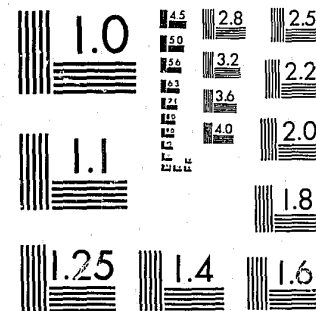


National Criminal Justice Reference Service

ncjrs

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

Date Filmed

3/01/81



THE SENATE
STATE OF NEW YORK
ALBANY
12247

COMMITTEES
RANKING MINORITY ON INSURANCE
HIGHER EDUCATION
FINANCE
CODES
CRIME & CORRECTIONS
CORPORATIONS

February 1, 1980

The Honorable Manfred Ohrenstein
Minority Leader
New York State Senate
Room 907, Legislative Office Building
Albany, New York 12247

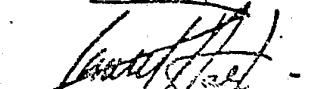
Dear Senator Ohrenstein:

In response to your request in May of last year the Senate Minority Task Force on Criminal Justice and I are pleased to present to you and to the members of the Democratic Conference "The Criminal Must Pay! Restitution in New York State".

The report examines the infrequent use of restitution and community service work by both juvenile and adult courts in this State as compared to the more extensive and successful use in other states. It presents an agenda of legislative and administrative recommendations designed to expand the use of restitution and community service work for most non-violent property offenders. This would free up a great deal of resources within the criminal justice system to improve its response to violent felony offenders. This will result in the savings of millions of tax dollars with no threat to the safety of the citizens of New York State.

I trust you and the members of the Democratic Conference will find this report informative and will work with the Task Force towards the implementation of its legislative recommendations.

Sincerely,


Donald Halperin
Chairman

NCJRS

13 1980

POSITIONS

73612

Summary of Major Findings and Observations

The Senate Minority Task Force on Criminal Justice made the following observations in its report The Criminal Must Pay!- Restitution in New York State:

1. Less than 4% of the juveniles arrested for property offenses paid restitution through the Family Court in 1978. The Family Court in New York City has no formal restitution program. This sparse use of restitution contrasts with a recent national survey conducted by the Institute for Policy Analysis which determined that 70% of all property offense cases in juvenile courts nationwide resulted in a restitution order.
2. In New York City restitution was only ordered in 4% of the cases where adults were convicted of property offenses in 1978. In Queens County, the lack of restitution is even more pronounced where the probation department has no restitution program.
3. Restitution collections through probation departments have increased over 109% between 1970 and 1978. Between 1977 and 1978 restitution collections increased over 26%, the second largest single year increase since 1959. However, collections decreased between 1977 and 1978 in Westchester and Erie Counties and are below the 1976 levels in Suffolk and Erie counties. These areas are the high crime areas where restitution activity should be increasing.
4. Juvenile and adult offenders placed in restitution programs in Georgia and Seattle have lower or similar recidivism rates than the same type of offenders placed in prison. Such programs realize up to a 70% savings in incarceration costs, in addition to decreased welfare costs, and increased tax revenues.

If similar programs were implemented in New York City over \$128.5 million a year could be saved from the \$178 million spent annually on incarcerating property offenders.

5. New York State taxpayers pay over \$62 million a year to incarcerate adult and juvenile property offenders in states prisons or Division for Youth Facilities. If a statewide intensive supervision probation/restitution program was implemented and residential restitution centers were created, \$40 million could be saved from the Department of Correctional Services' and Division For Youth's operating and capital construction budgets.

6. County governments pay over \$114.5 million a year to incarcerate in county jails people sentenced for misdemeanor, violation, or traffic offense cases. If these offenders were placed in probation/restitution programs county taxpayers could save over \$64 million annually.

Summary of Recommendations

1. Legislation should be enacted which would:
 - A. Create a presumption of restitution, which includes a community service work alternative, as a condition of probation or discharge for all convicted juvenile and adult property offenders. Judges should have the discretion not to order restitution in cases which involve the use or threat of force, persistent criminal offenders, or an offender's previous participation in a restitution program;
 - B. Establish standard procedures, similar to those presently used for fines, for imposing a restitution sentence, determining the amount of restitution and dealing with the non-payment of restitution. A provision should be included which specifically allows a judge to use community service work as an option for offenders unable to pay restitution or fines; and
 - C. Allow a juvenile placed in a restitution program to work without an employment certificate and after seven o'clock in the evening.
2. The Department of Correctional Services and Division for Youth should seriously consider establishing restitution centers for certain repeat non-violent property offenders.
3. The Division of Probation should:
 - A. Consider expansion of the Adjudicated Delinquent Restitution Program statewide;

- B. Attempt to secure federal funds for a restitution program for adult offenders similar to the Adjudicated Delinquent Restitution Program. (A variation which utilizes the progressive assumption of an offender's salary by the employer should be seriously considered for such a program);
 - C. Require all local probation departments to annually collect and report, for both juvenile and adult caseloads, the number of restitution orders, the amount of each order, the amount collected for each order, the offense involved, and the number of offenders required to pay restitution who violated their conditions of probation.
4. The Division of Criminal Justice Services should seek federal funds for a pilot restitution program administered by a non-profit community organization. The Division should carefully monitor and evaluate this program and submit a report of its findings to the Legislature.
5. The Office of Court Administration should require all courts to collect and report annually the number of cases where restitution was ordered which did not involve the probation department; the amount of such restitution, and the offense involved.
6. All restitution programs must actively seek to involve the community in their operation. Experience in other states indicates this is essential to successful program implementation.

INTRODUCTION

The issue of restitution as a dispositional alternative has recently received a great deal of attention from district attorneys, criminal justice scholars and other interest groups. The potential use of restitution could have a major effect upon court productivity and the costs associated with incarcerating certain offenders. This paper presents an informational overview of restitution programs, in and out of New York State, and presents a case for the more extensive use of restitution.

Restitution and victim compensation programs often carry similar connotations, but in fact, are quite different. Victim Compensation usually involves at least partial reimbursement by the State. A specified class of crime victims is reimbursed for defined losses.

In contrast, Restitution programs are concerned with payment by the offender to the victim. Restitution may be offered as either monetary payment or service to the community which is often referred to as "creative restitution". It is rendered either directly or through third parties, as amends for damages.

Restitution and community service work programs are proven creative alternatives to incarceration which can save New York State taxpayers hundreds of millions of dollars a year. This savings can be realized without endangering community safety as offenders in restitution programs often have lower recidivism rates than the same type of offenders who were on probation or in prison. Beyond these objectives the major purposes of restitution programs are:

1. To provide victims, particularly those involved in non-violent crimes with a quick and satisfactory resolution of their case without inconveniencing them.
2. To reduce the institutionalization of both juvenile and adult non-violent offenders.
3. To provide offenders with a sense of responsibility and accountability for their actions.

Restitution Programs in New York State

Restitution is currently used by both juvenile and adult courts across New York State at both pre - and post adjudicatory stages. There is little data available however, to indicate the extent of its use, the types of offenses it is associated with, and its success in reducing offender recidivism. What information does exist reveals there are definite differences between how restitution is handled in Family Court and the criminal courts. These differences warrant separate analysis.

Juvenile Restitution Programs

In 1976 the New York State legislature recognized that restitution and community-service work related dispositions were under-utilized in the Family Court and amended the Family Court Act (FCA) by adding Section 758-a "Restitution". This section attempted to maximize the use of restitution and instill a greater sense of responsibility on the part of the child. It allowed for restitution or services for the public good to be ordered for youth over ten and less than sixteen years of age. These alternatives could be mandated as a condition of or recommended as a condition of placement probation or suspended judgement. All such dispositions must be in accordance with Labor and Worker's Compensation Laws. In 1979 this section was amended to give the power of approval of the rules and regulations governing youth in restitution programs, not operated by the Division of Probation or Division for Youth, to the Department of Social Services which has jurisdiction over the placement of

youth with voluntary agencies. Section 758-a and the Education Law was also amended in 1979 to allow schools to supervise juveniles referred to them by the Family Court to do community service work. There are still several shortcomings within the law which, if corrected, will improve the use of restitution in the Family Court.

Inconsistencies Within State Law

The New York State Department of Labor believes there are several inconsistencies between the intent of Section 758-a of the FCA, which is to expand juvenile restitution, and sections of the Labor and Education Laws. The major problem is Section 3215 of the Education Law which prohibits the employment of a minor under 18 without an employment certificate and no exceptions are provided for youth employed pursuant to Section 758-a of the FCA. The exceptions in Sections 130-132 of the Labor Law do not exempt youth employed pursuant to Section 758-a of the FCA from obtaining employment certificates. Another problem is Section 758-a of the FCA does not amend the hours of work provisions contained in Sections 170 and 177 of the Labor Law. These sections prohibit minors under 16 to be employed after seven o'clock in the evening. The New York State Department of Labor points out that employers may be liable for double compensation if they employ a minor under 18 in violation of a labor law provision (see Section 14-a of the Worker's Compensation Law).

Additionally, there is age discrimination applied toward juveniles. One such practice is that used by the Worker's Compensation System. Employers must often pay exorbitant worksite insurance rates to employ youth. This acts as a deterrent toward youth employment.

Sparse Use of Restitution in New York State

These restrictions have limited the use of restitution for juvenile property offenders. Restitution collections in New York State Family Court amounted to only \$63,250 in 1976, \$61,650 in 1977, and \$145,131 in 1978. In 1977, 2,144 juveniles made restitution payments through probation departments, the average payment being \$28.75. In 1978 the number of juveniles paying restitution dropped to 1,952 but the average payment increased to \$74.35. There were no restitution collections made in New York City Family Court as there is no formal restitution program. These collection figures indicate less than 4% of the juveniles arrested for property offenses (burglary, larceny, motor vehicle theft, larceny, fraud, embezzlement, stolen property, vandalism), paid restitution through the Family Court in 1978.

The relatively sparse use of restitution in New York State Family Court contrasts sharply with the experience of juvenile courts across the United States. An LEAA funded survey by the Institute on Policy Analysis (IPA) attempted to determine the extent to which restitution and community service work is used as a disposition, and the success of restitution throughout the entire country.

Restitution Nationwide

IPA found that 86% of all juvenile courts surveyed used restitution and over 36% of those that did not planned to introduce the practice at some point in the future. On the average, restitution had been in use for 17 years. Nearly 75% of the courts described their programs as being designed both to assist victims and reduce offender recidivism. The remaining programs emphasized one of these goals over the other.

Over 38% of all cases in the juvenile courts surveyed resulted in a restitution disposition. 70% of all property offense cases, 45% of all robbery cases, 25% of all assault cases, and 10% of all sex offense cases resulted in a restitution order. The wide national use of restitution in juvenile courts, particularly in property offense and robbery cases is not indicative of the practice in New York State where restitution is rarely ordered and when it is ordered the data does not exist to determine what offense types it is used for.

In the IPA survey monetary payments were ordered in 96% of the courts, with almost 50% requiring restitutive work. Only 12% of the courts made monetary payments by the juvenile payable directly to the victim. Most courts had the youth make payments to the court or to a probation officer, who acted as intermediaries in the disbursement of payments to victims. This appears to be the common practice in New York State.

Determining the Amount of Restitution

The IPA survey found that judges determined the amount of restitution to be paid in 66% of the cases. The remaining 34% were decided by the probation officer (20%) and the victim (14%). In New York the most common practice is that probation officers recommend a restitution amount to the judge who usually accepts the recommendation and orders it.

In determining the amount of restitution to be paid, IPA found that in 10% of the cases, the offender's ability to pay was more important than the amount of loss suffered by the victim. IPA suggests caution when analyzing this finding, as "ability to pay" may be an initial determinant of the youth's eligibility for a restitution requirement. This is supported by a study on restitution practices in Minnesota by Steven L. Chesney, which

found that restitution was most frequently ordered for middle class whites. Chesney states that those offenders in whom courts had little faith that restitution would be completed, were not ordered to make restitution. The IPA and Chesney findings seem to parallel the practice in the New York State Family Court although no data is available to confirm or deny them.

Enforcing Restitution Orders

In two-thirds of the jurisdictions surveyed by IPA, probation officers were responsible for enforcing the restitution order, while in the other third there was follow-up by the court. Nearly 70% of the courts reported compliance rates of greater than 90% and only 1% said that more than 50% of offenders required to pay restitution failed to do so. Only 10% of the jurisdictions resorted to incarceration if the restitution order was not fulfilled. Less than 1% of the courts assigned the juvenile's salary for failure to pay restitution. Again these findings are likely to be indicative of the practice in New York State but there are no statistics available to reach these conclusions. It should be noted, however, that the IPA compliance rates refer only to those juveniles for whom restitution was considered an appropriate disposition. The IPA study believes that if restitution were required regardless of whether the offender appeared to be a "safe bet", the rate of non-compliance might be greater.

In almost 75% of the IPA cases, parents were not encouraged and were often prohibited, from helping their children pay restitution. IPA notes that courts in which the parents are prohibited from paying have approximately the same compliance rates as those in which parents are required to pay if the youth is unable to do so.

In New York State parents are not liable for restitution ordered to be paid by their children which is consistent with a major objective of the juvenile justice system - to teach youth to accept responsibility for their own actions. However, in 1979 the General Obligations Law was amended to make parents liable for up to \$1,000 for any property damages caused by their children who are over 10 and less than 18 years of age.

Courts predominantly used restitution in combination with supervised probation in the IPA jurisdictions as well as New York State. However, IPA contends that this requirement tends to lengthen the youth's contact with the criminal justice system. It is difficult to determine from the IPA research of New York State practice whether or not this increased contact further stigmatizes the youth. Further study is necessary to assess this stigmatization effect and whether restitution orders can be successfully implemented without a probation sentence. It should be noted that the New York State Division of Criminal Justice Services promulgated Final Draft Standards and Goals for the Juvenile Justice System which advocated that restitution programs should be established and administered by non-governmental not-for-profit community organizations. It was felt that community groups whose sole purpose was to devise and administer restitution orders had the best chance of convincing judges that restitution could be effectively carried out if ordered by the court. To date no such programs have been funded in New York State.

Court Attitudes towards Restitution

The IPA study also surveyed courts' attitudes towards restitution. Significantly, 99% of those courts using restitution and 84% of non-restitution courts believed restitution to victims of property offenses increased victim satisfaction with the criminal justice system.

Less than 1% felt restitution would encourage recidivism because it was an easy sentence. The courts further believed the more effective restitution programs were characterized by:

- (1) Direct payment to the victim rather than through an intermediary
- (2) The availability of work restitution, (direct work by the offender for the victim) in addition to monetary restitution.
- (3) The availability of community service work, in addition to monetary restitution.
- (4) Enforcement of the restitution order by the court rather than by an individual probation officer
- (5) The major program goal being the benefit of the youth rather than the provision of compensation to the victim.

In summary, IPA research shows that there is strong existing national support for restitution by judges and other juvenile court officials. Enforcement of restitution orders is not a critical problem and can be effectively enforced in the same manner as other probation requirements. There is a very high degree of belief that restitution programs across the United States reduce recidivism and improve victim attitudes toward the criminal justice system. National experience as measured by the IPA study indicates that restitution in New York State Family Courts is greatly underutilized.

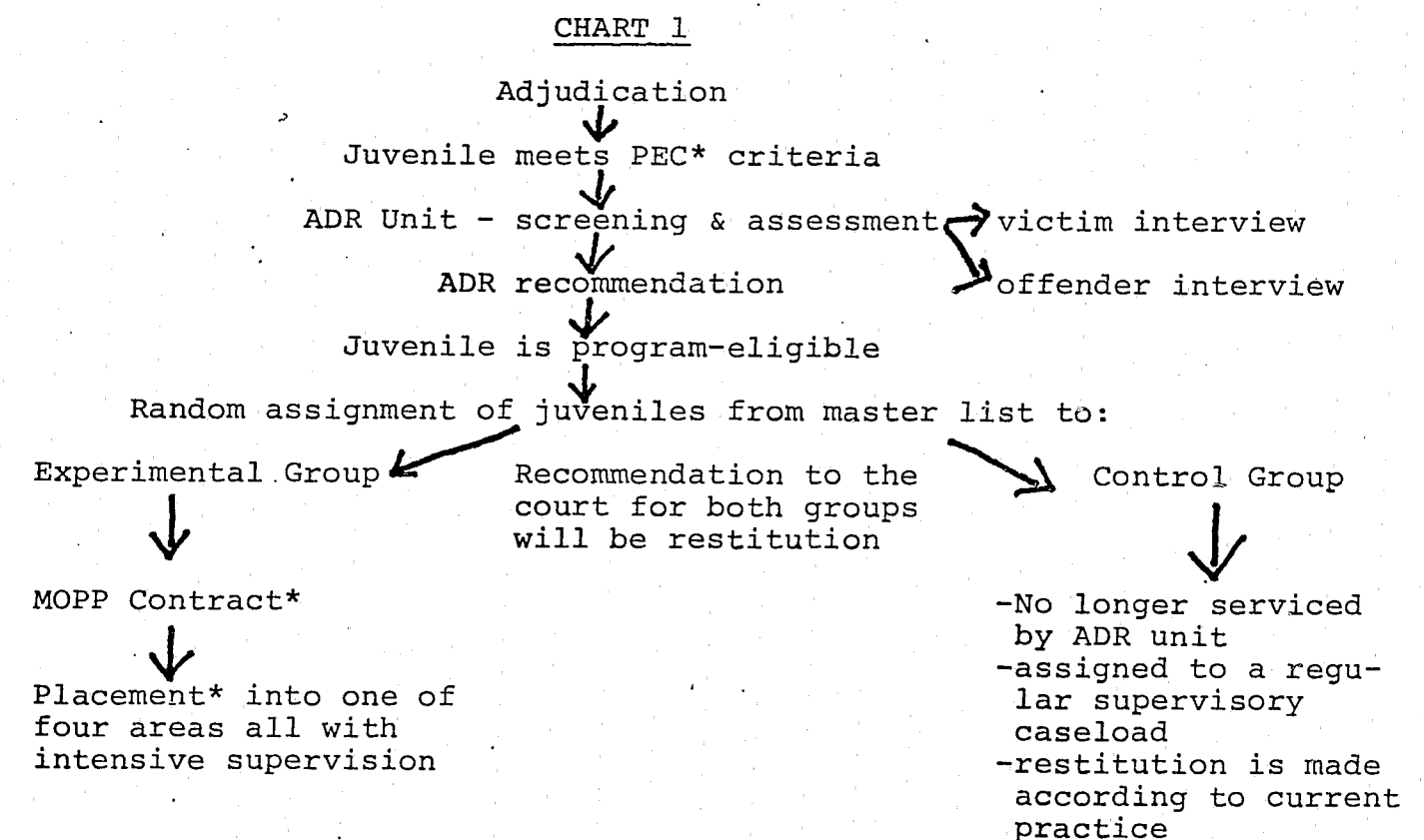
Adjudicated Delinquent Restitution (ADR)

The State Division of Probation, after evaluating the IPA study, sought to expand the use of juvenile restitution. They received a \$2 million LEAA grant in early 1979 to set-up the Adjudicated Delinquent Restitution (ADR) program. The program established three sites: Nassau, Suffolk, and Upstate (servicing primarily Fulton, Montgomery, Warren Counties and handling some cases from Albany, Schenectady, Rensselaer, and Saratoga counties), to serve as models for replication and expansion to other counties.

The sites are staffed and administered by local probation personnel while the Division of Probation has general administrative and training responsibilities.

The ADR program has also developed a comprehensive public information and education component to increase community confidence in the restitution alternative. Towards this end, public service television commercials have been created, and ADR advisory committees have been established for each local site. The advisory committees will review grievances and make recommendations regarding program administration to local staff.

The flow chart below presents a brief picture of how the ADR program operates. An explanation follows of the specific components in the chart.



*Preliminary Eligibility Criteria (PEC):

- (1) A positive cooperative attitude held by the juvenile during fact-finding
- (2) The acts for which the juvenile was adjudicated entailed identifiable property loss or damage
- (3) The crime the juvenile committed would not fall into the designated felony category.

*Mutual Objectives Probation Program (MOPP Contract):

The ADR program uses this contract in working out a restitution program for its participants. MOPP is based upon a procedure which allows a probationer and probation officer to mutually agree on a plan of action for the probationer during his/her probation period. Such an agreement results in a written contract which can be renegotiated by either party.

*Placements:

- (1) Service restitution - services to the victim of a community service agency or organization
- (2) Training and/or skill development - for those with difficulty in school attendance in a BOCES program.
- (3) Long-term employment - if the amount of restitution is greater than \$100, employment is for a maximum of 20 hours per week on a 14 week cycle. Probationers receive minimum wage which is totally paid for by grant funds
- (4) Short-term job placement - if the amount of restitution is less than \$100, placement is for a maximum of 4 weekends. Probationers are paid minimum wage which is totally subsidized by grant funds.

From March 1, 1979 through September 30, 1979 the ADR program has received 296 referrals or an average of 42 a month. 75% of the cases referred involved burglary (48%), vandalism (15%) and larceny (12%) offenses. 183 of the referrals were accepted into the program, a total of \$54,513 in restitution was ordered, an average of \$298 per offender, and \$11,615 was collected. Only 10% of the offenders in the program have "failed" through either a violation of probation or a lack of payment. These preliminary statistics seem to indicate that the ADR program has increased the number and size of the restitution orders in the Family Courts where it is operating. However, in all three sites there has been

a drop off in the number of referrals since May and a decrease in the number of juveniles accepted into the program since June. The average caseload per probation officer is below the twenty-five person target set by the Division of Probation. It is anticipated that these trends will be reversed as the program continues to operate and gain acceptance and the legal restrictions (regarding employment) mentioned previously are removed.

Adult Restitution Programs

Section 6510 of the Penal Law gives criminal courts the power to use restitution as they so desire as a condition of probation or discharge. The court determines the amount and/or manner of restitution made. Subsection (F-1) of this law limits the court in ordering community service work as a condition of probation or discharge to misdemeanor or violation cases. A February 22, 1979 opinion of the Attorney General clearly states that subsection (i) of this law, which generally allows any condition reasonably related to rehabilitation, does not override the limitation in subsection (F-1). This limitation has seriously curbed any probation program designed to increase the use of community service work with a restitution order. The Attorney General's opinion states there is no legal or penological reason why community service work should be limited to misdemeanor and violation offenses and suggests corrective legislation.

Another limitation in the Penal and Criminal Procedure Law (CPL) is that there is no procedure provided which guides a court in determining how restitution amounts should be determined. There is also little guidance on what the court should do if restitution

is not paid especially if it is a condition of discharge rather than probation. Article 420 of the CPL does set up a procedure for the collection and non-payment of fines which could easily be applied to restitution. Unfortunately, this section of the law does not specifically allow a judge to order community service work when an offender is unable to pay a fine.

The community service work option has been used since 1976 in the Fifth Judicial Circuit Court in Salt Lake City, Utah. Their work restitution program places selected defendants convicted of violations, and misdemeanors (e.g. shoplifting) who are unable to pay fines or restitution with community agencies where the defendants are allowed to work off a portion of their fine. Program monitors from the Fifth Judicial Circuit Court report that this opinion has instilled greater offender responsibility and reduced needless incarceration.

Use of Adult Restitution in New York State

Despite these obstacles restitution in general is used much more often for adults than for juveniles. In 1978, 90% of all restitution collected through probation departments in New York State was in the criminal courts, a slight decrease from 1977 and 1976 when the level was 95%. (see Table 1) From 1959 - 1970 restitution collections statewide increased only 21.6% but from 1970 - 1978 they increased over 119%. Most of this increase occurred in the criminal courts. The trend of increased collections has been erratic since 1973 however, in 1978, total collections and adult collections increased over 26% from their 1977 levels, the second largest single year increases since 1959. (see Table 2) Unfortunately present probation data does not include how many adults are actually paying restitution statewide so it is impossible

TABLE 1

RESTITUTION COLLECTED IN NEW YORK STATE (1976 - 1978)*

	<u>1976</u>	<u>1977</u>	<u>1978</u>
New York City	222,000	193,000	231,000
MPA	518,000	496,000	543,000
DPA	21,000	42,000	188,000
RCA	412,000	479,000	561,000
	<u>1,174,000</u>	<u>1,211,000</u>	<u>1,523,000</u>
Juvenile	63,250	61,650	145,000
Adult	1,110,750	1,091,350	1,378,000

*These numbers have been rounded to the nearest thousands, and include juvenile and adult figures.

MPA - Metropolitan Planning Areas - are largely populated, high crime areas i.e. Dutchess, Nassau, Suffolk, Westchester, Erie, Monroe.

DPA - Developmental Planning Areas - are mid-sized, middle level crime areas i.e. Dutchess, Rockland, Orange, Tri-City.

RCA - Regional Coordinating Areas are sparsely populated (rural) low crime areas i.e. St. Lawrence, all other counties.

Source: Statistical Supplements to 1976, 1977 and 1978 of New York State Division of Probation and New York City Probation, Statistical Analysis Unit.

TABLE 2

RESTITUTION COLLECTIONS BY PROBATION DEPARTMENTS

(1959 - 1978)*

1959	572,506
1960	633,818
1961	687,445
1962	676,914
1963	811,305
1964	787,211
1965	772,168
1966	674,297
1967	703,401
1968	738,677
1969	640,664
1970	696,365
1971	780,134
1972	1,058,500
1973	1,107,400
1974	1,004,776
1975	999,345
1976	1,173,971
1977	1,210,730
1978	1,523,387

Source: Statistical Supplements to 1976, 1977 and 1978 Annual Reports of New York State Division of Probation and New York City Probation - Statistical Analysis Unit

to determine whether increased restitution collections mean more adults being ordered to pay restitution or larger restitution orders. It is likely both conclusions are true.

DPA's

All planning areas of the state experienced increased restitution collections between 1977 and 1978, reversing the downward trend between 1976 and 1977. The Developmental Planning Areas (DPA) experienced the largest increase, over 347%. A great deal of this increase is due to the \$105,908 collected in restitution in Orange County in 1978, where no restitution collections were reported in 1977 and 1976. This huge increase was primarily due to a single collection of \$88,000, however, the Orange County Probation Department does report it is increasing the number of recommendations for restitution as a condition of probation especially for minor property offenses. Excluding Orange County, D.P.A. counties increased restitution collections by over 195% between 1977 and 1978. Each individual county reported significant increases in restitution collections between 1977 and 1978, as well as 1976 and 1978. (see Table 1 and Appendix 1) The increase in restitution collections is encouraging but it is necessary to know how many offenders are ordered to pay restitution, the type of offenses for which restitution orders are made, and the annual amount of restitution ordered to determine the true restitution activity within the D.P.A. Unfortunately this data does not exist and we can only conclude that restitution activity is probably increasing.

MPA's

The Metropolitan Planning Areas (MPA) reported a 9.5% increase in restitution collections between 1977 and 1978, which more than made up for the 4.2% decrease between 1976 and 1977. Westchester and Erie counties, however, reported significant decreases of over 57% and 17% respectively between 1977 and 1978. Westchester's decline put its restitution collections slightly above the 1976 level while Erie's decline put its collections below the 1976 level. Suffolk County's restitution collections were also below the 1976 level. (see Table 1 and Appendix 2) The fluctuations in restitution collection levels within the MPA is discouraging. Unfortunately data does not exist which reports the number of offenders ordered to pay restitution, the amount of restitution ordered, or the type of offense involved so it is difficult to analyze the significance of restitution collection fluctuations. It does seem that restitution activity is stalled in the state's high population and high crime areas where it should be increasing. This is probably due to manpower shortages, increased workloads, and a lack of knowledge of the benefits of restitution in the District Attorney offices, courts, and probation departments within the MPA. The vast potential for restitution makes it imperative that the MPA's seriously consider restitution as an alternative.

RCA's

Restitution collections in the state's Regional Coordinating Areas (RCA) increased 17% between 1977 and 1978 continuing the upward trend begun in 1976. Unfortunately restitution collections in each RCA county do not show consistent increases. Between 1977 and 1978 Putnam, Saratoga, Ulster, Madison, St. Lawrence,

Lackawana, Cattaraugus, Allegany, Cortland, and Broome counties all reported significant decreases in restitution collections. Cortland, St. Lawrence, Chemung, and Franklin counties' 1978 restitution collections were also significantly below 1976 levels. The lack of other restitution data makes it difficult to determine true restitution activity within the RCA from restitution collection levels alone; however, 35 out of the 46 RCA counties have increased restitution collection levels since 1976 which is encouraging and seems to indicate an increased use of restitution. (see Table 1 and Appendix 3)

New York City

Restitution collections within New York City increased over 19% between 1977 and 1978, reversing the decrease in restitution collections between 1976 and 1977. All counties except Richmond and Queens experienced increases in restitution collections between 1977 and 1978. In fact, restitution collections have increased steadily since 1976 in Bronx and Kings counties.

The New York City Department of Probation has provided additional information about restitution activity in Bronx, Kings, and New York County Supreme Courts in 1977. In the Criminal Courts within New York City all restitution ordered is paid directly to victims and neither the Probation Department or the courts have statistics to reflect the extent of this activity. In Kings County, in 1977, 29 restitution orders were issued totalling \$110,945.20, an average restitution order of \$3,825.70. Fourteen of the offenders ordered to pay restitution were convicted of Petit Larceny (4), Grand Larceny Third Degree (7), and Grand Larceny Second Degree (3). Five offenders given a Youthful Offender disposition were also ordered to pay restitution. The remaining

offenders were convicted for Perjury (1) Robbery Second Degree (1), Robbery Third Degree (1), Attempted Bribery Third Degree (1), Conspiracy Third Degree (3), Possession of Burglary Tools (1), and Rape Second Degree (1).

In the Bronx Supreme Court in 1977 restitution totalling \$83,912.41 was ordered in 44 cases, an average restitution order of \$1,907.10. Nineteen of the offenders ordered to pay restitution were convicted of Grand Larceny or Petit Larceny. The remaining offenders were convicted of Criminal Usury (5), Burglary (4), Criminal Mischief (3), Youthful Offender (3), Attempted Assault (3), Criminal Possession of Stolen Property (2), Criminal Possession of a Controlled Substance (2), Criminal Possession of a Forged Instrument (1), Possession of Gambling Records (1), and a violation of Section 632 (1A) of the Labor Law (1).

In New York County Supreme Court in 1977, 36 restitution awards amounting to \$435,557.83 were ordered, an average award of \$12,098.83. Twenty-one of the thirty-six offenders ordered to pay restitution were convicted of some degree of Grand Larceny or Attempted Grand Larceny. Information on what the remaining offenders were convicted of is not available, but they are believed to be almost all property offenses.

In analyzing the New York City data a number of conclusions and suppositions can be reached:

1. The average restitution orders are very large ranging from over \$12,000 in New York County to \$1,907 in Bronx County. Even though restitution payments are usually spread out over a five year period it is obvious lower or even lower middle class offenders could not make restitution awards of this size. Most property offenses, however, do not involve such large sums of money which leads one to believe restitution is reserved for the most serious property offenses which are committed by more wealthy offenders.

2. When restitution is ordered it is generally in larceny cases or when a youthful offender disposition is given. While restitution was ordered in a few robbery and rape cases in Kings County and a few attempted assault cases in the Bronx it is usually reserved for property offenses. It is interesting to note that in Kings County no criminal mischief or burglary convictions resulted in restitution orders. This points out the general underutilization of restitution; in 1977 there were 1,364 burglary convictions, 883 larceny convictions, 407 "other theft" convictions, and 82 forgery convictions in New York City. Only 4% of these property offense convictions resulted in restitution orders.
3. The amount of restitution ordered in 1977 in three of the four New York City counties which use restitution far exceeds the amount collected in 1977. This indicates there is very little relationship between restitution collections and restitution orders. Restitution collections are poor indicators of restitution activity and should be supplemented by additional information collected at the local level and reported to the Division of Probation (see Recommendation 9).

Use of Restitution By Lower Courts

As indicated earlier probation departments do not collect all adult restitution orders in this state particularly when those orders are made in the lower criminal courts. An example of such a court's restitution practice is that used in Albany Police Court. The judge uses restitution on a case by case basis and has no general restitution policy, except in welfare frauds where he mandates it. He offers restitution as a condition of disposition, and never informally offers it without requiring a criminal record. He does combine restitution with jail or probation sentences as well as using it as a condition of discharge. The judge requires that all restitution be payable through the court (often it is given directly to the victim in the courtroom) and if restitution is not paid he threatens to send the offender to jail and sometimes does.

It is not known whether the policy in Albany Police Court is typical of lower courts' restitution practices. It is likely that the use of restitution in such courts depends on the individual judge's predilections as well as the desires of the local District Attorney's office, public defenders, and Bar Association.

In summary, restitution is used more often in the criminal courts than in the Family Court but there is a lack of meaningful data to determine the extent and nuances of its use. The more detailed data which does exist is from New York City. It indicates that restitution is greatly underutilized and when it is used it is for middle class criminals convicted of property offenses (usually some degree of larceny), most involving large sums of money. Chesney's findings about restitution practices in Minnesota lead one to believe that the New York City experience is indicative of the entire state. This points out the major problem facing the expanded use of restitution. Most property offenders are indigents, who are unemployed and can not afford to pay restitution. The next section of the report will examine adult and juvenile restitution programs in other states, their successes and failures and how they have grappled with the indigent offender problem.

Juvenile and Adult Restitution Programs in Other States

Three experimental restitution programs in other states include (1) Georgia's Restitution Centers, (2) Seattle's Community Accountability Program and (3) South Dakota's Victim Assistance Program.

Georgia Department of Offender Rehabilitation

In October, 1975, the Georgia Department of Offender Rehabilitation began operating residential restitution centers as an alternative to incarceration for adult offenders. This program focuses on convicted property offenders, diverted from regular incarceration, who must make restitution while residing at a community facility. The offender's restitution may be performed through voluntary community service tasks in place of reimbursement.

There are two types of restitution center programs in Georgia. One is a "barebones" program which does little more than house the offender, provide job leads and schedule a victim-offender conference. The "barebones" program did not guarantee a job for the offender. The other program supplements the "barebones" services with intensive counselling which includes better case management (e.g. if offender has educational deficiencies he/she will be referred to a remedial program), small group counselling (e.g. alcoholism counselling), and psychotherapy.

The Georgia Department of Offender Rehabilitation performed an evaluation of both types of restitution center programs. They follow program participants for one year to determine recidivism rates in doing so, three indices were used: rearrest, reconviction, and return to prison. The results were as follows:

	"Barebones"	Intensive Counselling	Total Program
Rearrest	41.5%	29.6%	34.9%
Reconviction	31.3%	15.6%	22.5%
Return to Prison	15.9%	6.6%	10.8%

These recidivism rates compare favorably with the recidivism rates of the same type of offenders put on intensive supervision probation or in prison, 10.6% of the offenders who were on intensive supervision probation and 8.8% of the offenders who were in prison returned to prison within one year after their release, while only 6.6% of those participating in restitution and intensive counseling returned to prison. All offenders participating in restitution center programs had basically the same return to prison rates (10.8%) and those in the intensive counselling programs had lower return to prison rates. This is significant considering the cost savings which can be realized through the use of restitution centers.

It costs \$14.90 a day or \$5,440 a year to keep a property offender in a Georgia Prison. In a restitution center program the same offender is incarcerated in the community-based facility for four months and put on probation for the remaining eight months. This costs \$12.00 a day for the first four months (which does not include the \$8.00 a day the offender pays to the state for his/her room and board) and \$.50 a day thereafter for a total annual cost of \$1,563 per offender. Georgia realizes a 70% savings in incarceration costs with almost no increased risk of recidivism by keeping property offenders in restitution centers instead of prison.

The success of Georgia's restitution centers goes beyond criminal justice cost-savings and decreasing some recidivism. The program has enabled Georgia to decrease the overcrowded conditions in its prisons without resorting to building new ones. In one year alone (1976-1977) approximately \$128,000 in restitution was paid to victims and another 8,372 hours of community service work was performed. The state has also saved additional money in welfare costs, because offenders and their families who used to be wards of the state are employed, supporting themselves, and paying taxes. Officials from the Georgia Department of Offender Rehabilitation feel the key ingredient to the success of their restitution center program was community involvement within the program which lead to widespread community acceptance.

Seattle Youth Community Accountability Program

The Seattle Youth Community Accountability Program (CAP) began operation in 1974 in three target areas within Seattle. It is a pre-adjudicatory program which is used by the Seattle Police Department and King County Juvenile Court to divert youth who commit offenses such as burglary, larceny, and auto theft.

Youth are diverted to the Community Accountability Program where CAP staff extensively investigate each case determining the appropriateness of the referral. . Forty percent of the juveniles receive services at this point while the rest are sent to the Community Accountability Board, (CAB), which consists of community youth and adult volunteers. The board speaks with the youth and his/her parents, and then assigns a restitution obligation to the juvenile in the form of either:

- (1) A monetary payment to the victim if a monetary loss to the victim resulted from the offense, or
- (2) volunteer service to the victim or to the community if there is no monetary loss involved in the offense.

The program also provides a number of supporting services to youth who desire them. These include employment, and education services as well as individual, family, and group counseling. All of the juveniles receive support from, and can send grievances to, their CAB.

An evaluation of the program found:

- (1) The CAP target areas, when compared to the rest of Seattle experienced a statistically significant lower rate of increase in reported burglaries, larcenies and auto thefts.
- (2) More than a 10% decrease in police-juvenile contacts for Part I Offenses* in CAP areas, while the rest of Seattle endured over a 12% increase.
- (3) Only a 10.8% recidivism rate for the 250 youth who participated in CAP, was recorded in a six-month follow-up period.

This rate was less than half the predicted recidivism rate for Seattle youth, which was 22%.

*Part I Offenses include murder, robbery, assault, burglary, larceny and auto theft.

The recidivism rate for CAP youth increased to 20.5% over a 12-month period, but this was still statistically significantly lower than the predicted 30.1% recidivism rate for juvenile offenders which accrued over a 12-month period.

- (4) Total commitments to institutions decreased 26% between 1974 and 1975 for youth living within CAP areas, while youth commitments increased 88% in the rest of Seattle.

In summary, the Community Accountability Program has significantly reduced juvenile crime, juvenile recidivism, and juvenile institutionalization in Seattle. CAP staff strongly feel this success is due in large part to the high degree of community support for, and participation within, the program.

South Dakota's Victim's Assistance Program

The Victim's Assistance Program was initiated in October 1973 with LEAA funds for juvenile offenders in the Rapid City - Pennington County area of South Dakota. It was expanded to include victims of adult offenders in 1975. This program mandates monetary restitution for adults and, both monetary and service restitution for juveniles, as a condition of probation for certain crimes. The crimes involved are generally property crimes yet some assault and robbery cases are included as well.

Since its inception the program has maintained workload statistics which include the following findings:

- (1) Since October 1973, the juvenile component has dealt with 1,181 offenders and collected \$38,244 in restitution payments. In 1978, 261 juvenile offenders placed on work detail completed 6495 hours of community service work. From 1974 through 1978, there was a 28% increase in the number of juvenile

offenders participating in the program and a 136% increase in restitution payments collected.

(2) Since November 1975, 489 offenders have participated in the adult program. Of these offenders, 58% committed misdemeanors, 28% committed felonies, and the remaining 14% committed violations. A total of \$5,404 in restitution payments was collected. Between 1976 and 1978, there was a 40% increase in the number of offenders participating in the program, and a 14% increase in the amount of restitution collected.

There has been no formal structured evaluation of the South Dakota program but project monitors have identified a major problem - the inability of some offenders to make their ordered restitution payments.

Although exact numbers are not available Dennis Nagel, the administrator of the program believes a significant percentage of offenders ordered to pay restitution do not pay it. This is because many are unemployed and the program does not provide employment or employment services. Mr. Nagel also believes that the recidivism rates of the offenders in the restitution program are similar to those of similar offenders in prison or on probation.

The South Dakota, Seattle, and Georgia restitution programs have been successful in repaying hundreds of thousands of dollars to crime victims and reducing offender recidivism. Crucial to the success of each program was a high degree of community involvement

with and acceptance of the program. It is also important to note that the one program (South Dakota) which did not provide employment, or employment services, or the option of community service work for offenders experienced significant problems with non-payment of restitution orders. The next section will explore the fiscal implications of creating similar programs in New York State.

Fiscal Implications Associated With Restitution

A fully developed restitution program which would maximize the use of restitution as a condition of probation and build (or lease) restitution centers instead of constructing new prisons will accrue numerous costbenefits to the state. The costbenefits would be most visible in welfare costs, tax revenues, juvenile and adult prison expenditures and jail costs.

State Savings

The most recent DOCS estimates show that 14% of the state's adult inmate population were incarcerated for property crimes such as burglary, grand larceny, grand larceny auto, forgery, criminal possession of stolen property, fraud and petty larceny. DOCS also estimates that 8% of their total inmate population consists of first time property offenders. Looking at the current 2,940 inmates were incarcerated for property offenses, 1,680 of whom are first offenders. The average cost of incarcerating these offenders (using an estimate of \$15,000 per year per inmate) is \$44.1 million per year.

In 1978, 666 juvenile delinquents or juvenile offenders were incarcerated in DFY facilities for property offenses (trespass, burglary, possession of burglar's tools, criminal mischief, criminal tampering, reckless endangerment property, petit larceny, grand larceny, unauthorized use of a vehicle, theft of services, criminal possession stolen property, forgery, criminal possession of a forged instrument). DFY does not know how many of its property offenders are first offenders but assuming it is similar to the DOCS percentage it can be estimated to be 57% or 380 juvenile delinquents/offenders. It costs an average of \$26,940 a year to maintain a juvenile in a DFY facility or \$17,942,040 a year to house juvenile property offenders. The actual figure is probably much higher as the 996 PINS and 162 Youthful Offenders incarcerated in DFY in 1978 did not have their offenses recorded, and are not included in the 666 figure. It can be assumed, however, that a significant proportion of incarcerated PINS are property offenders since PINS petitions are often substituted for juvenile delinquent petitions when the act involves a property crime. It is also likely that many incarcerated youthful offenders were involved in property crimes. However, since there is wide disagreement over how prevalent these practices are no cost estimates can be derived concerning the cost of maintaining PINS or youthful offender property offenders.

It is reasonable to assume that most first-time juvenile and adult property offenders could be safely placed in a probation program with intensive supervision and a restitution component. The Division of Probation estimates the cost of such a program would be \$3,500 per year per probationer. (these costs, which include salaries paid to probationers for employment are based on pilot programs, and would be lower if the programs were institutionalized statewide). Using this figure it would cost \$5,880,000 a year to place the 1,680 first-time adult property offenders within DOCS on a probation restitution program and \$1,300,000 a year to place DFY's first-time property offenders. This would save the state \$25,200,000 a year in DOCS costs and \$10,237,200 a year in DFY costs for a net total savings to the state, when the cost of the probation program is subtracted, of \$28,257,200 a year. It should be noted that this cost savings figure is a conservative estimate since many PINS and Youthful Offenders incarcerated in DFY are first time property offenders and could be placed into a probation restitution program.

The remaining 1,260 adult property offenders and 286 juvenile property offenders could be safely incarcerated in restitution centers similar to those operating in Georgia. It currently costs the state \$26,604,840 to incarcerate these offenders for one year. The New York State Commission on Management and Productivity estimated in its report, The Restitution Center Concept..., that it would cost \$9,855 to place an adult property offender in a restitution center for one year. There are no estimates concerning how much it would cost DFY to place a juvenile

property offender in a restitution center but there is no reason why it should cost substantially more than the adult figure. Therefore, it would cost the state \$15,235,830 to house repeat juvenile and adult property offenders in restitution centers for one year or \$11,369,010 less a year than present incarceration costs.

The use of restitution centers and probation-restitution programs could also save the state a substantial amount of money in DFY and DOCS capital construction costs. In the Executive Budget for FY-1979 DOCS requested \$55 million to build two new 500-bed maximum security facilities and DFY requested \$7 million to add 150 secure center beds. If most of the 2,940 adult and 666 juvenile property offenders were placed on probation or in a restitution center it would probably open up enough maximum security and secure center spaces to alleviate the need for new facilities in the near future.

Community-based facilities already operated by DOCS and DFY, many of which are underutilized and some of which are filled to less than 50% of their capacity, could easily serve as Restitution Centers. The remaining space necessary could be built or leased at a substantially lower cost than building new maximum security or secure center facilities. The resulting savings would be most of the \$62 million capital construction request of DOCS and DFY for FY-1979.

Local Savings

Counties and New York City could also make substantial reductions in their criminal justice budgets if intensive supervision probation programs with restitution and/or community service work components were used as an alternative to a jail sentence. In 1978, 92,498 offenders were admitted to county jails

across the state, 17,646 of whom were serving a courtordered sentence, 73% of the sentenced population and 53% of the total admissions were people involved in misdemeanor, violation, or traffic infractions costing (based on a \$17,000 a year per inmate estimate) over \$114.5 million annually to incarcerate. (This estimate assumes sentenced property offenders spend 6-months in jail before release and the remaining property offenders spend 3-days in jail before their release).

It is more difficult to estimate the cost of incarcerating non-felony offenders in New York City jails. In 1978 there were 51,255 new admissions to the New York City Department of Corrections, 14,632 of whom were sentenced inmates. Ninety-one percent of the sentenced inmates and an estimated 50% of the total admissions were non-felony offenders costing (based on a \$71.87 per day per inmate estimate) over \$177.7 million annually to incarcerate. (The same length of stay assumptions used in the county jail cost projection were applied to New York City).

It costs \$3,500 a year to maintain an offender under an intensive supervision probation program (average caseload 25 offenders) with a restitution or community service work component. If only the misdemeanor or less serious offenders sentenced to county or New York City jails were placed in such a program the county jails could save over \$64.4 million a year and the New York City Department of Corrections could save \$128.5 million a year.

These cost savings could be higher if some non-violent felony offenders sentenced to county or New York City jails were placed in a similar program.

In summary, the state can save \$28,257,200 a year if it instituted a statewide probation-restitution program and \$11,369,010 a year if it developed restitution centers. These programs could also save the state \$62 million in capital construction costs. Counties could save \$64.4 million a year and New York City could save \$128.5 million in jail costs if they developed probation restitution programs. The total savings to the counties and state would amount to over \$294.4 million in the first year and up to \$232.4 million a year thereafter. This does not include the millions of dollars which could be saved from the \$7.5 billion a year expended by state, county and federal governments on welfare in New York State or the millions of dollars in state, county and federal taxes which would be generated from participating offenders incomes. The welfare savings would be realized because many families who must go on welfare because the head of the household is sent to prison, would no longer have to do so, if the person participated in a restitution program. The tax revenues would accrue from offenders who would normally be incarcerated and pay no taxes but who would pay taxes if they participated in a restitution program. Obviously there are numerous benefits associated with restitution programs justifying the wider use of restitution as an alternative to incarceration.

In the next section the advantages and disadvantages of restitution programs will be summarized in order to present a fuller picture of this sentencing alternative.

ADVANTAGES OF RESTITUTION PROGRAMS

1. Restitution will turn the emphasis of the criminal justice system toward serious offenders and will gradually reduce the number of incarcerated non-violent offenders, who can be dealt with more appropriately in community settings.
2. Restitution is a type of punishment which has a high degree of visibility within the community. This will consequently serve as a deterrent to other potential offenders.
3. The taxpayer is spared the financial burden of maintaining a non-violent offender in correctional custody and providing public assistance for the offender's family during his incarceration. It is estimated that state and county governments can save over \$292 million the first year of a statewide restitution program and over \$230 million a year thereafter. (see Fiscal Implications)
4. Recidivism rates for offenders in restitution programs are often better than the rates for similar offenders incarcerated in prison.
5. A restitution/probation sentence will not stigmatize an offender as seriously as a prison sentence would, and will prevent the need for adjustment to prison life, and the subsequent readjustment into the community.

Advantages (cont'd)

6. Restitution relieves some of the economic hardships faced by victims providing them with cash or services.
7. Restitution reinforces personal responsibility for crime, and allows the offenders to make positive amends for the crimes committed.
8. Restitution involves the victim in the resolution of criminal cases without having to spend as much time making frustrating court appearances. In so doing, this will improve the victim's attitude toward the criminal justice system.
9. A formal, high visibility restitution program, will publicize the use of restitution to those courts not now utilizing it, and will lead to the expanded use of restitution.

DISADVANTAGES OF RESTITUTION PROGRAMS

1. Indigent offenders will not be eligible for restitution programs involving monetary payments unless employment is provided. This would give the programs a socio-economic bias.
2. Restitution programs with employment components can be viewed as rewarding delinquent or criminal behavior with a job. Why should society give lawbreakers a job when many law-abiding citizens are unemployed?
3. Restitution even with a probation sentence may not be punishment enough for criminal/delinquent behavior.
4. There is question as to whether or not a restitution sentence is a true deterrent. When criminals know their only punishment will be restitution with, perhaps, a probation sentence, they will be more likely to take the risk of committing a crime.
5. Labor unions feel that restitution and community service programs take jobs away from their members.
6. A more formalized restitution program will only add more to the administration and already-existing bureaucracy of the system.
7. Restitution will provide compensation for only a very limited number of crime victims (most crimes do not result in conviction or arrests).

The advantages of restitution and community service work programs far outweigh their disadvantages. Restitution programs have proven in other states to have the same and often better offender recidivism rates than the recidivism rates of similar offenders incarcerated in prison. This is accomplished at a substantially reduced cost to the state. There is no evidence that offenders ordered to pay restitution as a condition of discharge or probation are more likely to commit further crimes.

The claim that offenders in restitution or community service work programs are "rewarded" with jobs that should be going to union members or other unemployed people is also a hollow one. First of all, restitution is most often given as a condition of probation, often intensive supervision probation. This means an offender will be watched in the community and certain restrictions will be imposed on their lifestyle - which is a punishment not a reward. It is also difficult to interpret a requirement that an offender on probation work and give a significant percentage of their earnings to their victim as "reward". If a probation/restitution sentence is viewed by a judge as insufficient punishment then the judge is able to add other conditions including community service work or weekend jail sentences.

It is important to remember that the jobs provided by restitution programs often involve physical labor or menial tasks and usually only pay minimum wage. These are generally not the jobs most union members or unemployed people are looking for. Also the claim that requiring offenders to clean municipal parks or wipe graffiti off subway trains takes jobs away from union members is shortsighted. Most municipalities can not afford to

hire people to perform these tasks and the work would not be done unless performed for free by offenders on probation.

Restitution/community service work programs are proven creative alternatives to incarceration which can save the state and localities a great deal of money without increasing the threat to community safety. The next section will make several recommendations to expand and improve restitution and community service work alternatives in New York State.

RECOMMENDATIONS

Existing New York State legislation concerning restitution does not adequately encourage nor provide for its widespread use. Restitution as a condition of probation and of discharge remains an underutilized disposition which can be corrected through legislative action. There is potential for expanded, systematic approaches to non-violent property crimes. It is, therefore, highly recommended that New York State expand and develop a uniform restitution program as follows:

1. There should be a presumption of restitution which includes a community service work alternative as a condition of probation or discharge for all adult and juvenile property offenders. Judges should have the discretion not to order restitution in cases which involve: use or threat of force, persistent criminal offenders (both misdemeanors and felonies), or an offender's previous participation in a restitution program. The judge must state his/her reason for denying restitution on the court record.

(a) The restitution program should include a procedure that deals with minor infractions of the restitution order. It would be inefficient and impractical to involve the court in the settlement of all minor violations. For example, Seattle's Community Accountability Board, rather than the courts, deals with minor infractions as well as grievances by juveniles in the restitution program. (See Juvenile and Adult Restitution Programs in Other States)

- (b) The restitution program should include a procedure to deal with recidivists. The incorporation of a part-time jail sentence in conjunction with a restitution program would be a feasible alternative.
- (c) All contracts made between adults/juveniles and the restitution agency/court, must be mutually agreed upon, requiring fulfillment of responsibility by both parties.
- (d) Intensive practical counselling services such as those available in the Georgia restitution program (e.g. remedial education, group alcoholism counseling) should be available on a voluntary basis for both juveniles and adults.

2. The Department of Correctional Services and Division for Youth should seriously consider establishing restitution centers for certain repeat non-violent property offenders, (see Fiscal Implications section). Community/"Grass Roots" involvement in these centers by government officials, community residents and offenders on probation, is imperative for insuring program success.

3. The Division of Probation should seriously consider the expansion of the Adjudicated Delinquent Restitution Program statewide.

(a) The Division of Probation should attempt to secure federal funds for a program similar to the ADR program but for adult offenders. A variation which utilizes progressive assumption of an offenders salary by employers should be also be considered for the adult program. Under this scheme the government

would initially fund the offenders entire salary for a certain period of time. The employer, depending on the length of the offender's employment, would gradually supply 25% of the offender's salary increasing in stages until full salary was achieved.

- (b) A community service work option should be a major component of any experimental adult restitution program.
- (c) All restitution programs must actively seek to involve the community in their operation. Experience in other states has shown this is essential to successful program implementation. Vehicles such as Seattle's Community Accountability Board should be seriously considered for inclusion in all New York State restitution programs.
(see Juvenile and Adult Restitution Programs in Other States)

4. The Division of Criminal Justice Services should seek federal funds for a pilot restitution program administered by a non-profit community organization. This was suggested in their Final Draft of Standards and Goals for Juvenile Justice. DCJS should carefully monitor and evaluate this program and submit a report of its findings to the Legislature.

5. Since a restitution program will send less people to prison, and place more offenders on probation, more state funds should be allocated to hire more probation officers. In addition, caseloads of probation officers should be kept at a minimum.

6. Legislation should be passed which would allow a judge the discretion to use community service work as a condition of discharge or probation for all felony convictions except those involving violent felony offenses.

7. Legislation should be passed which sets forth a procedure for imposing a restitution sentence, determining the amount of restitution, and dealing with non-payment of restitution. Article 420 of the Criminal Procedure Law, which establishes similar procedures for fines should serve as a model for restitution procedures.

- (a) Such legislation should include a provision which specifically allows a judge to use community service work as an option for those offenders unable to pay fines or restitution.

8. Legislation should be passed which would allow a juvenile placed in a restitution program to work without an employment certificate and after seven o'clock in the evening.

9. Local probation departments should collect and report to the New York State Division of Probation annually for both juvenile and adult caseloads: the number of restitution orders, the amount of each order, the amount collected for each order, the offense involved, and the number of offenders required to pay restitution who violated the conditions of their probation.

10. The Office of Court Administration should require all courts to collect and report annually the number of cases where restitution was ordered which did not involve the probation department, the amount of such restitution, and the offense involved.

11. Research is needed to evaluate the various existing forms of restitution programs in New York State and across the United States. This could be accomplished by conducting a national survey, as did the Institute of Policy Analysis, which would examine:

- (a) Characteristics of offenders participating in such programs, i.e., age, sex, education.
- (b) Characteristics of offenders who are most successful in such programs.
- (c) The effectiveness of such programs, including recidivism rates.
- (d) The type of staff personnel involved in such programs.
- (e) The cost-benefits of restitution programs.
- (f) The impact on prison populations.
- (g) The impact on probation caseloads.
- (h) Preventative programs dealing with non-violent property offenders.

APPENDIX 1

D.P.A.

Restitution Collections

County	1976	1977	1978
Dutchess	6879	11,817	25,911
Rockland	2574	10,052	17,955
Orange	-	-	105,908
Albany	8458	5631	15,005
Schenectady	3144	5953	6073
Rensselaer	-	8805	17,398
	21,000	42,000	188,000

Source: Statistical Supplements to 1976, 1977, and 1978 Annual Reports - New York State Division of Probation

APPENDIX 2

M.P.A.

Restitution Collections

County	1976	1977	1978
Nassau	132,290	157,451	187,054
Suffolk	193,807	103,682	132,141
Westchester	23,142	56,352	23,938
Monroe	47,434	58,335	79,858
Onondaga	39,271	26,422	42,375
Erie	81,780	93,783	77,338
New York City	221,762	193,371	231,036

Total M.P.A. (excluding New York City)	518,000	496,000	543,000
---	---------	---------	---------

New York City

County	1976	1977	1978
Bronx	18,354	34,231	35,909
Kings	51,811	58,160	67,117
New York	143,528	85,888	121,702
Queens	-	-	-
Richmond	8,069	15,092	6,308

Total New York City	222,000	193,000	231,000
------------------------	---------	---------	---------

Source: Statistical Supplements to 1976, 1977 and 1978 Annual Reports
New York State Division of Probation and New York City Pro-
bation, Statistical Analysis Unit.

APPENDIX 3

R.C.A.

Restitution Collections

County	1976	1977	1978
Broome	14,077	44,850	26,235
Chenango	7,006	9,979	13,170
Chemung	20,760	16,058	16,258
Cortland	5,642	6,661	1,241
Schuyler	3,009	3,409	3,266
Tioga	4,115	3,823	8,898
Tompkins	5,134	6,528	9,464
Allegany	11,776	20,625	7,935
Cattaraugus	3,758	7,104	3,784
Chautagua	7,533	12,316	15,501
Lackawanna	1,894	2,284	2,023
Niagara	30,086	45,208	52,515
Livingston	25,324	23,398	27,180
Ontario	27,280	19,376	22,270
Seneca	2,235	1,731	3,885
Steuben	34,670	23,445	31,972
Wayne	10,234	8,276	9,519
Wyoming	-	-	-
Yates	1,113	1,621	2,665
St. Lawrence	11,213	13,078	9,594
Cayuga	5,130	1,951	6,492

Appendix 3 (cont'd)

	<u>1976</u>	<u>1977</u>	<u>1978</u>
Jefferson	20,538	20,065	29,281
Lewis	3,264	3,445	5,650
Madison	2,596	4,320	3,284
Oswego	15,548	19,516	26,524
Clinton	1,153	12,334	15,896
Essex	12,906	10,814	12,623
Franklin	21,840	13,446	15,302
Hamilton	88	-	-
Herkimer	2,831	2,149	2,586
Saratoga	1,090	2,984	1,814
Washington	6,861	3,776	7,775
Columbia	6,883	8,658	10,365
Delaware	7,922	5,254	8,072
Greene	6,100	5,971	9,371
Ostego	2,269	2,874	4,602
Schoharie	3,340	2,725	4,247
Sullivan	9,969	11,662	14,620
Ulster	3,123	16,213	5,787
Direct Services	17,075	20,285	38,863
Putnam	1,370	2,636	2,159
Genesee	8,024	13,286	15,949
Orleans	5,861	5,220	9,562
Oneida	19,798	19,702	43,189
Total R.C.A.	412,000	479,000	561,000

Source: Statistical Supplements to 1976, 1977, and 1978 Annual Reports,
New York State Division of Probation

END