ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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MEMORANDUM

TO: Representative M. Mike Miller

FROM: Betty Barton and Leslie Longenbaugh
Research Staff

RE: Sentencing Alternatives
Research Request No. 83-79

This memorandum is in response to your request for information regarding sentencing alternatives to incarceration, particularly community-based programs for restitution and community service. You asked that we review other states' procedures and evaluate specific options that may be available for Alaska. This memorandum is presented in three parts:

- an overview of community corrections and the use of restitution and community service orders;
- a review of other states' programs; and
- an examination of program considerations for Alaska.

Our findings are based on information we have obtained from articles and interviews with corrections authorities in Alaska and other states.[1]

COMMUNITY CORRECTIONS

"Community corrections" refers to the placement and supervision of offenders within the community and outside of a traditional prison setting. Probation, parole, drug and alcohol treatment programs for corrections clients are each examples of community-based programs that have been a fundamental component of correctional services for a significant part of this century. During the past 15 years, however, interest in community-based supervision has intensified. New types of programs, established in response to growing frustration over the limited effectiveness of traditional correctional services, are an

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[1] Portions of this memorandum have been excerpted from information and reports prepared earlier this year by the House Research Agency.

integral part of the criminal justice system. Interest in these programs has developed particularly in response to the rising costs of traditional incarceration. Adequately designed, community-based corrections require less capital outlay and have fewer operating costs. Additionally, in residential programs, costs often are partially offset by room and board contributions by offenders. Today, besides other long-established programs, community corrections commonly refers to a range of activities including restitution and community service.

Restitution

Restitution to victims of crime has been the subject of national interest as the public has grown more concerned about the rights of victims. Congress recently enacted the Victim and Witness Protection Act of 1982 (see Attachment A) which, among other provisions, requires that federal judges either order restitution or explain why they have not done so. Laws of this type have been enacted in several states, including North Carolina, Louisiana, and Iowa. California voters in 1982 put such a provision into their state constitution, as part of the Victim's Bill of Rights (see Attachment B).

Andrew R. Klein, the former director of the restitution program in Quincy, Massachusetts, echoed many corrections officials' opinion of the economics of restitution when he wrote:

> A minimum-wage job for one year provides an offender with 2,000 hours of supervised incapacitation while allowing him or her to support a family and repay the victim. An equivalent amount of time in jail provides 8,000 hours of incapacitation during which nothing constructive is produced. Moreover, incapacitation [of the latter sort] costs taxpayers $15,000 to $25,000 a year.

Restitution usually is ordered as a condition of probation, but some courts order restitution as a condition of keeping a first offender's record clean and others assign it to parolees. Restitution is frequently used for juvenile offenders, and the federal government encouraged experimentation in this area during the 1970s. Because of the real differences in methods of handling juveniles and adults, we have limited our research to adult restitution programs except when as in Massachusetts, a program handles both juveniles and adults.

States differ in their eligibility requirements for admission to restitution programs. Some states, such as Georgia, allow only nonviolent offenders into certain programs. As mentioned above, other states require by law that all offenders who are convicted of certain classes of crimes make restitution.

Most state restitution laws define victims as persons, companies or communities that have suffered a direct injury or loss due to a crime.[2] The financial losses that are eligible for restitution generally include the items deductible from an insurance claim; e.g., medical bills not covered by insurance or the costs of replacement or repair for anything stolen or vandalized. In Iowa, the convicted offender must also pay for court and personal legal fees.

Not usually included in restitution awards are: indirect injuries, such as those to a victim's employer for lost time; compensation for the victim's suffering that could be recovered through civil courts; and restitution for crimes for which the offender has not been convicted.[3]

Proponents of restitution claim that 80 percent or more of court restitution orders nationwide are paid in their entirety.[4] The amounts owed generally are not large; nationwide studies have shown that the average restitution amount is less than $250.[5] An additional reason for a high rate of payment is that the repeat offenders usually have the most to lose (their freedom) by reneging on their restitution agreements and so often prove to be the programs' best risks. First offenders also have an incentive to complete restitution when the alternative is a criminal record.

While restitution has received increased emphasis in some states, so too have community service requirements as a sentencing alternative. A number of states now incorporate community service as either a companion or an alternative to restitution requirements.

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2 Insurance companies are nearly always excluded from claiming restitution; lawmakers believe that insurance companies are compensated in advance for any loss through the payment of premiums.

3 However, a court in California did uphold a restitution order for crimes for which the charges were dropped in return for a plea bargain on another criminal charge.

4 Andrew R. Klein, "Earn-It!" page 59 (no date, no publication name).

5 A.T. Harland, M.Q. Warren, and E.J. Brown, A Guide to Restitution Planning, Working Paper 17 (Albany, New York: Criminal Justice Research Center, January 1979), page 23.

Community Service Sentences

A number of states are returning to the notion of community service as a means of reducing prison populations, providing alternative sanctions, and increasing prisoner productivity. However, community service differs from restitution in that while restitution involves payment or compensation to a specific victim, community service generally is based on compensating the community as a whole.

"Community service" is commonly used to describe the functions of two distinct types of programs:

- Pretrial Diversion - where defendants perform community service work as part of an agreement in order to have formal charges dismissed; and

- Service Restitution - where convicted offenders are placed within nonprofit or public agencies to perform a specific amount of unpaid work within a designated period of time.

Of the two approaches, it is service restitution that serves as a sentencing alternative; pretrial diversion deflects individuals from the trial, and, hence, the sentencing, process.

Service restitution programs are widely divergent both in terms of the types of offenders that participate and the duties that the offenders perform. Most commonly, programs are limited to juveniles, young adults (between the ages of 18 and 25), or misdemeanants of any age group. While many programs restrict eligibility to offenders who have been convicted of lesser crimes, some, through a selective screening process, will allow any individual who meets the criteria to participate. Advocates of this approach maintain that if it is administered properly, there is no more risk associated with allowing offenders of serious crimes to participate than there is in placing this same category of offender on probation or parole.

When community service requirements are imposed as an alternative to incarceration, the trial judge generally determines the number of hours of service to be performed and the time frame in which the assignment is to be completed. This process can be somewhat arbitrary. When community service is ordered by the court in lieu of sentencing, the community service sentence is usually equivalent to the amount of incarceration or fine that would have been imposed had the defendant done otherwise.

In a report about community service prepared by the National Council on Crime and Delinquency, Kay Harris makes the following observation: "Judicial decision making with respect to community service sentences

as with sentencing in general has been highly discretionary and largely unstandardized."[6] In an effort to alleviate this situation, some programs have established conversion guidelines. In California, for example, most program officials have suggested that eight hours of service should be treated as the equivalent to one day (24 hours) in jail.

Some programs have followed procedures developed in Great Britain and have attempted to limit the length of community service sentences. In Great Britain, no offender may receive a sentence longer than 240 hours of community service (or, assuming an 8-hour work day, 30 days of service). Sentence limits may be more appropriate for lesser offenders.[7]

Although the use of service restitution is generating increased interest, the concept has raised several issues of concern. By some interpretations, community service orders may constitute involuntary labor. This may be of particular concern in pre-trial diversion programs, where defendants bypass a court hearing and are placed in a service restitution program. The Thirteenth Amendment to the Constitution prohibits involuntary servitude except as punishment for crimes in which individuals have been convicted. According to Kay Harris, this argument depends in part on court interpretation:

> [I]f the work performed is of real value and is not assigned with a punitive or demeaning intent (and thus does not carry the flavor of "chore work" or of a "chain gang"), questions concerning the voluntariness of the work can be avoided.

Another risk in establishing community service orders is the potential for discrimination and disparity in sentencing, particularly in programs where an offender may choose between the payment of a fine, incarceration, or community service. An individual from a higher income bracket can pay a fine more readily than a low-income person. Similarly,

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6 M. Kay Harris, Community Service by Offenders, National Council on Crime and Delinquency (Washington, D.C: National Institute of Corrections, January 1979).

7 For example, in Solano County, California, a two-year analysis of the Volunteer Work Program revealed that although four-fifths of the participants had been sentenced to less than 240 hours of service, offenders convicted of felonies were sentenced to 585 hours on the average. Community service orders for felons ranged from 25 hours to one sentence of 2,920 hours (or 365 8-hour days).

assuming that community service time is of a value equal to the minimum wage, a person having a higher income may value the time lost in community service more than the money required for the fine.

There has not been much formal evaluation of community service programs; however, the analyses that have been undertaken give some indication that limited cost-savings can be attained through this type of program.

We have ordered several reports pertaining to community service sentencing from the National Conference of State Legislatures and the National Institute of Corrections. We will transmit this information to you when it arrives.

OTHER STATES' PROGRAMS

We have selected programs in four states as examples of different community corrections options:

- Kentucky Pretrial Services Agency--an example of pretrial release;
- Minnesota Community Corrections Act - an example of developing incentives and building local planning capabilities to assume responsibilities for community corrections programs;
- Massachusetts "Earn-It" Program--an example of restitution;
- Virginia Community Diversion Incentive Program--an example of non-residential post-sentence diversion and community service;
- South Carolina Work Release--an example of a comprehensive approach to prisoner employment and work release.

Although not necessarily as their primary objective, each of these programs appears to have had some measurable impact in reducing State prison populations and, hence, the costs of incarceration.

Kentucky Pretrial Services Agency

In 1976, Kentucky enacted legislation which eliminated commercial bail bonding[8] and implemented a pretrial release program that established methods of defendant release for trial judges.

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8 Under the program, defendants now post cash bonds directly to the courts. Kentucky is the only state that has outlawed commercial bail bonding by statute.

The Kentucky program is initiated by an interview that is provided to a defendant shortly after he or she is charged with an offense. The interview process is voluntary[9] and involves the collection of basic biographical data regarding the defendant's past criminal record, community ties and family relationships, work history, and references. The information obtained during the interview is verified through contacts with third parties and, if the defendant has a past criminal record, by reviewing the defendant's criminal file.

This material is then evaluated through a uniform point system. The defendant is awarded positive points for responses or information that reflect a close association with the community. A defendant receives negative points for responses that suggest that he or she would fail to appear in court, e.g., a past felony conviction or a previous "no show." Upon completion of the evaluation, if the defendant has been awarded eight or more points, he is eligible for release on his own recognizance. The pretrial officer reviews these findings with the trial judge.

Based upon these materials, the trial judge makes an assessment of the conditions, if any, that the defendant will be required to meet in order to obtain release. The following options are available:

- the defendant may be released on his or her own recognizance or following the posting of an unsecured bail bond;
- the defendant may be released, but with limitations placed on his or her travel, place of residence, or association; or
- the defendant may be released by a bail bond that is secured by property, cash, or securities.

The defendant is then notified of the conditions of his or her release and the penalties of a failure to comply with the terms of the agreement. Upon acceptance of the terms, the defendant is free to leave.

Approximately 70 percent of all charged offenders elect to be interviewed by a pre-trial officer; of these, roughly 70 percent are eligible for release.[10] Fifty-five percent are released on their own recognizance without having to post any money.

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9 If a defendant decides against or is not eligible for the interview, he or she remains eligible for consideration for release by the trial judge.

10 Bill Morrison emphasized that a defendant's eligibility for release does not mean that the judge will automatically decide to release him or her.

Of the total number of defendants released on recognizance, approximately 4.5 percent fail to appear. According to Bill Morrison, Assistant General Manager of the program, fewer than 1 percent of these are charged for felony offenses; most of those who fail to appear have been charged with traffic offenses and public intoxication.

Like Alaska, Kentucky is largely rural--a characteristic that by some interpretations has been a primary factor in the program's effectiveness. According to Mr. Morrison, the failure-to-appear rate is significantly higher in the Louisville area than it is in other parts of the state. Mr. Morrison stated that, Kentucky residents generally understand the pretrial program quite well and, consequently, defendants recognize that it is to their advantage to abide by its terms.

Much of the program's effectiveness is attributed to the detail and accuracy of the interview and the background-data collection effort. According to Mr. Morrison, this process provides the pretrial officer and the judge with a very thorough understanding of the level of risk involved in releasing a defendant.

Another factor that has led to the program's overall success is its treatment of bail jumping. At the time of his release, an individual is informed that if he jumps bail an additional, comparable penalty is automatically imposed. Hence, if a defendant is charged with a misdemeanor, a second misdemeanor charge is imposed; if an individual is charged with a felony; a second felony charge is imposed. According to Mr. Morrison, the threat of added charges seems to have an effect. In several cases, a defendant has been found not guilty of the initial charge but guilty of bail jumping.

The program offers services in each of Kentucky's 56 judicial districts. Each of the less populated districts is served by one pretrial officer who works on a 24-hour on-call basis seven days a week. The program has 172 pretrial officers and an operating budget of approximately $3,000,000.

A distinctive feature of the program is its cooperative relief program. In order to reduce the number of personnel needed, the program has established an intern program, where senior year students of criminal justice and law enforcement from in-state universities relieve pretrial officers who are on annual leave. According to Mr. Morrison, the pretrial services program uses the cooperative relief program as a recruiting tool. At least 30 percent of the students are retained as permanent staff following their graduation from college.

Mr. Morrison is sending some supplementary material pertaining to the Kentucky program. We will forward it to your office upon its arrival.

Minnesota Community Corrections Act

One state frequently cited for the effectiveness of its approach to community corrections is Minnesota. Unlike many other states, Minnesota has a fairly lengthy history of correctional program reform. As early as 1959, Minnesota had begun implementing policies that expanded the use of probation and paved the road for a strong community-based corrections program. During the 1960s and 1970s, at the same time that other states were encountering substantial increases in crime and incarceration rates, Minnesota was experiencing a 43 percent decrease in its prison population. This reduction is generally attributed to the state's increased use of probation and other community-based programs.

In 1973, the state legislature established the Minnesota Community Corrections Act, which was enacted to accomplish three broad goals:

- to provide correctional services and sanctions in a more rational, economical, and effective manner;
- to encourage efficient and economical use of corrections funds; and
- to develop and maintain community corrections while effectively protecting the public.

The Minnesota Community Corrections Act (CCA) restructured the state's correctional services and addressed four major concerns: 1) increased institutional costs at the state level, 2) limited local correctional services, 3) overlapping correctional jurisdictions, and 4) a lack of uniform standards for delivering correctional services. The CCA allows counties to apply for grants to provide services such as diversion programs, probation and parole services, community corrections centers and county detention and treatment centers.

According to one assessment of this period:

> What was new about community corrections was not the kind, or even the location of programs, but rather the belief that community-based programs could be mounted to aid and sanction even relatively serious offenders without threat to the public.[11]

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11 John Blackmore, The Minnesota Community Corrections Act: A Policy Analysis, Prepared for the National Institute of Corrections, Grant #DF - 6, March 31, 1982.

The CCA is based largely on the notion that nonviolent property offenders (and all juveniles) will benefit more from community corrections than from prison. The state provides an inducement to counties that offer community corrections services; counties are charged by the state for each prisoner who is qualified for community corrections but is sent to prison. In addition to this negative incentive, the state provides a positive incentive in the form of subsidies to the counties that have community corrections programs. Money is disbursed through an equalization formula that takes into account the county's per capita income, per capita taxable value, per capita corrections expenditures, and its population between six and 30 years of age.

Each county (or group of counties) that participates in the CCA appoints a Corrections Advisory Board to develop a local comprehensive corrections plan which is subject to approval by the state commissioner of corrections. Each county establishes its own form of administration for its corrections programs.

County participation in the program is voluntary; however, as of 1980, 27 of the state's 84 counties, comprising 70 percent of the state's population, were participating in the CCA. Studies showed that counties that were enrolled in the CCA depended less on the state prison system for their corrections. Judges were sentencing many property offenders to the diversion programs rather than to prison, and the number of admissions to state prison had decreased.

Massachusetts "Earn-It" Program

Since 1975, the District Court in the city of Quincy, near Boston, Massachusetts, has operated a program for adults and juveniles that is a nationwide model of restitution as a condition of probation. The program, which is called "Earn-It," was begun by a judge who felt frustrated by the choices of "meaningless jail time or nothing" in sentencing. Through Earn-It, judges order offenders to make restitution or perform work services as a condition of either probation or court diversion (for initial offenders).

Earn-It participants provide restitution in cases of property theft or damage and personal injury. In some instances, such as in cases of vandalism or crimes which have harmed no single, identifiable victim, judges order offenders to work in lieu of making monetary payments. The unpaid labor can be for the private or governmental victim of vandalism or for some nonprofit community organization.

Once a judge has sentenced an offender to make restitution, a caseworker from the court's probation department meets with both the offender and the victim to set the amount of restitution that is due. Usually both parties are able to agree on a sum; in only about three percent of the

Earn-It cases has this determination had to be resolved by a judge. The factors that are considered in determining the amount include medical and/or other expenses incurred because of the crime, the victim's inconvenience, and the value of any stolen articles.

After the amount of restitution has been determined, the "job developer" from the probation department finds jobs for adults and juveniles who are unemployed. Judge Albert L. Kramer worked closely with the Chamber of Commerce in his area when starting Earn-It; today the business community is still a vital part of the program. More than 100 employers provide offenders with the number of hours' work they need to pay their restitution. Usually these jobs are low in status, pay the minimum wage, and are difficult to fill permanently. In past years, some jobs were provided through the federal Comprehensive Employment Training Act (CETA), but the public services employment (adult) portion of this program was eliminated in 1981, and only about half of the youth employment funds remain.

When an adult has been placed in a job (or it is found that he already is employed), he is responsible for making restitution payments to the court. The court forwards restitution payments to victims as the money comes in. The offender makes the restitution according to a schedule of 80 percent of wages for restitution and 20 percent for the worker until the debt is paid.

Because Massachusetts courts tend to incarcerate offenders less often than most of their counterparts across the nation, Earn-It's participants rarely would be sentenced to jail terms if they were not in the program. However, they are frequently the type of offender who would be sentenced to prison if they were in Alaska. Most of the participants are young (16 to 21) and male, and they include both first offenders and recidivists.

The Quincy District Court serves a seven-town area with a population that approaches 250,000. In 1980, Earn-It monitored 624 restitution determinations, 884 adult community work orders, and 150 adult job placements. The program handled restitution orders for approximately four-fifths of the adult and juvenile burglary, theft and assault cases in the seven-town area.

During 1981, adult offenders paid more than $218,000 in restitution to the victims of their crimes. The collection rate on court-ordered restitution has increased from 40 percent in 1975 to more than 70 percent in 1981.

Because of the high level of unemployment in the Quincy area, Earn-It has received some criticism from those who believe that the program is taking jobs that are needed for the law-abiding population. However,

program staff point out that the jobs are temporary, menial positions that are not in any demand and end when the victim has been paid.

Virginia's Non-Residential Commmunity Diversion Program

The Community Diversion Incentive Act was enacted by the Virginia legislature in 1980 to provide the judicial system with sentencing alternatives to incarceration and to facilitate local communities' capabilities to develop and maintain community diversion programs.

The Virginia program limits offender eligibility to nonviolent offenders who "may require less than institutional custody but more than probation supervision." At the time that the legislation was enacted, approximately 22 percent of the state's prison population was estimated to have been incarcerated for nonviolent offenses. The purpose of the program is to divert a portion of this population from confinement in a traditional prison setting.

Participants live in an assigned facility or at home with intensive supervision. Under the program, they are required to look for and maintain employment. Participants are required to pay restitution to their victims and must spend their days either looking for or maintaining a job. During the evenings and week-ends, participants are assigned community service duties. According to Ms. Bobbie Huskey, Manager of Community Placement Programs for the Virginia Department of Corrections, the program currently has 313 participants. Ninety-three percent of the program participants are currently providing community service and 91 percent are making victim restitution payments. Approximately $23,000 worth of community service has been provided to localities and approximately $10,000 in direct financial payments have been made to the participants' victims.[12]

Ninety-one percent of the offenders are "successful" participants in the program; that is, they participate in the program without being arrested for a new offense. Part of the program's overall effectiveness is attributed to the large amount of supervision that is given to participants, including intensive counseling which is required for all participants. A treatment plan is prepared for each participant and between one and two hours of professional counseling is provided.

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[12] According to Ms. Huskey, the restitution process has been quite effective. Unlike victim compensation programs, the restitution provisions do not require victims to file a formal complaint in order to obtain compensation. Because of this, the program has been very well received by victims and the public at large.

Several communities have initiated group counseling sessions. Although this method is not recommended for all participants, it has been very effective for some, particularly those offenders who have a history of alcoholism or drug abuse.

According to Ms. Huskey, the program places a great deal of emphasis on developing an offender's employment skills and work habits. Essentially, the program has two objectives: 1) to develop an offender's incentive to obtain and maintain steady employment; and 2) to expand an offender's job marketability. Because of this, the Virginia program has a significant amount of its operating budget reserved for contractual services for the provision of G.E.D. tutoring, vocational training, and other services.

Administrators have also emphasized the importance of meaningful work assignments. Too frequently, community service projects have developed "make-work" reputations. In Virginia, attempts are made to match positions to the participant's skills and abilities. Sample work assignments are: carpenter, Red Cross driver, office assistant, file clerk, groundskeeper, custodian, and a member of the fire rescue squad.

Unlike many other state diversion programs, the Virginia program does not divert offenders until after they have been sentenced to prison. This provision was included for two purposes. It provides some assurance that participants are offenders who without the program would otherwise have been incarcerated. Moreover, according to Ms. Huskey, this structure assists in sending an "obvious message" to the individual, "If you mess up in this program, you will be incarcerated."

South Carolina Work Release Program

Although many states have implemented prisoner employment programs, few have done so on the scale of South Carolina. Although the state has long had a thorough work release program, it has expanded its work release program in recent years partially as a means of addressing South Carolina's severe prison overcrowding.

The state's prisons currently house approximately 9,000 offenders, which means the system is at 140 percent capacity. In order to alleviate this problem, South Carolina relies heavily on the placement of prisoners within community-based work release centers and other designated residential facilities, including prisoners' own homes.

Unlike many work release programs, eligibility for South Carolina's programs is not solely limited to prisoners who are in the final months of their sentences. Eligibility criteria vary among each of the state's four programs:

- employment;
- regular work release;
- extended work release; and
- supervised furlough.

The first three programs are administered by the State Department of Corrections and the fourth program is administered by the State Department of Parole and Community Services. .

South Carolina's employment program is available to offenders who are within two years of their parole eligibility or release. However, the program makes use of a strict screening process for potential participants. Normally, acceptance into the program requires the approval of law enforcement officials located within the community where the work center is based. Only one of the state's nine work centers is used for this program. Participants work within the community but are driven to their jobs and picked up each evening to return to the work center at night. Participants receive strict supervision and, aside from their day-time release, have few privileges.

Prisoners who are within one year of their parole eligibility or release, and who are not participating in the employment program, are eligible for the regular work release program. Under this program, the Department of Corrections attempts to place offenders in a work center that is located in proximity to their homes. The program has fewer restrictions than the employment program and is intended as a means of facilitating the prisoner's reentry into his community. Participants pay 25 percent of their gross salaries for room and board. According to Hubert Clements, the Deputy Commissioner of Administration for the Department of Corrections, South Carolina's statute pertaining to restititution is used infrequently; consequently, participants rarely pay any restitution.

For over five years, South Carolina has also offered an extended work release program where offenders are placed directly under the custody of a family sponsor. Instead of living within a work release center, participants of this program live at the residence of a member of their immediate family. Eligibility is extended to offenders who are within nine months of release or parole eligibility and who have completed three months of the regular work release program.

Established in 1981, the supervised furlough program enables designated offenders to return to a work-day setting and to maintain employment. Unlike the other South Carolina programs, eligibility is generally determined based on the type of offense committed rather than the

offender's proximity to release. Eligibility is extended only to individuals who have a clean disciplinary record (six months minimum), who have committed a nonviolent offense, and who have been sentenced to five years or less. The program functions as a pre-parole program and participants must comply with all parole requirements excluding employment. However, once they have obtained employment, they become part of the regular parole program.

Approximately 25 offenders are currently participating in the program. The participants live at home and are charged $3.00 per day by the state for supervisory and counseling fees.

When the supervised furlough program was initially established, there was some apprehension that it would be in direct competition with the extended release program. Since that time, the supervised furlough program has met with some opposition and is not currently accepting any new participants. County attorneys have challenged the parole board's authority to administer the program. They have argued that the parole board is impairing public safety and has exceeded its authority by releasing people in advance of the date on which they are eligible for release or parole consideration.

According to Dr. Clements, the state has expanded its use of the extended work release program considerably in recent years. In January 1982, there were 147 inmates participating in this program; there are currently approximately 270 participants. In part, this increase has occurred because of a decline in the other work release programs. Dr. Clements stated that the poor economic climate of the state has made employment opportunities more scarce for residents of the work release centers. Consequently, plans for construction of new facilities have been postponed until the economy improves. Dr. Clements stated that the work release centers are designed under the assumption that residents will be employed. They have few recreational facilities and do not readily accommodate large numbers of inactive residents. Currently, between 20 and 25 percent of the work center residents are unemployed. As a result, the extended work release program, where participants live in their own homes, is being utilized more for the time being.

Beyond the litigation regarding the supervised furlough program, South Carolina has encountered little resistance to the work release programs. According to Dr. Clements, between 15 and 20 percent of the offenders who are released "get back into trouble," but this percentage is no higher than it would be had the prisoners completed their full sentences. Of those who are arrested again, many are charged with lesser offenses or parole violations; e.g., driving with no license. Dr. Clements observed that, from his perspective, it makes more sense to

release an individual 18 months early and provide him with intensive supervision to assist in his adjustment back into society than it does to spend the public dollar on 18 months of additional incarceration only to "turn him loose into the community" with little or no supervision.

PROGRAM CONSIDERATIONS FOR ALASKA

Alaska currently has several community corrections programs. The Pretrial Diversion Program, for example, which is administered by the Department of Law, has been in operation since 1978. Among other services, the Division of Adult Corrections administers a furlough program for State offenders that enables inmates to live in a halfway house setting for no more than one year in order to receive educational or counseling services. The Division also contracts out for halfway house services, which provide accommodations for offenders who are four to six months away from release.

Alaska has a number of options pertaining to community corrections, several of which could serve as sentencing alternatives to incarceration. We have identified the following options for consideration:

- establishing incentives for municipalities to develop community corrections programs;
- developing pretrial release services;
- increasing the number of residential correctional centers within the state;
- expanding the State's diversion program; and
- expanding the State's capabilities in restitution, community service, and other community-based work programs.

The extent to which these options are pursued depends in part on the State's ability to compile, process, and analyze information about offenders. In our conversations with officials in other states, it was apparent that much of the effectiveness of community-based programs depends on the reliability of profile data on offenders.

The Division of Adult Corrections is currently under contract with the American Correctional Association to establish a revised model for prisoner classification. The Division also is continuing its efforts to bring a comprehensive data retrieval system, Offender Based State Corrections Information System (OBSCIS), on line. This system will

record information regarding Alaska offenders from their initial point of entry into the corrections system through their discharge. A second phase of OBSCIS will include offenders on probation or parole. When this system is operational, the criminal justice system should be better able to assess offender location and system capacity. Although OBSCIS, combined with an improved classification system, may improve existing informational capabilities, additional offender data may be required if the State establishes a strong community corrections program.

Community Corrections Incentives--Evaluations of several community corrections programs have indicated that these programs may be less effective in rural areas than in urban areas of a state. Rural regions usually do not have the community resources available to maintain quality programs. Nonetheless, community-based programs could be expanded in Alaska's more urban areas and possibly could be located in several of the state's regional centers. As compensation for the added responsibility and associated costs of these programs, several states, such as Minnesota, offer incentives to local governments to encourage this development.

In light of its somewhat limited potential in Alaska, it may be more reasonable for the State to provide only positive financial incentives for communities. Some states also impose financial penalties on communities that do not establish community corrections programs as a negative incentive.

By establishing incentives, Alaska policymakers may inadvertently encourage communities that lack the capabilities to assume this responsibility and, hence, may be impairing the correctional system. Therefore, it may be more appropriate to develop incentives only for the state's larger communities and regional centers.

Pretrial Release Capabilities - The Alaska Division of Adult Corrections Population Management Plan, which was submitted in March 1983 in partial fulfillment of Cleary v. Beirne (Case No. 3AN-81-5274), made several recommendations regarding pretrial release. The Division has proposed working with the magistrates and district courts to assist in screening defendants for release and in supervising defendants who are released on their own recognizance, on supervised recognizance within a community resource setting, or on Third Party Release.

If administered properly, this approach could help to alleviate prison overcrowding that has resulted from unneccessary booking of defendants. If it is not adequately managed, however, it carries some risk of impairing the security of the public or, in turn, the public's perception of safety.

Residential Correctional Centers--The pursuit of this option is largely dependent upon the State's findings pertaining to its prisoner profile and classification system. Assuming that the State determines that some of its correctional population can be placed in less security-minded beds without impairing the security of the public, correctional staff, or of fellow prisoners, then the construction or aquisition of additional community-based residential facilities may be warranted.

While this may be a desirable option in many respects, it may be difficult to accomplish without public support. Other states have attempted to addresss this need by undertaking comprehensive public information programs. According to Bobby Huskey in Virginia, if more members of the public realized that 85 percent of the nation's offenders return to their communities upon release, there would be more interest in assuring that a phased reentry for eligible offenders occurs.

Diversion Program--In 1982, Alaska's Pretrial Diversion Program included 225 defendants charged with felonies and 292 defendants charged with misdemeanors. During this same period, according to Pat Conheady, Chief of the Department of Law's Pretrial Services Section, the program generated over $150,000 in restitution and over $14,000 in community service work for agencies and organizations. The program is oriented toward first offenders; however, other categories of offenders are accepted on a limited basis.

The State currently has very limited capabilities in terms of alternatives to incarceration for post-conviction offenders. The Pretrial Services Section provides some post-sentenced services through an interagency contract with the Department of Health and Social Services. However, according to Pat Conheady, the program is currently overloaded and may be in need of some formalization and general expansion. A program similar to that established in Virginia might accomplish this.

Restitution, Community Service, and Work Release--The Division of Adult Corrections has already formulated plans for increased emphasis on prisoner employment and is contemplating the expanded use of restitution and community service.

Alaska statute establishes guidelines for community work by offenders:

> The court may order a defendant convicted of an offense to perform community work as a condition of a suspended sentence or suspended imposition of sentence, or in addition to any fine or restitution ordered. If the defendant is also sentenced to imprisonment, the court may recommend to the Department of Health and Social Services that the defendant perform community work.
> (AS 12.55.055)

Although in terms of convicted offenders the emphasis of this law appears to be on the use of community work as a supplement to fines or restitution, it does provide for community service for offenders sentenced to prison. Not only does this authorize community service work release for prisoners, but it may also enable the court to recommend community work for offenders in lieu of incarceration, as is the case in South Carolina. However, standards must be developed carefully so that programs are not perceived as a means for certain classes of offenders to bypass incarceration.

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Many states have implemented some of the preceding options through community corrections acts. Since the late 1970s, a number of national organizations and associations have recommended that state governments establish community corrections legislation. The Uniform Law Commissioners' Model Sentencing and Corrections Act (see Attachment C) is one such example.

We hope this information has assisted you. If you would like additional material regarding this or other aspects of this topic, please do not hesitate to contact us.

BB/sj

Attachments

A--(Federal) Victim and Witness Protection Act of 1982

B--California Constitution, Article II, Section 28

C--Uniform Law Commissioners' Model Sentencing and Correction Act, Sections 2-201-303

ATTACHMENT A

(Federal) Victim and Witness Protection Act of 1982

Public Law 97-291
97th Congress

An Act

To provide additional protections and assistance to victims and witnesses in Federal cases

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Victim and Witness Protection Act of 1982".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that:

(1) Without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.

(2) All too often the victim of a serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim.

(3) Although the majority of serious crimes falls under the jurisdiction of State and local law enforcement agencies, the Federal Government, and in particular the Attorney General, has an important leadership role to assume in ensuring that victims of crime, whether at the Federal, State, or local level, are given proper treatment by agencies administering the criminal justice system.

(4) Under current law, law enforcement agencies must have cooperation from a victim of crime and yet neither the agencies nor the legal system can offer adequate protection or assistance when the victim, as a result of such cooperation, is threatened or intimidated.

(5) While the defendant is provided with counsel who can explain both the criminal justice process and the rights of the defendant, the victim or witness has no counterpart and is usually not even notified when the defendant is released on bail, the case is dismissed, a plea to a lesser charge is accepted, or a court date is changed.

(6) The victim and witness who cooperate with the prosecutor often find that the transportation, parking facilities, and child care services at the court are unsatisfactory and they must often share the pretrial waiting room with the defendant or his family and friends.

(7) The victim may lose valuable property to a criminal only to lose it again for long periods of time to Federal law enforcement officials, until the trial and sometimes and appeals are over; many times that property is damaged or lost, which is particularly stressful for the elderly or poor.

(b) The Congress declares that the purposes of this Act are—

(1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process;

(2) to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant; and

(3) to provide a model for legislation for State and local governments.

VICTIM IMPACT STATEMENT

SEC. 3. Paragraph (2) of rule 32(c) of the Federal Rules of Criminal Procedure is amended to read as follows: 18 USC app.

"(2) REPORT.—The presentence report shall contain—

"(A) any prior criminal record of the defendant;

"(B) a statement of the circumstances of the commission of the offense and circumstances affecting the defendant's behavior;

"(C) information concerning any harm, including financial, social, psychological, and physical harm, done to or loss suffered by any victim of the offense; and

"(D) any other information that may aid the court in sentencing, including the restitution needs of any victim of the offense.".

PROTECTION OF VICTIMS AND WITNESSES FROM INTIMIDATION

SEC. 4. (a) Chapter 73 of title 18 of the United States Code is amended by adding at the end the following new sections:

"§ 1512. Tampering with a witness, victim, or an informant 18 USC 1512

"(a) Whoever knowingly uses intimidation or physical force, or threatens another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

"(1) influence the testimony of any person in an official proceeding;

"(2) cause or induce any person to—

"(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

"(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

"(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

"(D) be absent from an official proceeding to which such person has been summoned by legal process; or

"(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be fined not more than $250,000 or imprisoned not more than ten years, or both. Penalty

"(b) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

"(1) attending or testifying in an official proceeding;

"(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

"(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

"(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined not more than $25,000 or imprisoned not more than one year, or both.

"(c) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

"(d) For the purposes of this section—

"(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

"(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

"(e) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

"(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

"(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

"(f) There is extraterritorial Federal jurisdiction over an offense under this section.

"§ 1513. Retaliating against a witness, victim, or an informant

"(a) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

"(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined not more than $250,000 or imprisoned not more than ten years, or both.

"(b) There is extraterritorial Federal jurisdiction over an offense under this section.

"§ 1514. Civil action to restrain harassment of a victim or witness

"(a)(1) A United States district court, upon application of the attorney for the Government, shall issue a temporary restraining order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

"(2)(A) A temporary restraining order may be issued under this section without written or oral notice to the adverse party or such party's attorney in a civil action under this section if the court finds, upon written certification of facts by the attorney for the Government, that such notice should not be required and that there is a reasonable probability that the Government will prevail on the merits.

"(B) A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed forthwith in the office of the clerk of the court issuing the order.

"(C) A temporary restraining order issued under this section shall expire at such time, not to exceed 10 days from issuance, as the court directs; the court, for good cause shown before expiration of such order, may extend the expiration date of the order for up to 10 days or for such longer period agreed to by the adverse party.

"(D) When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character, and when such motion comes on for hearing, if the attorney for the Government does not proceed with the application for a protective order, the court shall dissolve the temporary restraining order.

"(E) If on two days notice to the attorney for the Government or on such shorter notice as the court may prescribe, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

"(F) A temporary restraining order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

"(b)(1) A United States district court, upon motion of the attorney for the Government, shall issue a protective order prohibiting harassment of a victim or witness in a Federal criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

"(2) At the hearing referred to in paragraph (1) of this subsection, any adverse party named in the complaint shall have the right to present evidence and cross-examine witnesses.

"(3) A protective order shall set forth the reasons for the issuance of such order, be specific in terms, describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

"(4) The court shall set the duration of effect of the protective order for such period as the court determines necessary to prevent

harassment of the victim or witness.

...ss of three years from the date of such order's issuance. The ...rney for the Government may, at any time within ninety days before the expiration of such order, apply for a new protective order under this section.

"(c) As used in this section—

"(1) the term 'harassment' means a course of conduct directed at a specific person that—

"(A) causes substantial emotional distress in such person; and

"(B) serves no legitimate purpose; and

"(2) the term 'course of conduct' means a series of acts over a period of time, however short, indicating a continuity of purpose.

"§ 1515. Definitions for certain provisions

"As used in sections 1512 and 1513 of this title and in this section—

"(1) the term 'official proceeding' means—

"(A) a proceeding before a judge or court of the United States, a United States magistrate, a bankruptcy judge, or a Federal grand jury;

"(B) a proceeding before the Congress; or

"(C) a proceeding before a Federal Government agency which is authorized by law;

"(2) the term 'physical force' means physical action against another, and includes confinement;

"(3) the term 'misleading conduct' means—

"(A) knowingly making a false statement;

"(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;

"(C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;

"(D) with intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect; or

"(E) knowingly using a trick, scheme, or device with intent to mislead;

"(4) the term 'law enforcement officer' means an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant—

"(A) authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense; or

"(B) serving as a probation or pretrial services officer under this title; and

"(5) the term 'bodily injury' means—

"(A) a cut, abrasion, bruise, burn, or disfigurement;

"(B) physical pain;

"(C) illness;

"(D) impairment of the function of a bodily member, organ, or mental faculty; or

rary. .

(b) The table of sections at the beginning of chapter 73 of title 18 of the United States Code is amended—

(1) so that the item relating to section 1503 reads as follows:

"1503. Influencing or injuring officer or juror generally.", and

(2) by adding at the end the following:

"1512. Tampering with a witness, victim, or an informant
"1513. Retaliating against a witness, victim, or an informant.
"1514. Civil action to restrain harassment of a victim or witness
"1515. Definitions for certain provisions.".

(c) Section 1503 of title 18 of the United States Code is amended—

(1) in the heading of such section, by striking out ", juror or witness" and inserting in lieu thereof "or juror";

(2) by striking out "witness" the first place it appears after "impede any" and all that follows through "or any grand" and inserting "grand" in lieu thereof; and

(3) by striking out "injures any party or witness" and all that follows through "matter pending therein, or".

(d) section 1505 of title 18 of the United States Code is amended by—

(1) striking out paragraphs (1) and (2);

(2) striking out "such" the first place it appears in the fourth paragraph and inserting in lieu thereof "any pending";

(3) striking out "such" the second place it appears in the fourth paragraph and inserting in lieu thereof "any"; and

(4) striking out "such inquiry" in the fourth paragraph and inserting in lieu thereof "any inquiry".

(e) Section 1510(a) of title 18 of the United States Code is amended—

(1) by striking out the comma immediately following "bribery" and all that follows through "thereof";

(2) by striking out the semicolon immediately following "investigator" the first place it appears and all that follows through "Shall be fined" and inserting "shall be fined" in lieu thereof.

RESTITUTION

SEC. 5. (a) Chapter 227 of title 18 of the United States Code is amended by adding at the end the following:

"§ 3579. Order of restitution

"(a)(1) The court, when sentencing a defendant convicted of an offense under this title or under subsection (h), (i), (j), or (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense.

"(2) If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.

"(b) The order may require that such defendant—

"(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

"(A) return the property to the owner of the property or someone designated by the owner; or

"B if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

"i) the value of the property on the date of the damage, loss, or destruction, or

"ii) the value of the property on the date of sentencing;

less the value (as of the date the property is returned) of any part of the property that is returned;

"2) in the case of an offense resulting in bodily injury to a victim—

"A pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

"B pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

"C reimburse the victim for income lost by such victim as a result of such offense;

"3) in the case of an offense resulting in bodily injury also resulting in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and

"4) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

"b) If the Court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

"c) The court shall impose an order of restitution to the extent that such order is as fair as possible to the victim and the imposition of such order will not unduly complicate or prolong the sentencing process.

"d) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for such loss to the extent that such person paid the compensation. An order of restitution shall require that all restitution to victims under such order be made before any restitution to any other person under such order is made.

"e) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in—

"A any Federal civil proceeding, and

"B any State civil proceeding, to the extent provided by the law of that State.

Time period

"f) The court may require that such defendant make restitution under this section within a specified period or in specified installments.

"2) The end of such period or the last such installment shall not be later than—

"A) the end of the period of probation, if probation is ordered;

"B five years after the end of the term of imprisonment imposed, if the court does not order probation; and

"C) five years after the date of sentencing in any other case.

"3) If not otherwise provided by the court under this subsection, restitution shall be made immediately.

"g) If such defendant is placed on probation or paroled under this title, any restitution ordered under this section shall be a condition of such probation or parole. The court may revoke probation and the Parole Commission may revoke parole if the defendant fails to comply with such order. In determining whether to revoke probation or parole, the court or Parole Commission shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

"h) An order of restitution may be enforced by the United States or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

"§ 3580. Procedure for issuing order of restitution

"a) The court, in determining whether to order restitution under section 3579 of this title and the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

"b) The court may order the probation service of the court to obtain information pertaining to the factors set forth in subsection (a) of this section. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.

"c) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

"d) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

"e) A conviction of a defendant for an offense involving the act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim."

(b) The table of sections at the beginning of chapter 227 of title 18 of the United States Code is amended by adding at the end the following new items:

"3579. Nature of order of restitution.
"3580. Procedure for issuing order of restitution."

FEDERAL GUIDELINES FOR FAIR TREATMENT OF CRIME VICTIMS AND WITNESSES IN THE CRIMINAL JUSTICE SYSTEM

SEC. 6. (a) Within two hundred and seventy days after the date of enactment of this Act, the Attorney General shall develop and implement guidelines for the Department of Justice consistent with the purposes of this Act. In preparing the guidelines the Attorney General shall consider the following objectives:

(1) SERVICES TO VICTIMS OF CRIME.—Law enforcement personnel should ensure that victims routinely receive emergency medical and medical services as soon as possible and are given information on the following—

(A) availability of crime victim compensation (where applicable);

(B) community-based victim treatment programs;

(C) the role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

(D) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

(2) NOTIFICATION OF AVAILABILITY OF PROTECTION.—A victim or witness should routinely receive information on steps that law enforcement officers and attorneys for the Government can take to protect victims and witnesses from intimidation.

(3) SCHEDULING CHANGES.—All victims and witnesses who have been scheduled to attend criminal justice proceedings should either be notified as soon as possible of any scheduling changes which will affect their appearances or have available a system for alerting witnesses promptly by telephone or otherwise.

(4) PROMPT NOTIFICATION TO VICTIMS OF MAJOR SERIOUS CRIMES.—Victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims should, if they persons provide the appropriate official with a current address and telephone number, receive prompt advance notification if possible, of judicial proceedings relating to their case, including—

(A) the arrest of an accused,

(B) the initial appearance of an accused before a judicial officer,

(C) the release of the accused pending judicial proceedings, and

(D) proceedings in the prosecution of the accused (including entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, the release of the accused from such imprisonment).

(5) CONSULTATION WITH VICTIM.—The victim of a serious crime or in the case of a minor child or a homicide, the family of the victim, should be consulted by the attorney for the Government in order to obtain the views of the victim or family about the disposition of any Federal criminal case brought as a result of such crime, including the views of the victim or family about—

(A) dismissal,

(B) release of the accused pending judicial proceedings;

(C) plea negotiations, and

(D) pretrial diversion program.

(6) SEPARATE WAITING AREA.—Victims and other prosecution witnesses should be provided prior to court appearance a waiting area that is separate from all other witnesses.

(7) PROPERTY RETURN.—Law enforcement agencies and prosecutor should promptly return victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it.

(8) NOTIFICATION TO EMPLOYER.—A victim or witness who so requests should be assisted by law enforcement agencies and attorneys for the Government in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or attorneys for the Government, is subjected to serious financial strain, should be assisted by such agencies and attorneys in explaining to creditors the reason for such serious financial strain.

(9) TRAINING BY FEDERAL LAW ENFORCEMENT TRAINING FACILITIES.—Victim assistance education and training should be offered to persons taking courses at Federal law enforcement training facilities and attorneys for the Government so that victims may be promptly, properly, and completely assisted.

(10) GENERAL VICTIM ASSISTANCE.—The guidelines should also ensure that any other important assistance to victims and witnesses, such as the adoption of transportation, parking, and translator services for victims in court be provided.

(b) Nothing in this title shall be construed as creating a cause of action against the United States.

(c) The Attorney General shall assure that all Federal law enforcement agencies outside of the Department of Justice adopt guidelines consistent with subsection (a) of this section.

PROFIT BY A CRIMINAL FROM SALE OF HIS STORY

SEC. 7. Within one year after the date of enactment of this Act, the Attorney General shall report to Congress regarding any laws that are necessary to ensure that no Federal felon derives any profit from the sale of the recollections, thoughts, and feelings of such felon with regards to the offense committed by the felon until any victim of the offense receives restitution.

BAIL

SEC. 8. Section 3146(a) of chapter 207 of title 18, United States Code, is amended in the matter preceding paragraph (1)—

(1) by inserting after "judicial officer," the second place it appears the following: "subject to the condition that such person not commit an offense under section 1503, 1512, or 1513 of this title,"; and

(2) by inserting after "impose" the following: "a condition of release that such person not commit an offense under section 1503, 1512, or 1513 of this title and impose".

EFFECTIVE DATE

18 USC 1512 note

SEC. 9. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b)(1) The amendment made by section 2 of this Act shall apply to presentence reports ordered to be made on or after March 1, 1983.

(2) The amendments made by section 5 of this Act shall apply with respect to offenses occurring on or after January 1, 1983.

Approved October 12, 1982.

LEGISLATIVE HISTORY—S. 2420, H.R. 7191:

SENATE REPORT No. 97-532 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 128 (1982):
Sept. 14, considered and passed Senate.
Sept. 30, H.R. 7191 considered and passed House; S. 2420, amended, passed in lieu.
Oct. 1, Senate concurred in House amendments with an amendment; House concurred in Senate amendment.

VICTIM AND WITNESS PROTECTION ACT OF 1982

ATTACHMENT B

California Constitution, Article II, Section 28

§ 19. Eminent domain

Collateral References:

Cal Jur 3d Zoning and Other Land Controls § 231.

NOTES OF DECISIONS

1. In General

A mere unilateral expectation or an abstract need is not a property interest entitled to protection under the Fifth Amendment's prohibition against the taking of private property for public use without just compensation. Webb's Fabulous Pharmacies, Inc. v Beckwith (1980) 449 US 155, 66 L Ed 2d 358, 101 S Ct 446.

2. Taking

In regulating condominium conversion or land use generally, the police power is in direct confrontation with Cal. Const., art. I, § 1, concerning the right to acquire or possess property, and Cal. Const., art. I, § 19, prohibiting the taking of private property without just compensation. In areas of such critical importance and sensitivity as impairing private property rights and mandating the expenditure of public funds, the delegation of legislative authority to an administrative agency would violate the doctrine of separation of powers in Cal. Const., art. III, § 3, and would be invalid. Accordingly, guidelines promulgated by the State Department of Housing and Community Development concerning land use and housing are not self-executing and do not have the binding effect of law. The subject of conversion of condominiums is of such importance to property owners and tenants alike that the authority of the local government to regulate in the area should not hinge on subjective interpretation by courts or administrative boards of vague or general language to be found in the planning and land use law (Gov. Code, § 65000 et seq.) Bownds v Glendale (1980) 113 CA3d 875, 170 Cal Rptr 342.

A county's taking as its own—under the authority of a state statute deeming all interest accruing on moneys deposited with the clerk of a county court to be income of the clerk's office—the interest earned on an interpleader fund deposited in the registry of the county court is a taking violative of the Fifth and Fourteenth Amendments, where there is a separate and distinct state statute authorizing a clerk's fee for services rendered based upon the amount of principal deposited, the deposited fund itself concededly is private, and deposit in the court's registry is required by state statute in order for the depositor to avail itself of statutory protections from claims of creditors and others. Webb's Fabulous Pharmacies, Inc. v Beckwith (1980) 449 US 155, 66 L Ed 2d 358, 101 S Ct 446.

4. Inverse Condemnation

A direct legal restraint was shown, for purposes of establishing a de facto taking in an inverse condemnation action, where a city's actions in not permitting any development of certain beachfront property and in completely depriving the owners of the right to use or develop the property for an unreasonable period of time directly and specially affected the owners to their injury. Taper v City of Long Beach (1982, 4th Dist) 129 Cal App 3d 590, 181 Cal Rptr 169.

§ 27. Death penalty

NOTES OF DECISIONS

Cal. Const., art. I, § 27, enacted by initiative, which provides that statutes imposing the death penalty shall not be deemed to constitute the infliction of cruel or unusual punishment within the meaning of the state Constitution or to contravene any other state constitutional provision, validates the death penalty as a permissible type of punishment under the California Constitution. However, the provision was not intended to insulate a death penalty statute from the general strictures of the state Constitution, including the protection against unduly vague criminal statutes. Nowhere in the section or its legislative history is there any indication that the drafters or proponents intended to affect the continuing applicability of the state Constitution in death penalty trials insofar as the defect in the statute in question does not relate to the death penalty per se. People v Superior Court (Engert) (1982) 31 Cal 3d 797, 183 Cal Rptr 800, 647 P2d 76.

§ 28. Victim's Bill of Rights

(a) The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect

those rights, is a matter of grave statewide concern. The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.

(b) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(c) Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code. Sections 352.782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(e) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter. When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(f) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(g) As used in this article, the term "serious felony" is any crime defined in Penal Code, Section 1192.7(c).

Adopted June 8, 1982.

ARTICLE II

VOTING, INITIATIVE AND REFERENDUM, AND RECALL

§ 7. Secret voting

NOTES OF DECISIONS

Even though Cal. Const., art. II, § 7, states that voting shall be kept secret, if an absentee voter wishes to disclose his marked ballot to someone else, be it a family member, friend, or a candidate's representative, he should be permitted to do so. To hold otherwise would cast a pall on absentee voting. Such a voluntary disclosure cannot be deemed to violate the constitutional mandate. Beatie v Davila (1982, 5th Dist) 132 Cal App 3d 424, 183 Cal Rptr 179.

§ 8. Initiative

NOTES OF DECISIONS

An initiative measure entitled "The Victims' Bill of Rights" qualified for placement on the ballot, where, in accordance with an applicable urgency measure (Stats. 1982, ch. 102), the Secretary of State had timely received certificates from county clerks establishing that the number of valid signatures affixed to the initiative petition was more than 105 percent of the number of qualified voters needed to qualify the measure for the ballot under Cal. Const., art. II, § 8, subd. (b). Brosnahan v Eu (1982) 31 Cal 3d 1, 181 Cal Rptr 100, 641 P2d 200.

§ 10. Initiative and referendum election procedure

NOTES OF DECISIONS

Under Cal. Const., art. II, § 10, subd. (a), the filing of a duly qualified referendum challenging a statute in its entirety, including a reapportionment statute, normally stays the implementation of such statute until after it has been approved by the voters at the required election. Assembly v Deukmejian (1982) 30 Cal 3d 638, 180 Cal Rptr 297, 639 P2d 939.

In determining what election districts are to be used when the implementation of otherwise applicable reapportionment statutes has been stayed by the filing of referenda challenging such statutes, a court may, in the exercise of its equitable powers, consider any practical alternative which is available, including the legislatively drawn plan which is not yet in effect and which is scheduled to be submitted to a popular vote. To construe the referendum stay provision of Cal. Const., art. II,

ATTACHMENT C

Uniform Law Commissioners' Model Sentencing and Correction Act, Sections 2-201-303

Uniform Law Commissioners'

Model Sentencing and Corrections Act

Drafted by the
National Conference of Commissioners
on Uniform State Laws
and by it
approved at its
Annual Conference
Meeting in its Eighty-Seventh Year
in New York, New York
July 28-August 4, 1978

August 1979

U.S. Department of Justice
Law Enforcement Assistance Administration
National Institute of Law Enforcement and Criminal Justice

PART 2
COMMUNITY-BASED SERVICES

SECTION 2-201. [Division of Community-Based Services; Creation.] The division of community-based services is created within the department. It shall administer programs, services, and facilities for:

(1) persons sentenced or transferred to its custody;

(2) persons released before trial whenever supervision is a condition of release and a court or prosecuting attorney requests the department to participate; and

(3) victims of criminal offenses as authorized by Article 5.

COMMENT

This section establishes the division of community-based services which is responsible for correctional programs that take place within the community as distinguished from those that occur within a correctional facility. The major responsibility of the division is the supervision of persons sentenced to community supervision, this Act's counterpart to traditional probation.

The division may also administer some facilities, such as half-way houses or other forms of community correctional centers, that provide only minimal custody and operate in the community. The Act contemplates the division will have facilities to provide custodial care for some individuals sentenced to split-sentences under Section 3-503 and periodic confinement under Section 3-506. Section 4-407 also authorizes the transfer of a person sentenced to continuous confinement from the division of facility-based services to the division of community-based services during his last 90 days of confinement in order to facilitate his adjustment

SECTION 2-201
SECTION 2-202
SECTION 2-203

to the free society. Section 2-106 would authorize the director to utilize facilities in other divisions, i.e. jails, for this purpose as well.

The language in paragraph (1), "sentenced, committed, or transferred" is intended to include any person who is in the division's custody.

Paragraph (2) refers to conditional bail release programs and pretrial diversion programs involving community supervision. Courts or prosecuting attorneys operating such programs are authorized to request the division to provide supervision to persons in these programs. The nature and conditions of the supervision would be governed by those programs and not by the provisions of this Act.

Article 5 provides authority for programs to assist the victims of crime in relation to the criminal process. The division is authorized by paragraph (3) to provide these services.

SECTION 2-202. [Associate Director for Community-Based Services.] The director shall appoint and may remove in accordance with law an associate director of corrections for community-based services who has appropriate experience in corrections or training in a relevant discipline at an accredited college or university.

SECTION 2-203. [Duties of Associate Director.] Subject to approval of the director, the associate director shall:

(1) administer the division;

(2) adopt rules and other measures relating to the division;

(3) appoint, and he may remove in accordance with law, community-service officers, deputy officers, if

required, and other employees required to provide adequate supervision and assistance to persons in the custody of the division;

(4) appoint, and he may remove in accordance with law, the chief executive officer of each facility or program within the division and other employees and delegate to them appropriate powers and duties;

(5) evaluate and improve the effectiveness of the personnel, programs, services, and facilities of the division;

(6) develop programs, services, and facilities to meet the needs of persons in the custody of the division and victims;

(7) acquire and utilize community resources and social services for the benefit of persons in the custody of the division and victims; and

(8) exercise all powers and perform all duties necessary and proper in discharging his responsibilities.

COMMENT

This section lists specific duties of the associate director of the division of community-based services. He is given broad authority in paragraphs (1) and (8); the additional specific duties listed are not intended to limit his authority but to emphasize and give legislative support for the conduct of certain activities. The associate director may also be delegated specific functions by the director of corrections.

SECTION 2-204. [Powers of Community Service Officers.]

(a) A community service officer shall:

(1) assist and supervise persons in the custody of the division;

(2) make reports required by a sentencing court to determine the effectiveness of a program of the division or the progress of an individual participant in a program; and

(3) exercise all powers and perform all duties necessary and proper in discharging his responsibilities.

(b) A community service officer may not arrest a person under his supervision except to the extent private citizens may make arrests.

COMMENT

Community service officers are comparable to probation officers in traditional systems. However, the functions of pre-sentence investigations and field supervision, usually the responsibility of a single officer, are separated under the Act. Studies have demonstrated that where both functions are combined, the pre-sentence investigations are generally given priority and interfere with field superivison. D. Glaser, The Effectiveness of a Prison and Parole System 442-48 (1964). In addition, supervision of persons in the community is comparable to a custodial function and should be administered by the unified correctional agency. Pre-sentence investigation is more closely related to the judicial sentencing function, and the relationship between the pre-sentence investigator and the sentencing judge should be one of trust and confidence. Although the Act does not prevent one officer from performing both functions, the separate treatment of the two functions in the Act is intended to suggest consideration of creating two separate classes of staff. Pre-sentence service officers are authorized by Section 3-201.

Subsection (b) insures that community service officers do not function as auxiliary police officers. It has been demonstrated that surveillance and counseling roles cannot be successfully performed by the same individual at the same time. Nat'l Advisory Comm'n Correc. Std. 12.7; Studt, Surveillance and Service in Parole (1972). The subsection deprives these officers of the arrest powers of a law enforcement officer and emphasizes their counseling role.

SECTION 2-301
SECTION 2-302

PART 3
FACILITY-BASED SERVICES

SECTION 2-301. [Division of Facility-Based Services; Creation.] The division of facility-based services is created within the department. It shall administer programs, services, and facilities for:

(1) offenders convicted of felonies and sentenced to terms of continuous confinement; and

(2) persons sentenced, committed, or transferred to its custody.

COMMENT

This section establishes the division of facility-based services which is responsible for administering facilities for long-term offenders. It is also possible that periodically other persons will be subject to the division's custody. The phrase "sentenced, committed, or transferred" is intended to include any person who is in the division's custody.

SECTION 2-302. [Associate Director; Appointment.]

The director shall appoint, and he may remove in accordance with law, an associate director of corrections for facility-based services who has appropriate experience in corrections or training in a relevant discipline at an accredited college or university.

SECTION 2-303. [Duties of Associate Director.]

Subject to approval of the director, the associate director shall:

(1) administer the division;

(2) adopt rules and other measures relating to the division;

(3) appoint, and he may remove in accordance with law, the chief executive officer of each facility or program within the division and other employees and delegate to them appropriate powers and duties;

(4) evaluate and improve the effectiveness of the personnel, programs, services, and facilities of the division;

(5) develop programs, services, and facilities to meet the needs of persons in the custody of the division;

(6) acquire and utilize community resources and social services for the benefit of persons in custody of the division; and

(7) exercise all powers and perform all duties necessary and proper in discharging his responsibilities.

COMMENT

This section lists specific duties of the associate director of the division of facility-based services. He is given broad authority in paragraphs (1) and (7); the additional specific duties listed are not intended to limit his authority but to emphasize and give legislative support for the conduct of certain activities. The associate director may also be delegated specific functions by the director of corrections.