payments from earnings, that these expectations and procedures are presented directly and up front to juveniles, that controls are in place so that restitution payments are, in fact, made, and that reinforcement is provided by the official restitution agency.

#### ***Placement Agencies Need a Policy Concerning a Juvenile's Retention of a Percentage of Earnings***

There are various rationales with this issue. The rationales depend, at least in part, on whether the earnings utilize public subsidy funds, whether the agency facilitates an on-grounds or off-grounds agency-related earning capability, or whether a juvenile obtains employment in the community. Modifying circumstances include whether a court has ordered a percentage payment, a placement agency's viewpoint regarding partial payments to juveniles as incentive and motivator, transportation costs to the job, and the needs of juveniles to have money for necessities or general spending purposes. Agency policies vary significantly as to juveniles' retention of partial earnings.

In Utah community correctional programs, 100 percent of paid community service goes to the victim. This is true, also, with the juvenile restitution program in Waterloo, Iowa, where limited state subsidy funds are available. The rationale there is that

transmission of 100 percent of earnings enables more juveniles to perform work and complete restitution payments. However, when youths find employment in the community, they are permitted to retain from 25 to 50 percent of earnings. The Sonoma County Probation Camp receives all payments from the sale of residents' products and transmits 100 percent of this income to victims. Harborcreek Youth Services turns over 90 percent of juveniles' earnings from on-grounds and off-grounds employment. Northwest Passages, Webster, Wisconsin, allows juveniles to retain a small part of their earnings if they "do a good job"; otherwise, 100 percent is paid for restitution. Juveniles in residential programs who participate in the Erie Earn-It Janitorial Services Program retain 25 percent of earnings. The Perseus House program in Erie authorizes juveniles to utilize their entire first paycheck for clothing and other needs and directs juveniles to pay 75 percent of future earnings for restitution. Further, staff members strongly encourage juveniles to set aside portions of retained earnings to prepare for independent living. The Sanctuary Group Home, Mercer, Pennsylvania, allows juveniles to retain 50 percent of their earnings from jobs they secure in the community. New Pride, Denver, requires enrollees to pay from 25 to 50 percent of earnings, most juveniles in this day treatment program being indigent. Some enrolled juveniles who earlier had failed to make restitution payments have been ordered by the court to pay 50 percent of earnings for restitution. The residential work release program, Ventura, California, authorizes juvenile retention of 20 percent of earnings. The detention center in Tacoma, Washington, authorizes juveniles on work release during phase two of their detention sentence to retain 50 percent of earnings from community jobs.

A placement agency policy will need to consider factors such as those described above.

#### ***Placement Agencies Need To Have Procedures To Sanction Restitution Non-Compliance***

Placement agencies, like probation departments and community restitution programs, experience restitution non-compliance. A written restitution contract and clear communication of requirements tend to reduce the need for sanctions. The ultimate sanction involves a return to court and judicial determination of a new disposition. Placement agency control of earnings, as is obvious, reduces non-compliance.

Placement agencies report little difficulty in ob-

taining compliance with restitution requirements when this is a purpose of their program and earning opportunities are in place. They report few examples of non-compliance that prompt a court hearing for this factor alone. They use sanctioning procedures such as not moving a juvenile up to a new level of privilege that would have brought program graduation at an earlier date. A consequence, also, may be a dropping of a level or requiring additional unpaid work.

Agencies need to anticipate that non-compliance may occur, develop strategies that enhance compliance, and implement reasonable sanctions that are administered consistently.

### Summary

The primary forms of restitution, financial and community work service, have become frequently used sanctions in juvenile courts. It is likely that this approach to accountability on the part of juvenile offenders will continue its expansion and become a regularized requirement. Programs to assist with restitution requirements must supplement judicial orders if courts and communities are to be accountable to victims through high rates of compliance. Courts that place juveniles in day treatment and community-based residential programs should include restitution requirements in their orders and expect that these requirements will be fulfilled during the course of placement. A number of placement agencies have successfully incorporated restitution projects and compliance opportunities into their programs. Others should.

The court and its restitution arm should place the burden on a placement agency to show why restitution compliance cannot be fulfilled during place-

ment. A series of policy issues that require resolution has been presented. Some are directed to the courts; others are directed to the placement agencies. None are impossible. Victim payments need not be deferred and reasonable community work service sanctions need not be passed by or overlooked when placement occurs. Present practices should be evaluated for gaps; remedies should be designed. Rethinking juvenile restitution can result in many pay-offs.

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### Statutes

- Ariz. Rev. Stat. Ann. § 230.01.
- Colo. Rev. Stat. § 19-2-706.
- Fla. Stat. Ann. § 39.04
- Tex. Fam. Code Ann. § 53.03.
- Tex. Hum. Res. Code § 61.081.
- Utah Code Ann. § 55-11b-23.