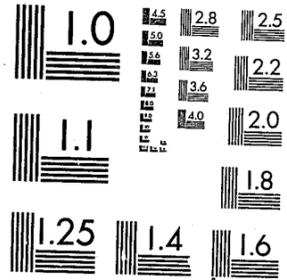


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STATE OF ARKANSAS
LEGISLATIVE COUNCIL
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72201

RESTITUTION: AN ALTERNATIVE TO INCARCERATION

U.S. Department of Justice
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SCOPE

This report was requested by legislative members of the Subcommittee on Criminal Justice of the Arkansas Legislative Council which was created pursuant to Interim Resolution 79-64 by Senator Knox Nelson to study various aspects of the Arkansas criminal justice system.

INTRODUCTION

Restitution has become a popular concept in recent years as an alternative to incarceration.

Contained in this report is a statement of the Arkansas restitution law as it applies to adults and juveniles. Following is a section on other states' restitution laws. Practically all state law makes restitution a condition of probation and/or parole.

The National Center on Institutions and Alternatives has developed individualized model restitution plans for offenders in Washington, D. C. as an alternative to prison. This is one method of punishing a non-violent offender.

One innovation, Georgia's Restitution/Diversion model is discussed as a viable alternative to incarceration.

NCJRS

OCT 12 1982

ACQUISITIONS

1 RESTITUTION: AN ALTERNATIVE TO INCARCERATION

2
3 In order for restitution to succeed as an alternative to incarceration,
4 much depends upon the attitude of the offender in that
5 the offender must be willing to make restitution to the victim assuming the
6 offender committed a non-violent crime. Other factors in restitution
7 success are the "offender's financial situation" and his "ability to
8 maintain employment." ¹

9 Restitution sentencing can be looked upon as a positive sentence which
10 has the potential of helping the victim, the community, and the offender.
11 Judge Dennis Challeen of Winona, Minnesota "has been using restitution
12 sentencing in his court" ² since 1972, and the recidivism rate is only 3
13 percent out of 4,000 cases, compared to 29 percent for a national average of
14 comparable samples of cases. Judge Challeen stresses that "[s]elf-esteem and
15 responsibility are two key concepts to any restitution scheme" ³
16 He also warns against "negative restitution" which might shame or embarrass
17 the offender. Judge Challeen suggests letting "the offender participate in
18 the sentencing, . . . [in suggesting] how he might make it right" ⁴
19 In the Judge Challeen Court, two probation officers

20 "function as court workers to monitor restitution orders,
21 which are never more than thirty days. For more serious
22 offenses where some incarceration is called for, Judge
23 Challeen still gives restitution a chance by letting
24 offenders work on a restitution scheme while in jail." ⁵

25 Arkansas restitution sentencing law applies to both adults and
26 juveniles.

27 Arkansas Law

28
29 Ark. Stats. Ann. 43-2331 provide that "[w]hile on probation and among
30 the conditions thereof, the defendant . . . may be required to make resti-
31 tution to aggrieved parties for actual damages or loss caused by the offense
32 for which conviction was had." Juvenile courts are authorized and empowered
33 in Ark. Stats. Ann. 45-436 "to make and enforce special order against juveniles,
34 their parent[s], and their estates . . . [to provide] restitution in kind or
35 value for property stolen, damaged, destroyed, or otherwise unlawfully taken
36 or received by such juvenile[.]" A recent Attorney General opinion stated

1 that "it would appear that the Juvenile Court, in lieu of sending the juvenile
2 to DYS or imposing some other form of punishment could place the juvenile on
3 probation upon such terms and conditions as the Court deems appropriate . . ." ⁶

4
5 Other States

6
7 Thirteen states, including Arkansas, have enacted restitution laws:
8 Colorado, Connecticut, Ohio, Idaho, Iowa, New York, Mississippi, New Mexico,
9 North Carolina, Tennessee, Virginia, and Maine. ⁷

10
11 Colorado. Restitution can be used as a condition of parole and probation
12 in Colorado. As a result of a 1976 law "allowing restitution to be used as
13 a condition of parole, . . . the LEAA funded the Colorado Crime Victims
14 Restitution Program as one of the seven projects to study offender behavior,
15 victim attitude and cost effectiveness." ⁸

16
17 Connecticut. A juvenile may be required to make restitution or perform
18 community service work. In Connecticut, restitution specialists, when
19 ordered by the Court, must "investigate and report on the victim's loss and
20 the defendant's financial situation when imposing a sentence of probation or
21 conditional discharge." ⁹

22
23 Iowa. In Iowa, "restitution may be used as a condition of probation," ¹⁰
24 and "the defendant must submit a restitution plan to the Court. If the Court
25 modifies the amount of restitution owed, the Court must submit a written
26 statement indicating the reasons for the departure." ¹¹

27
28 Maine. "Restitution may be a condition of any sentence imposed in
29 Maine." ¹² If the Court orders restitution, it must "consider the conduct
30 of the victim, failure to report the crime within 72 hours without good
31 cause, and the offender's ability to pay." ¹³

32
33 Mississippi. A juvenile in Mississippi may make restitution through
34 monetary payments or direct services to the victim.
35
36

1 New Mexico. Restitution in New Mexico may be considered as a condition
2 of probation or parole. As in Iowa, the defendant must submit a restitution
3 plan to the court, and if it modifies the plan, the court must state the
4 reason for doing so in a written statement.

5
6 New York. In New York, a juvenile may make a "monetary restitution up
7 to \$1,000 as a condition of placement, probation, or suspended sentence."¹⁴
8 Juveniles may also do community service work as the New York Family Court
9 Act indicates.

10
11 North Carolina.

12
13 [R]estitution may be made a condition of probation,
14 work release or parole at the time of sentencing an
15 adult. Restitution can include community service or
16 other activities which aid the defendant's
17 rehabilitation. When community service is ordered,
18 the type of work done most often is related to either
19 the crime committed or the skills of the offender. An
20 appropriate community service order for an offender
21 convicted of vehicular assault would be 10 hours of
22 work in the emergency ward of a community hospital for
23 a specified number of weeks.¹⁵

24
25 Tennessee. In 1976, laws were enacted in Tennessee creating residential
26 restitution centers both inside and outside the state prison. "Only felony
27 offenders whose sentence is five years or less are eligible. Offenders are
28 allowed to work and reimburse victims for losses and are required to pay room
29 and board. Restitution centers are similar to work release centers, but the
30 main goal to be achieved is the payment of restitution."¹⁶

31
32 Model Programs

33
34 NCIA Project. The National Center on Institutions and Alternatives
35 (NCIA) of Washington, D.C. has developed for the past year "model individual-
36 ized alternative-to-prison plans for offenders in the Washington, D.C. area."¹⁷
A monetary restitution as well as work in public service is mandated for
criminal acts. "[A]ttendance at school, job training, or a paid job with
supervised driving arrangements, probation supervision and frequently alcohol

1 or drug-related counseling and individual therapy"¹⁸ may be required.
2 Professionals must monitor the behavior of serious offenders several times a
3 day in order to help them, if needed.

4 "NCIA's sentencing plans have been accepted by the courts in lieu of
5 incarceration. Judges can have confidence in the plans as they include
6 monthly progress reports that will bring lawbreakers who are not fulfilling
7 the individual punishment to the attention of the court, so they can be
8 sentenced to prison."¹⁹ NCIA hopes to demonstrate that restitution as an
9 alternative to incarceration is financially wise, since it costs taxpayers
10 \$26,000 per year per inmate to incarcerate.²⁰

11
12 Georgia Restitution and Diversion Centers. The Georgia program provides
13 a mechanism for combining "restitution with a community-based residential
14 diversion program."²¹ Georgia and Florida are the states with the most
15 advanced programs in combining restitution with a residential center. The
16 concept of community-based correction espouses keeping offenders in the
17 community and therefore, reorienting their values to those of the community.
18 Other advantages to the offender remaining in the community are that (1)
19 family ties remain intact (2) employment, vocational, and educational
20 opportunities are strengthened, and (3) psychological problems can be
21 treated at the community level.

22 The Georgia Probation Act (1968) provides for a restitution program,
23 "most frequently used by judges as a condition of probation in connection
24 with the use of a suspended sentence or as part of the program of community
25 corrections centers."²²

26 The program works in this fashion:

27
28 **To be admitted to a Restitution/Diversion Center, there**
29 **must be a determination made that the only alternative to**
30 **the center was prison. This can occur in two ways: Post**
31 **Sentence Diversion or Direct Sentencing. If the Post**
32 **Sentence method is employed, the offender will be first**
33 **sentenced to prison. A Post Sentence investigation is**
34 **made to determine if the individual is an appropriate**
35 **candidate. If so, the original sentence of time to**
36 **serve is modified to probation with a special condition**
that the offender reside at the center.

The Direct Sentencing method is applied when prior to
sentencing the probation officer recommends the use of a
center to the judge based on the results of a pre-sentence

1 investigation. If the sentencing judge concurs, the
2 offender is sentenced to probation with a special
3 condition that he reside in a center.

4 **Criteria used to determine offender eligibility for**
5 the program are as follows: 1) offender would
6 otherwise be incarcerated; 2) offender has committed
7 a property crime not involving the use of a weapon or
8 any act of violence; 3) offender is 17 years of age
9 or older; 4) offender is not regarded as a professional
10 criminal; 5) offender must be in suitable health
11 capable of maintaining employment; 6) offender is
12 willing to enter into a contract with the center
13 establishing objectives which must be achieved before
14 release.

15 **Once accepted to a Restitution/Diversion Center, the**
16 offender enters a two-week orientation period. During
17 this time a contract is negotiated between the offender
18 and staff. During orientation obtaining a job is the
19 primary task. The contract determines the amount to
20 be deducted from each paycheck for restitution, an
21 amount to be deducted for savings, and an allowance for
22 the resident's weekly expenses. Departmental policy
23 calls for the resident to pay \$5 a day for room and
24 board that is also deducted from the paycheck. In
25 general, restitution dollars will accumulate until
26 the offender completes the program. The amount of
27 restitution collected is then submitted to the court
28 for transfer to the victim.

29 **On the average, a resident will spend four to five**
30 months in the center before resuming regular probation
31 supervision. Release to regular probation supervision
32 is decided by the judge on the recommendation of the
33 center staff.²³

34 Georgia is operating 11 totally state-funded Restitution/Diversion
35 Centers. In 1980, approximately \$200,000 per center was allocated.
36 "[F]acilities used to house the residents are leased by the Department.
Motels, vacant dormitories, and large houses are among the types of buildings
that have been converted into Restitution/Diversion Centers."²⁴

The program has been viewed as successful in terms of reducing prison
population by providing an alternative to incarceration. "Restitution/
Diversion Centers have proven to be 70 percent less expensive than incarcer-
ation when comparing the cost over a one-year period."²⁵

In order for this type program to succeed, there must be available in
the community "employment, housing, transportation, and community support
... "²⁶

SUMMARY

Restitution is one alternative to incarceration and is usually a
condition of parole or probation in the states which have enacted restitution
laws. Restitution is usually provided by the offender to the victim in
monetary payments or in service to the community. Arkansas' law offers
restitution as a condition of probation for adults. Juveniles may be
ordered to make restitution for stolen or damaged property.

One model, the Georgia Restitution and Diversion Center Program,
established in 1968, has proven to be a cost-effective alternative to
incarceration in Georgia by combining restitution with a residential center.

FOOTNOTES

¹ NCSL, "Criminal Restitution," C J Monitor, Vol. II, No. IV, July, 1979, p. 1.

² "Restitution - A Way Out of the Criminal Justice Maze?" Liaison, Vol. 6, No. 7, July - August, 1980, p. 18.

³ Ibid, p. 19.

⁴ Ibid, p. 20.

⁵ Ibid.

⁶ Arkansas, Attorney General Opinion No. 80-134, September 3, 1980.

⁷ NCSL, C J Monitor, p. 2.

⁸ Ibid, p. 3.

⁹ Ibid.

¹⁰ Ibid, p. 2.

¹¹ Ibid.

¹² Ibid, p. 3.

¹³ Ibid.

¹⁴ Ibid, p. 2.

¹⁵ Ibid.

¹⁶ Ibid, p. 3.

¹⁷ The Edna McConnell Clark Foundation, Press Release, October 3, 1980.

¹⁸ Ibid, p. 2.

FOOTNOTES

¹⁹ Ibid.

²⁰ Ibid.

²¹ Scott Seymour, "Innovations: A Review of Innovative State Criminal Justice Programs," Council of State Governments, March, 1980, p. 11.

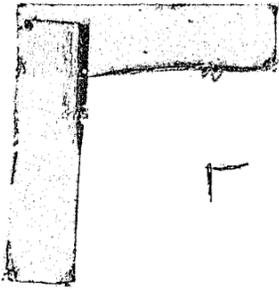
²² Ibid.

²³ Ibid, pp. 11 and 12.

²⁴ Ibid, p. 12.

²⁵ Ibid.

²⁶ Ibid.



END