

# **Restitution in Pennsylvania: A Multimethod Investigation**

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R. Barry Ruback  
Program in Crime, Law, and Justice  
Department of Sociology  
Pennsylvania State University  
University Park, PA 16802

(814) 865-1307  
bruback@psu.edu

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# Restitution in Pennsylvania: A Multimethod Investigation

## Executive Summary

**Restitution, a convicted offender's court-ordered obligation to compensate victims for their losses, is widely supported both because it addresses victims' needs for compensation and because it meets the criminal justice system goals of punishment and rehabilitation.** This project analyzed the imposition and effects of restitution in Pennsylvania. The series of five studies used multiple methods (analyses of existing data bases, collection of information from court records, surveys of decision makers), multiple sites (urban and rural counties across the state), multiple levels (statewide, county, individual), and multiple years, including a pre/post analysis of the 1995 statutory change making restitution mandatory.

The idea of restitution is at least 4,000 years old, as several legal codes required restitution for property offenses and other codes required restitution for both property and violent offenses. Although restitution was required in much of colonial America, its use died out in the nineteenth century. The use of restitution was revived in the early part of the twentieth century, in that restitution was permitted as part of suspended sentences and probation. By the 1930s, 11 states had legislation permitting judges to order restitution as a condition of probation. Beginning with the 1967 report from the President's Commission on Law Enforcement and the Administration of Justice, there have been consistent calls to require offenders to pay restitution to victims. For example, the President's Task Force on Victims of Crime (1982, p. 72) recommended that "judges should order restitution to the victim in all cases in which the victim has suffered financial loss, unless they state compelling reasons for a contrary ruling on the record." By 1990, all states had implemented statutes regarding restitution, and **29 states have made it mandatory.** But statutory support for restitution does not necessarily mean that judges impose it when they should or that offenders pay it when ordered to do so.

This research project addressed three questions about restitution: imposition, payment, and effect. First, the studies were concerned with factors that predicted the imposition of restitution, including demographic factors, case factors, and contextual factors. These same factors were also used to predict the imposition of fines and costs, so that we could determine the extent to which the imposition of restitution was similar to and different from the imposition of fines. Second, the studies examined factors that predicted the payment of restitution, in terms of both any payment and the percentage of ordered restitution paid. Third, the research studied how the imposition and payment of restitution affected recidivism, as measured by probation revocation and by the commission of a new crime.

These questions were examined in a systematic fashion at both the state level and the county level. The first study used statewide data from the Pennsylvania Commission on Sentencing for the years 1990-1998. The second study used survey responses from criminal court judges, district attorneys, and chief probation officers. The third, fourth, and fifth studies

used county-level analyses. The third study examined restitution in Allegheny County (Pittsburgh) for the year 1994. The fourth study examined the imposition and effects of restitution for the years 1994 and 1996 in four counties: Blair (Altoona), Centre (State College), Dauphin (Harrisburg), and Erie (Erie). The final study examined restitution in Philadelphia for the years 1994-2000.

## 1. Statewide Multi-Level Analysis of Restitution Decisions

**This research used restitution decisions in Pennsylvania from 1990-1998 to compare inferred policy toward victims and offenders with both apparent and actual policy toward these groups. Results of bivariate analyses of 148,524 decisions from 1990-1994, when such orders were discretionary with the court, were most consistent with a view of restitution as punishment. However, multivariate analyses of these decisions were, in line with state policy, more consistent with a view of restitution as rehabilitation. A 1995 statutory change making restitution mandatory increased the proportion of restitution orders statewide in 1996-1998, but the level of this change was not equal in all counties or for all types of cases. Analyses of 68,164 restitution-eligible decisions following the imposition of a mandatory statute indicated that restitution was ordered statewide in only 58% of cases. Multi-level analyses of restitution decisions from both the pre- and the post-statutory change periods were generally consistent, with restitution being ordered more during both time periods for property offenders, offenders with no prior record, white offenders, and younger offenders. In terms of contextual factors, there was evidence at both time periods that type of crime (person or property) was handled differently in urban and rural counties and that the tenure of the courtroom workgroup affected restitution sentences differently in urban and rural counties.**

## 2. Statewide Survey of Judges, District Attorneys, and Chief Probation Officers

The second study, a statewide questionnaire survey of judges, prosecutors, and chief probation officers, was intended to investigate whether policy disagreements and practical limitations are likely reasons why the level of restitution imposition was not higher. To examine both broad policy questions and specific questions regarding implementation, we conducted a statewide survey of criminal court judges, district attorneys, and chief probation officers in each of the 67 counties in Pennsylvania. We included district attorneys and chief probation officers because these individuals often make recommendations to judges and, at least for chief probation officers, because they are more likely than judges to know the effects of restitution orders (e.g., who pays and how much).

**The final sample consisted of 225 individuals, 147 judges, 30 district attorneys, and 49 chief probation officers. The questionnaire contained 85 items divided into 21 sections. These items concerned the goals of restitution, specific factors that judges might use when deciding whether to order restitution, the appropriateness of giving restitution to specific types of victims and third parties, and the types of information that judges might use to**

determine the amount of restitution owed. Additionally, there were questions on the types of background information available, the effect of restitution on fine orders, the importance of restitution for three types of victims, the amount of contact with victims, responses to slow payment, and enforcement difficulties. All of the ratings of these items were made on 7-point scales. In addition, there was one item assessing the degree to which respondents believed collecting restitution was a problem, which used a 4-point scale. There were also five questions relating to specific responses to nonpayment which called for yes/no responses.

Regarding the purpose of restitution, respondents rated compensation significantly more important than punishment, punishment was rated significantly more important than rehabilitation, and all three were rated significantly more important than deterrence. Respondents said that for determining whether to order restitution they relied primarily on victim input, the extent of the victim's injury, somewhat less on the type of offense, less on the type of sentence imposed, the offender's employment, and the offender's ability to pay, and least on the offender's family obligations and the offender's prior record.

Respondents were asked to indicate the extent to which eight factors (five system-related and three offender-related) accounted for difficulties in enforcement or collection of restitution orders. Judges were significantly more likely than chief probation officers to believe that the county had inadequate collection methods, that too much time elapses before payment, and that there is inadequate notification. Urban counties had more problems with all five system difficulties and with two of the offender-related difficulties. There was one factor (inability to locate the offender) that was more problematic in rural counties than in urban counties.

Overall, criminal court judges', district attorneys', and chief probation officers' perceptions about the imposition and payment of restitution in Pennsylvania suggested that the failure to implement the policy at a higher rate resulted from both disagreement with the policy and from practical factors affecting the way the policy is enforced. Policy disagreements were primarily related to the role of the respondent (judge, district attorney, probation officer), whereas implementation issues were primarily related to whether the county was urban or rural.

### 3. County-Level Analyses of Restitution

#### a) Allegheny County (Pittsburgh)

This study examined adult restitution-eligible probation cases in Allegheny County (Pittsburgh) during 1994, when the imposition of restitution was discretionary. In particular, this research examined the factors related to the imposition of victim restitution, the factors related to the payment of victim restitution, and the effects of restitution on future arrests. Further, this study examined the extent to which the effectiveness of restitution is conditioned by community integration. Finally, the results of these analyses were compared with results from similar analyses regarding the payment of fines in order to determine whether the effects of restitution

payment are unique. Results indicated that judges ordered restitution most often when damages were easy to quantify and that offenders were most likely to make payment when they were able to pay and when the victim was a business. Restitution payment was negatively related to rearrest, and this effect was especially strong among married persons.

#### b) Four-County Study (Blair, Centre, Dauphin, and Erie)

This study examined court records, probation records, and collection office records in four counties in central and northwestern Pennsylvania: Blair (Altoona), Centre (State College and Bellefonte), Dauphin (Harrisburg), and Erie (Erie). These counties were chosen because they vary along two dimensions: (a) population size (Dauphin and Erie are relatively large, whereas Blair and Centre are relatively small) and (b) the use of specialized units for the collection of monetary sanctions (Blair and Erie have them, whereas Centre and Dauphin do not). From each county, restitution-eligible cases were sampled from both 1994 and 1996 in order to test the effect of a 1995 statutory change mandating restitution. The final sample size for these analyses was 1,785 cases: 547 cases from Blair County (262 cases from 1994 and 285 from 1996); 340 cases from Centre County (149 cases from 1994 and 191 from 1996); 450 cases from Dauphin County (246 cases from 1994 and 204 from 1996); and 448 cases from Erie County (173 cases from 1994 and 275 from 1996).

Multivariate models indicated that restitution was significantly more likely to be ordered for property crimes, for offenses that were more easily quantified, for offenses against businesses, and for offenses after the statutory change. Similar to the Allegheny County study, we found that restitution was more likely to be ordered when the harm was quantifiable, when the victim was a business, and when the offense was a property crime. Also consistent with that study, we found that the greater proportion of restitution paid, the lower the likelihood of a new arrest, an effect that was not present for the payment of fines or costs.

Aside from these case and offender factors, both the population size of the county and whether or not the county had a specialized collection unit affected the dependent variables. Offenders in the two counties with smaller populations were more likely to have restitution imposed, more likely to have lower amounts of restitution ordered, and more likely to pay a higher proportion of the ordered restitution. These results are consistent with the idea that criminal justice agents in counties with smaller populations are more likely to respond to the needs of victims and the problems of offenders. In terms of specialized collection units, we found that offenders in the two counties with these special units were less likely to have fines imposed overall, less likely to have restitution imposed in 1996, more likely to have lower amounts of restitution ordered, and more likely to pay a smaller proportion of the ordered restitution, but less likely to have a new arrest.

#### c) Philadelphia

This study examined the imposition of restitution orders in Philadelphia during the seven-year period 1994-2000, during which time there was a statutory change making restitution

mandatory. In addition, this study examined factors related to the payment of victim restitution and the effects of paying restitution on recidivism. For each of the 84,970 restitution-eligible cases in the data, which were taken from computer files maintained by the Philadelphia courts, 20 items of information were coded. Analyses were conducted separately for crimes in which private individuals and businesses were the victims ( $n = 79,555$ ) and for crimes in which the State was the victim ( $n = 5,415$ ). Restitution was significantly more likely to be ordered and for higher amounts when the victim was the State rather than a private individual or business. For private victims, restitution was significantly more likely to be ordered for younger individuals, for whites, for individuals who had private attorneys, for cases in Common Pleas court, for cases after the 1995 statute was imposed, for probation cases, and for cases in which costs were imposed, and were significantly less likely to be imposed for cases in which fines were imposed. For State-victim cases, restitution was significantly more likely to be ordered for welfare fraud cases than for other types of cases (e.g., tax violations, Medicaid fraud), for individuals who had private attorneys, and for cases after the 1995 statute was imposed and was significantly less likely to be ordered for male offenders, for cases in which fines were imposed, and for cases in which costs were imposed.

The 1995 statutory change making restitution mandatory produced a larger increase in the percentage of cases awarded restitution for State-victim cases than for private-victim cases. For both State-victim and private-victim cases, the imposition of fines and restitution were negatively related and generally were predicted by different factors.

### Summary Across Studies

This multimethod research program was designed to answer questions about the imposition, payment, and effects of restitution. In addition, the research examined the effects of statutory change on the behavior of judges.

#### A. Imposition of Restitution

Across studies, restitution was more likely to be imposed for property offenses, for offenses for which the loss could be easily quantified, and for whites than for nonwhites. There was also evidence that the imposition of restitution was influenced by contextual factors. Statewide analyses indicated that rural counties were more likely than urban counties to impose restitution. Among urban counties of approximately the same size, more populous counties were less likely to impose restitution but more likely to impose restitution of larger amounts.

#### B. Payment of Restitution

In general, we found that characteristics expected to be related to the ability to pay were related to payment: older individuals, males, and whites were, depending on the analysis, more likely to make payment. Contrary to the expectation of judges and probation officers in Blair and Erie Counties, the two counties we investigated that had specialized collection units, we

found that these units were related to lower likelihood of making full payment.

### C. Effect of Restitution

In addition to imposition and payment, we were also interested in the effects of restitution on offenders' subsequent behavior. It has been argued that restitution should promote rehabilitation because it makes offenders responsible for their behavior. Consistent with that idea, our results from Allegheny County for 1994 indicated that paying restitution is in fact related to lower recidivism, controlling for other factors. Paying fines did not produce the same effect, suggesting that it is not simply paying money that produces this positive effect. The results from Philadelphia were not quite as clear, although there was an indication that the imposition of restitution was related to lower recidivism as measured by an arrest for a new crime.

### D. Evaluation of Pennsylvania Statutory Changes

Results indicated that the mandatory statute has not been fully implemented. Analyses of the Pennsylvania Commission on Sentencing data indicated that, after the 1995 statute making restitution mandatory, restitution was imposed in only 58% of cases in which restitution could be imposed. Although this figure was significantly higher than the pre-1995 figure of 35%, it is still lower than what might be expected. Analyses of the data from the four-county study indicated that, although there was an increase in restitution orders after the 1995 statute, it was not as large as that evidenced in the Sentencing Commission data. Moreover, with the exception of crimes in which the state was the victim, the analyses of the Philadelphia data indicated that the imposition of restitution was relatively infrequent. The questionnaire study suggests that judges' failure to implement the mandatory statute more fully is likely due to disagreements with the policy and to practical constraints.

The increase in imposition rates for crimes against private individuals and businesses after the statute was not greater for three likely reasons. First, despite the mandatory nature of the statute, it may be that in practice restitution is ordered only if the victims request it. It is likely that victims are not aware that they must make this request. Second, most of the offenders are probably poor and the odds are low that they would be able to make payments. Third, the amounts of money involved are relatively small, and judges, prosecutors, and probation officers may not believe that the money that could be recovered is worth their involvement.

In contrast to private victims, offenders of most crimes with the State as the victim were ordered to pay restitution, and the increase after the statutory change was even more dramatic. This difference is probably due to the fact that there is no possibility of victim precipitation or victim responsibility, the state agencies involved asked for restitution, the exact amounts of loss are known, the offenders in the non-welfare fraud cases probably did have money (since they were relatively more likely to have private attorneys) and therefore there is a greater probability of payment, and the average amounts of money involved were relatively large.

## Policy Implications

Aside from providing a general understanding of how judges impose restitution and of how judges respond to mandatory legislation, this research has three specific policy implications: one relating to the imposition of restitution, one concerning the efficacy of specialized collection units in terms of payment and recidivism, and the last concerning the effects of economic sanctions on two measures of recidivism.

### 1. Imposition of Restitution

Results from three studies indicated that business victims are more likely to get restitution than individual victims and that the State is more likely to get restitution than private victims. It is likely that neither of these outcomes was the intended result of the restitution legislation. In both instances, restitution is more likely because requests for restitution are more likely to be made and the amounts of loss are more easily determined.

Judges' and chief probation officers' responses on the survey confirmed what we had learned from conversations with probation officers that, despite the mandatory statute, restitution is imposed in many cases only if the victim requests it. In practice, many victims do not know of this requirement and the victim/witness assistance agency in many counties is probably so understaffed that contacts with victims and, consequently, requests for restitution are not always made. Our research suggests that there should be stronger links between the victim/witness assistance office and the probation office, so that victims' restitution needs can be better tied to the sentencing process. Moreover, the consistent finding that quantifiability is strongly related to the imposition of restitution suggests that helping victims document their losses will increase the likelihood that restitution will be ordered.

### 2. Specialized Collection Units

With regard to specialized collection units, qualitative information suggests that there is a generally positive view of such units. On their questionnaires, judges from both Blair and Erie Counties commented on the amount of money that their units collected. Moreover, in informal discussions, probation officers in these counties indicated that they believed the specialized collection units reduced the burden on them.

Despite these positive qualitative remarks, our quantitative analyses suggest that such units are no more effective and may, in fact, be less effective than having probation officers perform this responsibility. In terms of specialized collection units, we found that offenders in the two counties with these special units were less likely to have fines imposed overall, less likely to have restitution imposed in 1996, more likely to have lower amounts of restitution ordered, and more likely to pay a smaller proportion of the ordered restitution, but less likely to have a new arrest. These generally counterintuitive results are consistent with the position that

specialized collections units may be less effective at collecting economic sanctions because special collection unit officers, relative to probation officers, have fewer resources to encourage offenders to pay and less information about how well the offender is managing community supervision overall. The finding that offenders in counties with specialized collections are less likely to be rearrested is also consistent with our perspective. Specifically, the apparent positive effect of special collection units on recidivism is probably an artifact of the fact that offenders in these counties can successfully be discharged from their probation supervision before completing payment of their monetary sanctions. Thus, offenders in these counties are able to avoid close criminal justice supervision, which means that any subsequent offenses may not be discovered.

These results suggest that probation officers should supervise all aspects of probationers' behavior, including the payment of economic sanctions. As suggested earlier, when probation officers handle economic sanctions, they are likely to know more about the entire case and can make adjustments if problems arise, as they inevitably do. Probation officers have a working rapport with their clients, in that offenders know that probation officers have the power to invoke further mechanisms of formal control and to ease current formal controls. In short, probation officers typically have more resources to bargain with than do collections officers. Probation officers can use discretion about such matters as whether and when to arrest offenders for a technical violation, whether and when to revoke offenders' probation/parole, whether to allow the offender to travel out of the county, and whether to facilitate or hinder offenders' access to treatment and training programs. Given that probation officers have such broad discretion, it should not be surprising that offenders would make payments to garner favor with their probation officers. Alternatively, if probation officers do not have responsibility for the entire case, including the payment of economic sanctions, collections units might be tied more closely to probation units, collections officers and probation officers might be asked to work more closely together, or collections officers might be given more discretion and resources.

### 3. Payment of Restitution

Across studies, we found that individuals who paid higher percentage of their ordered restitution were less likely to commit a new crime. Obviously, the causality could work the other way. That is, individuals who did not commit a new crime were more likely to pay more of their ordered restitution. However, in one study (Allegheny County) we were able to test and discount this plausible alternative hypothesis. Moreover, in that study and in the four-county study we found that not only was the payment of restitution beneficial, but the payment of fines was not beneficial. In other words, our results suggest that paying restitution has beneficial effects, and that these beneficial effects are unique to restitution. This finding suggests that judges and probation officers should be especially concerned with monitoring and collecting offenders' restitution payments.

## Summary

In summary, restitution should be strengthened both because it is strongly supported by judges, district attorneys, and probation officers and because payment is linked to lower recidivism. Imposition rates can be increased if losses can be more easily quantified and if victims are more involved. Payment rates can be increased if probation officers, rather than specialized collection officers, monitor the payment of restitution.

## Restitution in Pennsylvania: A Multimethod Investigation

**Restitution refers to a convicted offender's court-ordered obligation to compensate victims for their losses. Most often, restitution involves an offender making monthly payments to cover the costs of damaged or stolen property, although these monies may also be ordered to cover medical expenses and lost wages (Harland, 1980).** Restitution is widely supported because it both addresses victims' needs for compensation and meets the criminal justice system goals of punishment and rehabilitation. **Today, every state has a law addressing restitution, and 29 states mandate restitution unless the judge gives compelling reasons for not doing so (Office for Victims of Crime 1998, p. 356).**

This report summarizes a project that analyzed the imposition, payment, and effect of restitution in Pennsylvania. The five studies reviewed here used multiple methods (analyses of existing data bases, collection of information from court records, surveys of decision makers), multiple sites (urban and rural counties across the state), multiple levels (statewide, county, individual), and multiple years, including a pre/post analysis of the 1995 statutory change making restitution mandatory.

The report is presented in eight sections. First, there is a review of the historical and legal background of restitution. Second, there is an analysis of the current status of restitution in the United States, including a review of the statutes in the 50 states and the federal system and a general characterization of the operation of restitution in the United States. Third, there is a review of the research on the imposition and effect of restitution in the juvenile and adult systems. Fourth, there is a characterization of the law in Pennsylvania, including a discussion of the 1995 statutory change making restitution mandatory. Fifth, there is a discussion of a statewide analysis of restitution in Pennsylvania, with a focus on the years 1990-94 (before the statutory change). Sixth, there is a discussion of the imposition of restitution during the years 1996-98 (after the statutory change) based primarily on a statewide survey of judges, district attorneys, and chief probation officers. Seventh, there is a discussion of three county-level studies: (a) one examining Allegheny County (Pittsburgh) during 1994, (b) one comparing four counties in central and northwestern Pennsylvania during the years 1994 and 1996, and (c) one examining Philadelphia during the years 1994-2000. Finally, there is an evaluation of the use of restitution in Pennsylvania and of the 1995 statutory change and a discussion of the implications of the research, with a particular focus on the payment of restitution and the effects of payment on recidivism.

### I. Historical Background of Restitution

The idea of restitution is at least 4,000 years old (Van Ness, 1990), as several legal codes from the middle east (e.g., the Code of Hammurabi [c. 1700 B.C.], the Code of Lipit-Ishtar [c. 1875 B.C.]) required restitution for property offenses and other codes required restitution for both property and violent offenses (e.g., the Code of Ur-Nammu [c. 2050 B.C.], the Code of Eshnunna [c. 1700 B.C.]). In Leviticus, there is an explicit recognition of the need for

restitution: "If anyone sins and commits a breach of faith . . . through robbery, . . . he shall restore what he took by robbery . . . he shall restore it in full, and shall add a fifth to it, and give it to him to whom it belongs." Leviticus 6: 1-5. Roman Law and Germanic tribal laws also included restitutionary sanctions (Van Ness, 1990).

In the Middle Ages, crime victims were compensated for their losses under a system called composition, according to which there was a preset rate for the type of harm that was done (Klein, 1997, p. 153). For homicide, the amount (called a *wer*) depended on whether the victim was a noble or a serf. For injuries, the amount (called a *bot*) depended on the type of injury. As long as offenders paid the compensation they owed, they were protected by the king. However, if they did not pay the restitution they owed, they were considered to be outside the law, and victims could punish them without consequences (Klein, 1997).

For administering this system, the king demanded a fee (called a *wit*). By the 12th century, this fee had greatly increased and payments to victims had dramatically decreased. The transition was completed in 1256, when King Louis IX of France ended restitution completely. During the next several hundred years, in addition to fines, kings added such sanctions as torture, banishment, and flogging (Klein, 1997, p. 154).

In colonial America, victims were entitled to restitution. In colonial Massachusetts, for instance, thieves had to pay treble damages to victims, in addition to being whipped and standing at the gallows with a rope around their necks. If the thieves could not pay the restitution, they worked as an indentured servant for the victim or a third party. After 1785, when Massachusetts established its first prison, thieves were imprisoned and victims' losses were ignored. In 1805, Massachusetts completely eliminated treble damages to victims (Klein, 1997, p. 154). For the next 170 years in the United States, prosecutors and judges gave little consideration to the concerns of crime victims in the prosecution and punishment of offenders.

This evolution from victim's right to restitution under the Code of Hammurabi to the substitution of the state for the victim in criminal law, and the subsequent elimination of restitution as a sentencing option, is summarized by Jacob (1975, p. 37), as quoted in Harland (1980, p. 2).

The ancient historical evolutionary process thus consisted of several stages: (1) private vengeance; (2) collective vengeance; (3) the process of negotiation and composition; (4) the adoption of codes containing pre-set compensation amounts which were to be awarded the victim in the compensation process; (5) the gradual intervention of lords or rulers as mediators, and payment to them of a percentage of the composition-compensation award; and (6) the complete take-over of the criminal justice process and the disappearance of restitution from the criminal law. . . . During this process the interest of the state gradually overshadowed and supplanted those of the victim. The connection between restitution and punishment was severed. Restitution to the victim came to play an insignificant role in the administration of the criminal law. The rights of

the victim and the concepts of composition and restitution were separated from the criminal law and instead became incorporated into the civil law of torts.

The use of restitution was revived in the early part of the twentieth century, such that restitution was permitted as part of suspended sentences and probation. By the 1930s, 11 states had legislation permitting judges to order restitution as a condition of probation (Frank, 1992). Beginning with the 1967 report from the President's Commission on Law Enforcement and the Administration of Justice, there have been consistent calls to require offenders to pay restitution to victims. For example, the President's Task Force on Victims of Crime (1982, p. 72) recommended that "judges should order restitution to the victim in all cases in which the victim has suffered financial loss, unless they state compelling reasons for a contrary ruling on the record." **Until the late 1970s, state statutes broadly stated that restitution may be ordered, but did not specify the conditions under which restitution would be appropriate (Harland, 1980, p. 3).** By 1990, all states had implemented statutes regarding restitution (Shapiro, 1990).

## II. Current Status of Restitution in the United States

### A. Rationales for Restitution

**Restitution is widely supported because it is believed to help victims, offenders, and society. More specifically, restitution serves three different goals (McGillis, 1986, p. 5). First, it restores victims by providing financial and psychological benefits. Even though the absolute amount of most losses is generally small, especially when insurance is taken into account, (Harland, 1981), victims nonetheless experience distress. The *compensation* aspect of restitution can address both the victim's financial loss and the victim's sense of injustice. Second, restitution can serve as a means for changing offenders' behavior. This *rehabilitation* aspect of restitution is aimed at changing offenders' behavior by forcing them to recognize both the losses that they have caused and their responsibility for repairing those losses (McGillis, 1986, p. 13). Such recognition should promote reintegration. That is, offenders should be more likely to seek employment and to maintain ties to the community. Third, restitution has *punishment* aspects, in that the requirement of making payments is more onerous than straight probation. Moreover, this punitive aspect can enhance the credibility of the criminal justice process, a necessary goal if the public is going to be willing to support and participate in the criminal justice process (McGillis, 1986, p. 19).**

**Despite the fact that most people believe restitution has these three goals, according to the Office for Victims of Crime (1998, p. 355), restitution is simply a debt that the offender owes the victim; it is not punishment or an alternative to fines or other sanctions. Similarly, in Pennsylvania, the first two rationales, compensation and rehabilitation, are considered the primary purposes for restitution, although the courts do recognize that there are some aspects of punishment.**

## B. Legal Status

At the federal level, the Victim and Witness Protection Act of 1982 authorized restitution “to any victim of the offense . . . in addition to or in lieu of any other penalty authorized by law.” It also required the court to provide reasons for failing to order restitution or ordering restitution only in part. The Violent Crime Control and Law Enforcement Act of 1994 mandated restitution for violent sexual crimes committed against women. In addition, the Act allowed the application of restitution for emotional as well as physical and monetary harm (Franklin, 1995). In 1996, the Mandatory Victim Restitution Act (18 U.S.C. §3663A) made restitution a mandatory condition of probation and mandatory in all crimes of violence, crimes against property, and for certain other crimes. Victims included those “proximately harmed” by a scheme or conspiracy. In setting restitution, judges cannot take into account offenders’ ability to pay, any insurance payment, or other source of compensation, although judges may consider offenders’ ability to pay, “their financial resources and other assets, their projected earnings, and their financial obligations” in determining the payment schedule. Finally, the legislation provided victims and offenders with the right to petition the court to modify the restitution order.

In Hughey v. United States (1990), the Supreme Court held that restitution may be awarded only for the victim’s losses resulting from the specific conduct for which the defendant was convicted. In Kelly v. Robinson (1986), the Supreme Court held that restitution depends on the penal code of the state and the situation of the defendant rather than on the victim’s injury.

All states have a law allowing for restitution. Without such a provision, courts of criminal jurisdiction cannot order the offender to pay restitution to the victim. (21A Am Jur 2d, Criminal Law §1051, 15 ALR5th 391, 430). According to these statutes, restitution can be a condition of probation, but, in some states, probation cannot be conditioned on restitution unless the court has first considered the defendant’s ability to pay the ordered amount. In some states, the amount of restitution must not be in dispute or must be adjudicated, whereas in other states there is no requirement that the amount be determined. In most states, victims are limited to economic losses that are “easily ascertainable,” “specific,” “actual,” or “liquidated” (Klein, 1997, p. 171; McGillis, 1986, p. 36). With regard to the types of losses, some states use the general language of “losses and damages,” whereas others list specific types of losses, such as medical expenses and stolen property. Most states do not allow restitution for pain and suffering and other general damages, since most judges believe these damages should be sought in civil suits.

Generally, most courts do not consider restitution to be a debt that is dischargeable in bankruptcy (15 ALR5th 391, 440). However, in 1990 the U.S. Supreme Court held that criminal restitution orders can be discharged in civil bankruptcy proceedings under Chapter 13 of the Bankruptcy Code (Pennsylvania Department of Public Welfare v.

**Davenport, 495 U.S. 555 (1990), although they cannot be discharged in civil bankruptcy proceedings under Chapter 7 of the Bankruptcy Code (Kelly v. Robinson, 479 U.S. 36 (1986)).**

**Following the federal statute, 29 states mandate restitution in all cases unless the judge provides reasons for not doing so. However, even among these “mandatory” statutes, there is little consistency, in that some states require restitution only for violent crimes, whereas others require restitution only for property crimes (Office for Victims of Crime, 1998, pp. 356-357). There are also differences among the states in terms of who can receive restitution. In some states only the victim can receive restitution, whereas in other states family members and victims’ estates, as well as agencies that provide assistance to victims (e.g., victim service agencies, compensation programs), can receive restitution. There are also differences among states in terms of whether indirect victims (e.g., insurance companies) and local governments are entitled to restitution (Klein, 1997). In some states, incarcerated offenders must pay restitution, whereas in others offenders must be on probation or parole. States also differ in terms of whether or not juveniles are obligated to pay restitution.**

**In general, these statutes allow restitution for medical expenses and lost wages. As reviewed in the ALR5th, court cases have also considered such costs as funeral expenses, interest, attorney’s fees, travel expenses, moving expenses, future medical expenses, repair costs, and lost profits.**

### C. Contemporary Use of Restitution

In most states restitution is a permissible condition of probation, although some states have made restitution a mandatory condition in every case (Klein, 1997, p. 154). In some states, restitution is justified by its rehabilitative effect on the offender, whereas in other states it is justified by its impact on the victim. Restitution is aimed at doing justice by having the offender compensate a victim for damages caused by the crime.

Nationally, restitution is handled in one of four different ways (McGillis, 1986): as a component of Victim/Witness Assistance Programs, through Victim-Offender Reconciliation Programs, in conjunction with probation or parole supervision, and through court-based employment programs. Three-fourths of restitution programs are located in probation departments, most of which are located in courts (Office of Juvenile Justice and Delinquency Prevention, 1998). The first two methods, Victim/Witness Assistance Programs and Victim-Offender Reconciliation Programs, are victim-focused agencies, whereas the last two methods, probation/parole supervision and court-based employment programs, are offender-focused agencies. Victim/Witness Assistance Programs usually focus on the economic aspects of restitution, whereas Victim-Offender Reconciliation Programs typically focus on the psychological harm resulting from the victimization.

The primary argument for including the supervision of restitution payments along with more traditional probation work (supervision, enforcement of rules, counseling, help with educational and vocational training), is that ensuring the payment of restitution fits in with these other roles (McGillis, 1986, p. 17). In addition, having probation officers keep track of probation is often the cheapest way of implementing the policy. The arguments against having probation officers do this work is that they are already so overburdened with the other responsibilities of supervision that they do not have the time to do a good job of supervising and enforcing payments to victims. Thus, keeping track of payments to victims is often a low priority for probation officers.

To be fair to victims, restitution programs must give them the opportunity to make a claim for all relevant losses. In most states, victims are limited to economic losses that are “easily ascertainable” (McGillis, 1986, p. 36). With regard to the types of losses, some states use the general language of “losses and damages,” whereas others list specific types of losses, such as medical expenses and stolen property. Most states do not allow restitution for pain and suffering and other general damages, since judges believe that these damages should be sought in civil suits. The other aspect of fairness to victims is that they not be misled into believing that they will recover restitution in full (McGillis, 1986, p. 36). To reduce the possibility that victims develop unrealistic expectations, McGillis suggested that victims should be given a letter stating that in only a portion of restitution orders do offenders pay all that they are ordered to pay.

To be fair to offenders, McGillis (1986, pp. 35-40) argued that restitution programs should meet four standards. First, they should use selection criteria that treat all victims equally. Research suggests that poor offenders, including minority offenders, are less likely to be ordered to pay restitution than are nonpoor offenders (Hudson & Chesney, 1978). What is not known is whether offenders who are not ordered to pay restitution because judges believe that they will not pay it are sentenced more severely on some other dimension (McGillis, 1986, p. 37). To prevent this problem, McGillis suggested that offenders who do not have economic resources be placed in menial work temporarily so that they will be able to make their restitution payments. Alternatively, offenders might be ordered to pay less overall or to make payments over a longer period of time.

Second, restitution programs should use fair procedures to determine the amount of damages owed the victim. When probation officers believe that an amount is distorted, they should investigate without offending the victim and then rely on the sentencing hearing to bring out the truth of the claim. McGillis (1986, p. 38) suggested that the exact determination of the amount of restitution can sometimes be problematic. For example, if the victim claims lost wages because of having to attend court for the sentencing hearing, this claim is clearly justified by the fact that it is connected to the crime. However, it may raise constitutional issues if it means that the defendant is essentially being punished for raising his constitutional right to present evidence at a sentencing hearing.

Third, restitution programs should give offenders the opportunity to challenge restitution recommendations. Many states provide that offenders have the opportunity to participate in a restitution plan prior to the sentencing hearing, and some states allow offenders to a detailed hearing in which the defendant can challenge the victim's claims of losses. Harland (1980, cited in McGillis, 1986) has suggested that offenders may be reluctant to exercise this right, however, if they believe that by challenging the restitution recommendation they may receive a more severe sentence. To avoid that problem, Harland suggested that the determination of restitution be the focus of a second phase of sentencing, once the basic terms of the sentence (e.g., length of incarceration or probation) are made.

Fourth, the judge's restitution order must be precise about the amount of restitution owed and the schedule for paying it. In states where probation can be ordered only as a condition of probation, the period of probation must be long enough that the defendant can reasonably meet his obligation to pay the restitution.

#### Practical Operation

Many programs are proactive in helping victims document losses, through bills and receipts, relating to money losses, lost wages, and property losses (McGillis, 1986, p. 7). The most objective determination of the amount of restitution owed would be to require the victim to produce receipts for out-of-pocket expenses caused by the offender. A more subjective model, one more likely to be used in mediation, would be to allow the victim to participate in a decision about what is a fair amount. Some programs do allow for the equivalent of "pain and suffering" awards in the criminal justice system. For example, the "Earn-It Program" of the Quincy, Massachusetts District Court arranges for "reparations for inconvenience" (McGillis, 1986, p. 14).

Aside from the standard conditions of probation (e.g., reporting to the probation officer, not leaving the jurisdiction without permission), judges can impose both punitive conditions (e.g., fines, house arrest, drug testing), which reflect the seriousness of the offense and make probation more burdensome, and treatment conditions (e.g., drug counseling, job training), which force probationers to deal with specific problems (Petersilia, 1997, p. 164). Under this definition, paying restitution, like fines, would be considered a punitive condition rather than a treatment condition.

Paying court-ordered restitution may force some offenders to commit crimes. For example, a man in Fort Lauderdale was arrested on a warrant for not paying the restitution he had been ordered to pay. While he was in jail, the police noticed that a string of bank robberies on Mondays had ended. The man confessed to the bank robberies, stating that he robbed the banks on Mondays to be able to pay the restitution on Tuesdays ("Man accused," 1997).

More than 20 years ago the National Institute of Justice was concerned about the feasibility of imposing restitution (Harland, 1980). The questions remaining today are how

restitution decisions are made, whether offenders pay the ordered amounts, and the effects of a restitution order, payment, or both on offender recidivism.

### III. Review of Research on Restitution

#### A. Juveniles

**Several characteristics of the offender may be related to the imposition of restitution orders. In one study, juveniles who were ordered to pay restitution as a sole sanction differed in four ways from those sentenced to restitution plus probation: those with longer prior records, more serious offenses, lower family incomes, and poorer school attendance were more likely than other juveniles to receive restitution plus probation. Judges apparently used this background information to decide that juveniles who were 'worse risks' should receive more supervision (Schneider, Griffith, & Schneider, 1980). Similarly, other studies have found that judges are more likely to impose restitution in cases in which the offender appeared likely to pay (e.g., those in which the offender was employed and better educated) (Lurigio & Davis, 1990). Such a finding makes sense, because the primary reasons for having offenders pay restitution to victims include meeting victims' financial needs and lowering their distress.**

Across six counties (in California, Georgia, Idaho, Oklahoma, Wisconsin, and Washington, DC), Ervin and Schneider (1990) found that juveniles randomly assigned to formal restitution programs had lower recidivism than juveniles randomly assigned to other dispositions (e.g., ad hoc restitution). Ervin and Schneider suggested that this positive effect of restitution was not the result of deterrence, a change in self-image, or increased integration into the community. Rather, their analyses indicated that successfully completing the restitution program was the best predictor of recidivism. The authors suggested that restitution programs in which juveniles make regular payments mean that they perform a tangible action that provides positive feedback on a continuing basis, rather than just at the end as is the case with most programs.

Evaluations of restitution programs initially funded by OJJDP indicated that most were successful, in terms collecting monies owed (86%), recidivism rates (less than 10%), and provision of community service (Bureau of Justice Assistance, 1988). Similarly, evaluations of local programs suggest that juveniles in restitution programs are less likely to recidivate (Shichor & Binder, 1981).

In an analysis of the court records of juvenile offenders in Utah whose cases involved robbery, assault, burglary, theft, auto theft, and vandalism, Butts and Snyder (1992) found that recidivism was significantly lower when juveniles were ordered to pay restitution either directly or through earnings from community service. Other studies have also found that juveniles who pay a higher proportion of their ordered restitution are less likely to recidivate (Jacobs & Moore, 1994). One possible reason for this effect is that working and paying the restitution teaches the juvenile to take responsibility for the outcomes of his crime. Alternatively, it might be that

individuals who are ordered to pay high amounts of restitution simply give up and pay no restitution (Jacobs & Moore, 1994).

## B. Adults

Studies with adults suggest that judges are more likely to order restitution when the offender was better educated and employed, characteristics that make it more likely that the offender will pay the imposed restitution (Lurigio & Davis, 1990). In an experimental test of the effects of notification in Cook County, Lurigio and Davis (1990) sent notification letters to the experimental group of offenders and no letters to the control group. The letters, sent by certified mail, contained a reminder that restitution was a condition of probation, a description of the amount and time of the offender's delinquency in payment, a warning that continued nonpayment would result in a violation of probation and possibly incarceration, and a set of guidelines for making payment. Results indicated that offenders in the experimental group were significantly more likely to pay the restitution, particularly if they had a job and had less experience in the criminal justice system.

Research with adults suggests that the collection rates of restitution are low, 45% in one national study (Smith, Davis, & Hillenbrand, 1989) and 34% in Cook County (Chicago) (Lurigio, 1984). **An analysis of the 561 offenders ordered to pay restitution in North Carolina in the first quarter of 1990 found that only 41% paid all of the ordered restitution, 13% paid some of the restitution, and 46% paid no restitution (North Carolina Sentencing and Policy Advisory Commission, 1994, cited in Sims, 1998).** In the most recent study, an analysis by the Bureau of Justice Statistics study of felony probation in 32 counties, the average restitution order imposed per probationer was \$3,368, of which on average only 54% was paid when the probationers had completed their sentences (Cohen, 1995).

If offenders do not have any money, they are often unwilling to make any efforts to pay the restitution (Galaway & Hudson, 1975). The likelihood of payment is increased if offenders are told about the importance of restitution, if they given employment opportunities, if they are closely supervised, and if they are allowed to pay in installments (Klein, 1988; Rubin, 1988; Schneider, 1990; VanVoorhis, 1985). These factors are similar to research on the payment of fines indicating that payment increases with ability to pay and closer supervision (Hillsman, Mahoney, Cole, & Auchter, 1987).

There is relatively little research on what factors predict the rate at which restitution orders will be paid in full. McGillis (1986), who relied on agencies' self-reported estimates of payment rates, found no systematic predictors of payment. McGillis was also careful to note that the estimates were not validated by independent examination of case records. Factors that may be predictive include whether the agency has a strong emphasis on victim assistance, the types of cases heard, the presence of enough staff to monitor payment, and the support of the judiciary to punish offenders who do not comply.

Because most offenders are not able to pay restitution orders immediately, they frequently pay over time. There is debate about whether delayed and partial payments are worthwhile (McGillis, 1986, pp. 47-48). At the very least, these payments help reduce some of the victims' economic losses and may help them psychologically, if they believe that justice has been at least partially done. On the other hand, delayed and partial payments do victims little good if they need to replace stolen or damaged property immediately. Moreover, some have suggested that continuing partial payments serve as constant reminders to victims of their victimization.

Restitution programs have generally not been seen as successful because there is a reluctance to impose restitution on offenders who are assumed not to be able to pay it, payment on restitution orders typically follows other financial obligations (e.g., costs, fines), and there is often ambiguity about who is responsible for monitoring, collecting, disbursing, and enforcing restitution payments (Office for Victims of Crime, 1998, p. 358).

Research suggests that the amount of available resources can affect professionals' judgments about the benefit of punishment and treatment. For example, Mulvey and Repucci (1988) found for individuals involved in the delivery of treatment to juveniles that juveniles were generally rated more amenable to treatment when the agency (court, community mental health center, social services) had greater resources.

Twenty years ago, Harland (1980) argued that restitution is imposed unsystematically, rather than being based on an empirical determination of the conditions that are associated with effective treatment of the offender and meaningful benefit to the victim. Harland (1981) used data from the National Crime Survey to determine the amounts of restitution owed by defendants to victims of six personal and household offenses: larceny from the home, larceny away from home, burglary, vehicle theft, purse snatching/pocket picking, and unarmed robbery. Most of these victimizations (86%) resulted in something being stolen; in 19% of the victimizations, victims suffered damages. Harland found that most losses were small; 48% of the victimizations involved losses of less than \$25 and 73% of the victimizations involved losses of less than \$100. These relatively small amounts, Harland argued, means that paying restitution is possible, even for offenders who have no financial resources and are unemployed, unemployable, or underage. Harland also argued that, if paying restitution to an individual is more rehabilitative than paying restitution to a corporation, restitution is likely to be successful.

However, there are three limitations of Harland's work. First, the surveys on which it was based are more than 20 years old, meaning that the absolute amounts of money he reported are too low, even if the general point is true. Second, as Harland noted, because he relied on the NCS, his data include both crimes reported to the police and those not reported to the police (68% of his sample did not report). Although including both groups of crime provides a good estimate of the losses for which offenders potentially could pay restitution, in practice many of these crimes are not relevant to the criminal justice system since they are unlikely to be reported to the police. Even among crimes reported to the police, only if the offender is arrested, prosecuted, and found guilty does restitution come into play. Thus, Harland argued, the property

offenses for which restitution is arguably most appropriate are those least likely to come to the attention of and to be cleared by the police (p. 23). Harland (1980) called for the collection of data on the types of offenses, losses, and victims involved in restitution programs in order to determine who is benefiting from the programs and who is not (p. 25).

### Payment of Restitution

The payment of restitution is crucial if the victim, offender, and system are to benefit (McGillis 1986). In particular, if restitution orders help victims only when they are paid and can be harmful when restitution is expected but unpaid, it is important to know (a) whether and how much restitution is paid (Adair 1989) and (b) what factors affect payment. Research suggests that generally restitution is not completely paid. For example, a study by the American Bar Association on restitution programs reported that only 45% of the restitution dollars owed were ever collected (Smith, Davis, and Hillenbrand 1989). Similarly, in the Cook County (Chicago) probation department, the mean collection rate over a three-year period in the early 1980's was only 34% (Lurigio 1984). **A study of restitution in 32 counties in the United States indicated that the average restitution order imposed was \$3,368 (Cohen, 1995, cited in OVC, 1998, p. 357). Of those offenders who had completed their probation sentences, only 54% of the ordered restitution had been paid.**

Compliance rates seem to be higher when courts take ability to pay into account (Davis, Smith, & Hillenbrand, 1991). Research suggests that restitution is more likely to be paid when the amount is reasonable in light of the offender's ability to pay, when enforcement efforts are high, and when the offender is given enough time to pay (Davis et al., 1991).

Other reports, however, indicate that most offenders will comply with restitution orders if they are both well supervised and allowed to pay in installments (Klein 1988). Understanding what factors affect payment is important, because it is at this point of enforcement that policies can be changed to make restitution more effective as a sanction. For example, if research concludes that increased supervision or employment assistance is necessary in order to ensure payment, such changes could be applied to existing restitution programs.

The rehabilitative potential of restitution hinges both on offenders' ability to pay and their willingness to pay (Galaway & Hudson 1975). Offenders who do not have adequate resources to pay restitution are generally unwilling to even attempt payment (Galaway & Hudson 1975). Accordingly, research has shown that emphasizing the benefits of paying restitution, supervising probationers well, and providing employment opportunities to offenders to help with payment increases compliance with the order (VanVoorhis 1985; Schneider 1990; Rubin 1988). Thus, it appears that emphasizing the importance of restitution payment and providing opportunities to fulfill the obligation can increase the likelihood of payment. Research on the payment of fine orders also supports the finding that the payment of financial sanctions relies heavily on the ability to pay and the emphasis placed on payment during supervision (Hillsman, Mahoney, Cole, & Auchter 1987).

## Effects of Payment on Recidivism

Aside from addressing the needs of victims, restitution is intended to rehabilitate offenders and thereby benefit the justice system. By accepting responsibility and repairing the damage to the victim in a tangible way, offenders may reap benefits that remain long after the criminal sanction has ended, including taking responsibility in other aspects of their lives and avoiding criminal behavior in the future. Both reintegrative shaming theory (Braithewaite, 1989) and defiance theory (Sherman, 1993) provide insight into the potential of victim restitution to be an effective means of reducing future criminal behavior.

Reintegrative shaming. The essential proposition of reintegrative shaming theory is that sanctions shame offenders either in a stigmatizing way, which increases crime, or in a reintegrative way, which reduces crime. Stigmatizing sanctions increase crime by shaming the offenders as people (i.e., through formal court proceedings and labeling sanctions), causing them both to feel like outcasts and to continue offending. Reintegrative shaming, on the other hand, reduces crime by shaming the act and not the individuals, allowing offenders to make amends for their crimes and to be reintegrated into the community (Braithewaite 1989).

Consistent with this theory, some studies (VanVoorhis 1985; Schneider 1990) have reported that the process of making amends for one's actions is what makes restitution effective. That is, offenders who recognize the reparative benefits of restitution have lower recidivism rates. These studies suggest that restitution may be effective because it emphasizes the benefits to the victim and allows offenders to take responsibility for their actions without stigmatizing them. Likewise, research has indicated that successful completion of a restitution order is generally one of the strongest predictors of lowered recidivism (Ervin & Schneider 1990).

Such positive effects of restitution payment may be especially likely for individuals who are more integrated into the community (i.e. those who are older, married, and employed). Reintegrative shaming theory (Braithewaite 1989) states that those who are more integrated initially will be more easily reintegrated through the appropriate sanctions. In fact, according to defiance theory, such integration is essential for any type of sanction to successfully reduce subsequent offending (Sherman 1993). Specifically, according to the theories, reintegrative sanctions should have a positive effect on all offenders, but the effect will be far stronger for individuals who are more integrated into the community than for those who are not. Other research has also shown that commitment to social institutions (marriage, employment) and a sense of community are powerful insulators against crime (Sampson 1997). Accordingly, one of the studies in this research project examined how offenders' level of social bonds/community integration conditions the effectiveness of restitution in reducing recidivism.

Evidence on restitution and recidivism. Overall, restitution appears to be an effective means of reducing recidivism. In particular, studies have shown that although formal restitution (i.e., as a condition of probation or assigned through court) may be less effective than more

informal restitution arrangements (i.e., residential programs or court diversion), it is still more effective than straight probation or incarceration (Schneider 1990; Rowley 1990). Similarly, studies have shown that reoffense rates for restitution cases increase monotonically with the degree of court control (Schneider et al. 1980). In contrast, a study of juveniles in Utah (Butts & Snyder 1992) found positive effects for restitution regardless of whether juveniles were processed formally or informally, although the effect was more dramatic among the informally processed group. In general, studies examining the effectiveness of restitution among juveniles (Schneider 1986) have shown that juveniles who pay restitution have lower rearrest rates than juveniles who receive other sanctions.

Research on the use of restitution with adults is limited but shows similar trends. In one study, adults in the Minnesota Restitution Center who had to pay restitution had lower recidivism rates than a group of incarcerated offenders (Heinz, Galaway, & Hudson 1975). Likewise, another study, which performed a two-year follow-up of adult parolees, found that those randomly assigned to the Minnesota Restitution Center had fewer new court commitments than those on standard parole (Hudson & Chesney 1977).

#### Limitations of existing research

The studies of adult restitution programs are limited methodologically and their results are inconclusive. Both studies of adult restitution were conducted within residential restitution programs. In contrast, most adult restitution programs are ad-hoc, meaning that restitution is simply a condition of probation (Hudson & Chesney 1977). Based on this research, it remains unclear whether restitution would be effective with adults participating in an ad-hoc restitution plan. It is also unknown what case, offender, and victim attributes predict an order of restitution in adult ad-hoc restitution programs. Although reparation may be the vehicle through which restitution operates, no studies have separated the notion of reparation from the behavior of payment. One way to separate the two is to compare those who pay restitution to similar others who pay fines. Such a comparison would clarify whether reparation is the important mechanism or whether payment itself lowers recidivism.

#### IV. Overview of this Project

This research was conducted in Pennsylvania, using both state-level and county-level data. Aside from investigating general questions about the imposition, payment, and effect of restitution, the studies investigated the impact of a 1995 statutory change making restitution mandatory.

##### A. Restitution in Pennsylvania

From 1978 to 1995, the controlling statute in Pennsylvania gave courts the power, but did not require them, to order restitution. According to the statute, courts were to consider the extent of the victim's injuries and could also consider any other matters, including the offender's ability to pay. Courts had the power to order restitution according to any payment schedule within the time limit set by the maximum term of imprisonment to which the offender could have been

sentenced. Restitution in Pennsylvania is considered a type of restorative sanction, and in 1994, the state sentencing guidelines recommended restorative sanctions for crimes of relatively low seriousness. Restorative sanctions (a) are least restrictive in restraining the offender's liberties, (b) do not involve housing the offender, and (c) focus on restoring the victim to pre-offense status (Pennsylvania Commission on Sentencing, 1997).

In 1995, as part of a comprehensive change in criminal statutes, Pennsylvania implemented a statutory change making restitution mandatory (18 Pa. C.S.A. §1106 (1)).<sup>1</sup> Under the statute, victims, either individuals, businesses, or the state, whose property was stolen or damaged or who suffered personal injury as a direct result of a crime were entitled to restitution. Moreover, the statute explicitly stated that restitution awards were not to be reduced by any payments that had been made to the victim from such sources as the Crime Victim's Compensation Fund, other governmental agencies, or insurance companies. That is, if victims had received partial or total compensation, offenders still owed the total restitution amount, although the payments were to be made to the government agency or insurance company who had paid the victim. And, according to the statute, judges were to impose full restitution regardless of the offender's financial resources. These changes should have resulted in a substantial increase in the number of restitution orders, as the legislature was clearly trying to eliminate possible reasons why judges had not previously been ordering restitution.

In 1998, the Pennsylvania General Assembly enacted legislation that made the county probation department the agency responsible for collecting restitution, ordered that 50% of money collected had to go to paying restitution, with the remainder going toward costs, fines, and fees, permitted a wage attachment for the purposes of restitution, allowed courts to use private collection agencies, ordered the Department of Corrections to pay inmates' ordered restitution by deducting money from their personal accounts in the prison.

Effect of statutory change. Because of the 1995 statutory change mandating restitution regardless of offenders' ability to pay, we expected higher rates of restitution sentences for the years 1996-1998 than for the years 1990-1994. Moreover, if the 1995 statutory change making restitution mandatory were effective, then none of the factors (demographic characteristics of the offender, mode of conviction, contextual factors) that were significant when judges had complete discretion should be significantly related to the imposition of restitution. Although we expected a general increase in the imposition of restitution, we also thought that the statute might be implemented more quickly in some counties than in others. On the one hand, it might be that counties that had a more pro-victim, pro-punishment philosophy (i.e., rural counties, counties with higher percentages of Republicans) would be more likely to adopt the statute sooner. On the other hand, it might be that counties with more formal bureaucratic procedures (i.e., urban counties) would be more likely to adopt the statute sooner. Have mandatory restitution laws had

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<sup>1</sup>“Mandatory restitution—the court shall order full restitution regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation.”

an effect? Some researchers have argued that victim reform legislation has been minimized by legal professionals, who desire to maintain their autonomy (Erez & Laster, 1999).

## B. Overview of the Research

This research project addressed three questions about restitution: imposition, payment, and effect. First, the studies were concerned with factors that predicted the imposition of restitution, including demographic factors, case factors, and contextual factors. These same factors were also used to predict the imposition of fines and costs, so that we could determine the extent to which the imposition of restitution was similar to and different from the imposition of restitution. Second, the studies examined factors that predicted the payment of restitution, in terms of both any payment and the percentage of ordered restitution paid. Third, the research studied how the imposition and payment of restitution affected recidivism, as measured by probation revocation and by the commission of a new crime.

These questions were examined in a systematic fashion at both the state level and the county level. The first study used statewide data from the Pennsylvania Commission on Sentencing for the years 1990-1998. The second study used survey responses from criminal court judges, district attorneys, and chief probation officers. The third, fourth, and fifth studies used county-level analyses. The third study examined restitution in Allegheny County (Pittsburgh) for the year 1994. The fourth study examined the imposition and effects of restitution for the years 1994 and 1996 in four counties: Blair (Altoona), Centre (State College), Dauphin (Harrisburg), and Erie (Erie). The final study examined restitution in Philadelphia for the years 1994-2000.

## V. Statewide Multilevel Analysis of Restitution Decisions

The first study used statewide data from the Pennsylvania Commission on Sentencing to determine the effect of demographic, case, and contextual factors on the imposition of restitution. In particular, the focus was on county-level contextual factors.

### Contextual Factors

Both the general political, social, and economic context of communities and the more specific context of court communities affect judges' decisions (Homel & Lawrence, 1992; Kramer & Ulmer, 1996; Rungay, 1995). Thus, it is important to consider the rural/urban nature of the jurisdiction, the political context, and characteristics of the courtroom workgroup.

**Rural/urban.** For three reasons we expected the rural/urban nature of counties to be related to decisions about restitution orders. First, if judges believe that the primary goal of restitution is punishment, then judges in rural counties should be less likely to impose restitution than judges in urban counties. Research consistently indicates that rural counties are more punitive than urban counties, in terms of imposition of probation fees (Olson & Ramker, 2001) and length of incarceration (Myers & Talarico, 1987; Pruet & Glick, 1986), although not in terms of rates of incarceration. Thus, if restitution were the sole sanction and if it were seen as a penalty, then it should be imposed less frequently in rural counties, which are more likely to view restitution as an inappropriately light punishment.

Second, if judges believe that the primary goal of restitution is compensation to victims, then judges in rural counties should be more likely than judges in urban counties to impose restitution. Specifically, because of the smaller populations in rural counties, rural criminal justice personnel should be more likely than their urban counterparts to know victims personally and thus to be more responsive to their needs. Third, related to the second reason, because criminal justice personnel in rural areas are more likely to know the needs of both victims and offenders, a condition of restorative sanctions, we would expect them to know those conditions under which restorative sanctions would work best. In contrast, in urban counties, where criminal justice personnel are simply trying to process cases and where they are less likely to know victims personally, victims' needs may be less salient to decisions about restitution.

Compared to courts in rural areas, courts in urban areas are characterized by more formal bureaucracies, more division of labor, and weaker connections among professionals in the court community (Eisenstein, Flemming, & Nardulli, 1988). By contrast, courts in rural areas are generally less bureaucratic and less formal. Given this difference, we expected that, before the statutory change, judges in rural counties would be more likely to impose restitution but that the formal bureaucracy of the urban courts would make statutory changes easier to implement. Thus, during the period after the statutory change we expected urban courts to be more likely to impose restitution.

**Political context.** Prison sentences in areas that are more politically conservative tend to be longer than prison sentences in less conservative areas (Kritzer, 1979; Huang, Finn, Ruback, & Friedmann, 1996; Nardulli, Flemming, & Eisenstein, 1988). For example, Nardulli et al. (1988) found that judges in more politically conservative jurisdictions in Illinois, Michigan, and Pennsylvania (as indexed by the proportion of residents who voted for Republican candidates in local and presidential elections) tended to give longer prison sentences to repeat offenders than did judges in less conservative jurisdictions. The effect of the political conservatism of an area was especially strong for offenders who committed more serious offenses. Similar to our hypotheses about the effect of rural context on restitution decisions, for two reasons we expected that counties' political context would be related to the imposition of restitution. First, conservatives are less likely to be supportive of offender rehabilitation than are liberals (Levrant et al., 1999). Second, politically conservative areas are less likely to view restitution as a sufficient punishment for many offenses. Consequently, if the primary goal of restitution is rehabilitation or punishment, then judges in politically conservative counties should be less likely than judges in politically liberal counties to impose restitution. However, if compensation to victims is the primary goal of restitution, then the political context of counties should have no effect on restitution decisions as both conservatives and liberals agree on the need for greater attention to crime victims' need (Levrant et al., 1999).

**Workgroup.** Members of courtroom workgroups (judges, prosecutors, and public defense attorneys) come from the local community and, because of their concern for reelection, are likely to share the community's values and to make decisions similar to other local government officials, including legislators and agency heads (Eisenstein et al., 1988, p. 11). In addition to sharing political orientations, courtroom workgroup members share a loyalty to the norms of their own group. Because these individuals interact closely, often for long periods of time, they develop norms about the appropriateness of particular penalties for typical crimes. It is these norms that often make it difficult for externally ordered change to be implemented. Thus, we might expect that when changes are ordered regarding restitution, the longer the courtroom workgroup had been together, the less quickly they would implement changes regarding the imposition of restitution, especially if the mandated policy was at odds with workgroup policy.

**Monitoring and enforcement.** With regard to restitution specifically, it is important to include measures related to the monitoring and enforcement of restitution orders. For example, judges might be reluctant to impose restitution if they know that probation resources are not sufficient to keep track of payments. Instead of the amount of restitution ordered predicting amount of money collected, causality might be working the other way. That is, in counties with greater resources for collecting and monitoring restitution, judges might be more likely to impose restitution. Without such resources, however, judges might believe it is pointless to impose restitution.

**Other contextual variables.** Other contextual factors that have been found to affect sentencing include the crime rate (Huang et al., 1996), the percentage of the population who are males aged 15 to 24 (Inverarity & McCarthy, 1988) and measures of income (Bailey, 1981; Joubert, Picou, & McIntosh, 1981). We included these indicators in order to control for the presence of crime and other social problems.

In this study, we addressed two primary research questions. First, we attempted to determine both the apparent and actual policies during 1990-1994, when the imposition of restitution was totally discretionary with the judge. These analyses included as predictors legally relevant case level factors, demographic characteristics of the offender, and contextual factors. Second, we examined cases from 1996-1998 to determine the effect of the 1995 statutory change in the law on the imposition of restitution.

### **Method**

The data for this research consisted primarily of sentencing information from the Pennsylvania Commission on Sentencing (PCS) for the years 1990-94 and 1996-98.<sup>2</sup> We merged these data with contextual information from the 1990 U.S. Census, the 1990 Uniform Crime Reports, and The Pennsylvania Manual (Commonwealth of Pennsylvania) for 1992 and 1996 for each of the 67 counties in the state.

### **Sentencing Data**

The PCS compiles annual sentencing information, including offense, offender, and case processing characteristics, for most felony and misdemeanor convictions in the state.<sup>3</sup> Judges are required by law to report information on cases to the PCS on the Guideline Sentence Form, based on sentencing guidelines developed by the PCS. For the period covered by this study, Pennsylvania courts reported 466,531 cases to the PCS (excluding DUI offenses). Because this study concerns the likelihood of restitution as a sentencing outcome, we included only “restitution-eligible” cases, that is, those cases with an identifiable victim other than the state. Aside from excluding DUI and drug offenses, we dropped cases determined to have no identifiable victim, based on crimes listed in Title 18

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<sup>2</sup> Data from 1995 are incomplete regarding restitution (see Pennsylvania Commission on Sentencing 1997).

<sup>3</sup> Cases processed through the Municipal Court in Philadelphia, which handles the majority of misdemeanors in the county, are not included in the PCS data set.

**(Crimes and Offenses) of Pennsylvania Consolidated Statutes Annotated. Because we were specifically concerned with crimes against identifiable individuals and businesses, and not with crimes against society, we also dropped cases that were not brought under Title 18.<sup>4</sup> These exclusions resulted in the removal of 205,483 cases.**

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<sup>4</sup>Offenses under the following titles of the consolidated statutes were excluded: Title 22, Detectives; Title 25, Elections; Title 30, Fish and Boats; Title 32, Forests, Water, and State Parks; Title 34, Game; Title 35, Health and Safety; Title 40, Insurance; Title 47, Liquor; Title 70, Securities; Title 72, Taxation and Fiscal Affairs; Title 75, Vehicles; and Title 77, Workmen's Compensation. This rejection of non-Title 18 crimes resulted in the exclusion of 57,270 cases.

Within each year, the PCS collects information on all offenses. However, in our analyses we used only the most serious offense within each criminal incident, since we believed this is the best approximation of the individual's crime.<sup>5</sup> In addition, within each year, we included individual defendants only once. That is, to eliminate problems of correlated errors, within each year we excluded any second and subsequent offenses committed by an individual.<sup>6</sup> After removal of all these cases, our final sample consisted of 148,524 cases in 1990-1994 and 68,164 cases in 1996-1998, for a total analysis sample of 216,688.

**Sentencing outcomes.** From the PCS data file, we extracted three sentencing outcomes: restitution orders, fine orders, and incarceration. The decision whether or not to impose an order of restitution was measured as a dichotomous variable coded '1' if imposed and '0' if not imposed. We used whether or not a fine was imposed (coded '1' if imposed and '0' if not imposed) as a control for the overall severity of the sentence (i.e., the "going rate" for monetary penalties associated with the crime) in our analyses of the restitution decision. In these analyses of both the restitution and fine decisions, we also controlled for whether or not the individual received a sentence of incarceration. Including this measure of the decision to incarcerate allowed us to test for the possibility that judges would not impose restitution for offenders who were incarcerated and who, therefore, would probably be less likely to pay the ordered amounts. In addition to these measures of restitution, fines, and incarceration for the years 1990-1998, for 1996-1998 data, we also obtained data for restitution amounts.

**Case-level variables.** We included four legally relevant variables related to the case. The first, offense type was measured by a dummy variable with property crimes coded '1' and person crimes as the reference group. We distinguished between person and property crime on the basis of common law definitions. Property crimes included offenses such as burglary, theft, and auto theft, and person crimes included offenses such as rape, assault, and manslaughter, and robbery.

Second, we included a variable representing severity of offense, which came from the Offense Gravity Score (OGS) reported by the PCS. The range of possible OGS values was 10 for the years 1990-1994, increased to 13 under the 1994 guidelines, and increased to 14 under the 1997 guidelines. To create a variable that was comparable across time

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<sup>5</sup> This procedure is how the Commission reports crimes in its annual report and is how prior research with the PCS data has been conducted.

<sup>6</sup> Across years, defendants may appear more than once due to the possible assignment of different identification numbers. There was no way to determine duplicate defendants across years. And, in any event, we suspect that cross-year duplication would not substantially change the analyses because the number of such cases is small relative to the overall sample size, and because for such cases we are already controlling for many of the important predictors of restitution (e.g., offense severity, prior record, mode of conviction).

periods and that also captured the relative proportionality of offense seriousness within each time period, we computed a proportion seriousness variable. That is, within each time period we divided the offense seriousness of a crime by the number of possible values for that time period. For example, burglary of an unoccupied home was scored as .80 in 1990-1994 (8/10) and .54 for 1996 (7/13). Mean offense seriousness for the entire sample was .40 for 1990-1994 and .30 for 1996-1998.

Third, we included a measure of prior record, calculated from the prior record score reported by the PCS. We coded prior record '1' for the presence of a prior record and '0' for the absence of a prior record. We dichotomized this variable because the distribution of number of prior convictions was not normal: 57% of the offenders in our sample had no prior record. Moreover, research suggests that, although there is a substantive difference between having and not having a prior record, there is little difference between one or more prior offenses (Spohn 1990).

Fourth, we included mode of conviction as a dummy variable, with bench and jury trials coded as '1' and guilty pleas serving as the reference category.<sup>7</sup> Negotiated and non-negotiated pleas were recoded to represent a general plea item. In 1996-1998, the PCS expanded the mode of conviction item to include categories of "nolo contendere" and "other" convictions. For consistency across years, we recoded these categories to guilty pleas.<sup>8</sup>

**Offender demographics.** We controlled for the effects of individual offender characteristics by including gender, race, and age in the analysis. Gender of offender was coded '1' for male and '0' for female. Race was dichotomized as white versus non-white, with white coded '1' and all other races coded '0'. Age of offender was measured as the age of offender (in years) at the time of offense. Only offenders reported as being age 18 and over were included in the study.<sup>9</sup>

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<sup>7</sup>Because analyses indicated no difference between bench and jury trials, we combined them for all analyses presented here.

<sup>8</sup>In the final sample, 19% of all cases were missing data on the mode of conviction variable. Rather than lose such a substantial number of cases, missing data were recoded as guilty pleas for two reasons. First, only 8% of all cases resulted in a bench or jury trial conviction. Second, ANOVA-Newman-Keuls tests were conducted to determine whether there was a significant difference between missing cases and plea, jury, or bench trials based on the offender's age, gender, race, offense severity, offense type, and prior record. Results showed that missing cases were significantly different from both cases resulting in bench and jury trial convictions based on these other variables. They were *not* significantly different, however, from plea outcomes. (For a similar analysis, see Ulmer and Kramer 1996).

<sup>9</sup>Because age at time of offense was not available for 1990-1994 data, we used age at time of sentencing as an approximate measure.

## County Context Variables

We included seven variables to control for the social, political, and criminal justice context of each county. First, we created a dummy variable representing type of county; urban counties were coded '1' and rural counties served as the reference group. For this classification, we used the distinction made by the Center for Rural Pennsylvania (an agency of the Pennsylvania legislature). According to the U.S. Census Bureau, a place is rural if the population is less than 2,500 and it is not contiguous to an urban area. The Center for Rural Pennsylvania considers a county to be rural if at least half of the residents in the county fit this Census Bureau description (Center for Rural Pennsylvania 1999).

Second, we included a measure of the political climate of the counties. In our analysis of the restitution decision across all years, this variable represented the average of the percentage of county voters who voted for the Republican candidate in the 1992 and 1996 presidential elections. In our analysis of the pre-statutory change period, this variable represented the percentage of county voters who voted for the Republican candidate in the 1992 presidential election; and in our analysis of the post-statutory change period, it represents the percentage of county voters voting for the Republican candidate in the 1996 presidential election. Our measure of political climate was used to represent both the punitiveness of counties and the consistency between state and county leadership, in that Republicans have controlled the governorship and both state houses since 1995.

We also included variables to control for crime rates and correlates of crime. The third and fourth variables, taken from 1990 U.S. Census data, were the percentage of a county's population living below the poverty level and the percentage of a county's population who are most prone to crime (males aged 15-24). Fifth, we also included the Part I crime rates of counties, based on the rate of Uniform Crime Reports in 1990.

Sixth, we included a measure of courtroom workgroup stability. Previous studies show that the stability of a courtroom workgroup impacts sentencing decisions (Eisenstein & Jacobs 1977; Ulmer 1997). To determine whether workgroups impact restitution decisions, we created a variable representing workgroup stability measured as the number of years the judge and the county District Attorney were employed within the same jurisdiction. For each county, we aggregated across cases sentenced from 1990 through 1994 and across cases sentenced from 1996 through 1998 cases to get a mean workgroup stability measure for each time period.

Seventh, to account for the resources devoted to probation supervision, we used the average per officer active caseloads in each county for Fiscal Year 1998-99 (Pennsylvania

Legislative Budget and Finance Committee, Table 19, pp. 62-63, 2000). The average per officer active caseloads ranged from 0 to 223.9 (M = 96.4; Mdn = 91.0).<sup>10</sup>

### Analytic Procedures

Our analyses proceeded in two-stages. First, we used bivariate analyses to describe the restitution decision for 1990-94, when this decision was discretionary. Second, we used a multi-level logit model, available in the HLM software program, to implement the two-level approach proposed by Britt (2000) to test for variations in the effects of both offender/case characteristics *and* social context on restitution decisions. In doing this, we have expanded Britt's two-level approach to include sentencing decisions other than incarceration. Multilevel models are especially appropriate in analyses such as ours, where researchers are interested in testing simultaneously for individual and contextual effects on the dependent variable. The general form for the decision level (level 1) model is:

$$\log_n[\text{odds}(\text{Restitution}_{ij} = 1)] = \beta_{0,j} + \beta_{1,j}(X_{1ij} - X_{..}) + \dots + \beta_{k,j}(X_{kij} - X_{..}), \quad (1)$$

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<sup>10</sup>In addition to average per officer active caseload, we also examined four other measures of county-level criminal justice resources: the total Probation Improvement Grants awarded to each of the 67 counties since the programs' inception in 1967 (Pennsylvania Legislative Budget and Finance Committee, Appendix D, p. 109, 2000) and the penalty assessment collections, state Victim/Witness allocations, and Crime Victims compensation awarded for Fiscal Year 1998-99 (Pennsylvania Commission on Crime and Delinquency, 2000). However, these measures were highly collinear and could not be simultaneously included in multivariate analyses. We chose to include average caseload size rather than some other measure of resources because it is the most direct indicator of how much time probation officers would have to monitor and enforce restitution orders, and the use of probation staff to enforce and collect restitution is the modal method of collection in Pennsylvania.

where  $i$  is the index for decisions,  $j$  is the index for counties, and  $(X_{k,ij} - X_{k\bullet})$  is a decision level explanatory variable centered on the grand mean.<sup>1113</sup> The general form for the county context level model (level 2) is:

$$\beta_{0j} = \gamma_{00} + \gamma_{01}(W_{1j} - W_{1\bullet}) + \dots + \gamma_{0m}(W_{mj} - W_{m\bullet}) + \mu_{0j} \quad (2)$$

$$\beta_{1j} = \gamma_{10} + \gamma_{11}(W_{1j} - W_{1\bullet}) + \dots + \gamma_{1m}(W_{mj} - W_{m\bullet}) + \mu_{1j} \quad (3)$$

⋮

$$\beta_{kj} = \gamma_{k0} + \gamma_{k1}(W_{1j} - W_{1\bullet}) + \dots + \gamma_{km}(W_{mj} - W_{m\bullet}) + \mu_{kj}, \quad (4)$$

where  $\beta_{k0}$  is the mean regression slope for all counties for explanatory variable  $k$ ,  $(W_{mj} - W_{m\bullet})$  is a county level explanatory variable centered on the grand mean,  $\gamma_{km}$  is the effect of the explanatory variable  $m$  on the decision level coefficient  $\beta_{kj}$  for variable  $k$  and county  $j$ , and  $\mu_{kj}$  is the unique effect of county  $j$  on variable  $k$  controlling for  $W_m$ .<sup>1213</sup>

## Results

The results are presented in three parts. First, we describe the entire sample and compare the subsample from 1990-94 to the subsample from 1996-98. Second, we use both bivariate and multi-level analyses to model 1990-94 restitution decisions, when restitution orders were discretionary. This two-step procedure allows us to compare the two analyses to each other and to the deductive models described earlier. Third, we use multi-level analyses to model 1996-98 restitution decisions, when the restitution decision was mandatory.

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<sup>11</sup>Centering on the grand mean, or population mean, is appropriate for obtaining pooled estimates of the decision level (i.e., offender and case characteristics) effects and the county level (i.e., social context) effects on restitution decisions. After centering on the grand mean, the model intercepts represent county level means adjusted for the covariates. For example, in equation 1, the intercept,  $\beta_{0j}$ , represents the mean proportion of cases in county  $j$  that resulted in a decision to impose restitution adjusted for differences among counties in  $X_{1ij} \dots X_{k,ij}$ .

<sup>12</sup> Including the  $\mu_{kj}$  variance terms in equations 3 and 4 makes our models random-coefficients models. This allows us to estimate the extent to which the effects of the decision level explanatory variables and decisions about restitution differ across counties.

### **Description of the Sample**

Table 5-1 presents a description of the sample of 216,688 cases for the entire period and broken down by the pre- and post-statutory change periods (1990-94 and 1996-98). Overall, most offenders were male and white. Offenders ranged in age from 18-96 (Mdn = 27.0), and almost all cases were disposed of through a guilty plea. Most of the cases in the sample (66%) involved property crimes. Across the entire sample, restitution was imposed in 42% of the cases.

In terms of changes between the pre- and post-statutory change periods, bivariate analyses indicated that from 1990-94 to 1996-98 all of the variables listed in Table 5-1 are significantly different. Thus, there were significantly more person crimes, significantly more female offenders, and significantly more plea-bargained cases in 1996-98 than in 1990-94. Restitution was significantly more likely to be imposed after the statutory change. At the contextual level, counties became more Republican and less poor. The average courtroom workgroup stability increased by two and a half years.

### **Restitution Decisions Under Complete Discretion**

Our first analyses were of the years 1990-94, when Pennsylvania judges had complete discretion about whether or not to impose restitution. To determine the apparent and actual policies underlying these restitution decisions, we conducted both bivariate and multivariate analyses.

**Bivariate analyses.** Table 5-2 presents bivariate analyses of the restitution decision. In terms of case-level variables, restitution was more likely to be imposed for person than for property crimes, for low severity than for high severity crimes, for offenders with no prior record than for offenders with at least one prior conviction, and for offenders who pleaded guilty rather than being convicted at trial. In terms of offender demographics, restitution was more likely to be imposed for males, for whites, and for young offenders. In terms of county-level variables, restitution was more likely to be imposed in rural counties, counties with higher percentages of Republican voters, counties with higher percentages of individuals living below poverty, counties with lower percentages of males aged 15-24, counties with higher crime rates, counties with higher courtroom workgroup stability, and counties with lower average probation caseloads.

**Multivariate analyses.** Table 5-3 presents the two-level logistic analyses of the 148,524 restitution-eligible cases for the 1990-1994 period. These analyses present main effects of six case-level factors, three offender demographics, and seven county-level factors (Model 1), these main effects plus the interactions of workgroup with county type and

percent Republican (Model 2), and the main effects, the two interactions of workgroup, and the interactions of county type with the six case-level factors and the three demographic factors (Model 3).

Across all three models restitution was significantly more likely to be imposed for property than person crimes, for offenders with no prior records, for male offenders, for white offenders, and for younger offenders. In the first two models, and marginally in the third model, offenders who pleaded guilty rather than being convicted at trial were more likely to receive a restitution order. In terms of context, restitution was significantly less likely in urban counties containing courtroom workgroups that had worked together longer.

When the interactions of county type with case-level and offender characteristics were added to the equation (Model 3), two interactions were significant. Restitution was significantly less likely for property crimes in urban counties and significantly more likely for males in urban counties.

### **Restitution Decisions After the Statutory Change**

The analyses of the 68,164 restitution decisions made during 1996-1998 are presented in Table 5-4. Consistent with the multivariate analysis for 1990-1994, across all three models restitution was ordered more for property offenders, offenders with no prior record, white offenders, and younger offenders. Also, consistent with the analysis for 1990-1994, in the first two models, and marginally in the third model, offenders who pleaded guilty rather than being convicted at trial were more likely to receive a restitution order. In terms of context, restitution was significantly less likely in counties with higher percentages of individuals living below poverty. In contrast to the results for 1990-1994, more severe offenses were significantly more likely to result in a restitution order and male offenders were not significantly more likely to be ordered to pay restitution.

When the interactions of county type with case-level and offender characteristics were added to the equation (Model 3), two interactions were significant. Restitution was significantly less likely for property crimes in urban counties (consistent with the analysis for 1990-1994) and significantly more likely in urban counties when fines were also imposed. Most of the results from the two time periods are consistent. That is, restitution was ordered more at both time periods for property offenders, offenders with no prior record, white offenders, and younger offenders. There were five differences between the two time periods, which are supported by time by variable interactions using the entire sample. In the pre-statutory change period, males were more significantly more likely than females to be ordered to pay restitution, but in the post-statutory change period there was no gender difference. In the pre-period offense severity was not a significant predictor of

restitution but in the post-period it was. This pattern suggests that legally relevant factors might have mattered more after than before the statutory change.

There were also three differences between the two time periods relating to the type of county. In the pre-change period the interactions of urban and workgroup stability and of urban and male were significant. In the post-change period, these interactions were not significant. In the post-period the interaction of urban and fines was significant, although it was not significant in the pre-period.

### Amount of Restitution Imposed

Aside from the decision of whether or not to impose restitution, when judges decide to impose restitution, they must also decide how much restitution the offender should pay. We analyzed this second decision using data from the years 1996-1998, because the Sentencing Commission data were not available for the earlier years. Of the 68,164 cases included in the 1996-1998 period, the PCS dataset contained information about the amount of restitution ordered in 17,739 cases. As with the models analyzing the decision of whether or not to impose restitution, we analyzed these 17,739 cases using a multilevel model to assess the impact of both case and offender characteristics and contextual factors on the amount of restitution imposed.

We measured the outcome variable as the natural log of the amount of restitution in dollars imposed.<sup>14</sup> Because the outcome variable was continuous, we analyzed linear models corresponding to the three models used in the logistic analyses (i.e., a base model, a modified model containing level 2 interactions, and a full model containing all interactions). As with the decision of whether or not to impose restitution, across all three models, we found several individual characteristics of the offender and case level factors that affected the amount of restitution ordered (results not shown). Higher amounts of restitution were ordered for older offenders, for offenders with no prior record, for offenders receiving fines, for severe offenses, and for property offenses. The effects of race, gender, and incarceration on amount of restitution differed between models. Without controlling for the interaction of type of county with individual level factors, amount of restitution ordered was higher for white offenders. When the interaction between race and county type is entered into Model 3, the effect of gender became non-significant, but a significant negative interaction between race and county type emerged. On the other hand, gender had no significant effect on amount of restitution in Model 1 or Model 2. In Model 3, however, being male significantly increased the amount of restitution ordered. Being

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<sup>14</sup> Because the variable of amount of restitution was highly skewed, we transformed the variable to the natural log to obtain a normal distribution of the possible outcome values.

**incarcerated decreased the amount of restitution ordered in Model 1 and Model 2, but had no significant effect in Model 3. In this last model, incarceration significantly interacted with county type.**

**As with the logistic analyses, contextual factors only marginally affected the amount of restitution ordered. When controlling for interactions, in high percentage Republican counties, the amount of restitution ordered was significantly larger than in non-Republican counties. Also, in Model 2 and Model 3, courtroom workgroups exhibiting higher rates of stability imposed larger amounts of restitution. The interaction between percentage Republican and courtroom workgroup was consistently significant, with Republican counties at the mean level of workgroup stability imposing smaller amounts of restitution.**

**The results suggest that when determining whether or not to impose restitution and the amount of restitution to be ordered, decision-making processes differ. Though both decisions are similarly influenced by most case level and offender related characteristics, the significant negative effects of incarceration and fines on amount of restitution ordered indicate that this second decision is viewed by the court as part of an overall package of punishment. Such a “going rate” hypothesis was not supported in the analyses of the first decision regarding the imposition of restitution.**

**The results also suggest that contextual factors play more of a role in the decision of amounts of restitution than they do for the initial decision of whether or not to impose restitution. In particular, Republican counties tended to impose larger amounts of restitution, suggesting a more punitive stance by such counties. Also, the significant effect of courtroom workgroup stability on the amount of restitution imposed may further indicate that sentencing decisions should be examined at the level of the workgroup.**

**The fact that fines were inversely related to the amount of restitution suggests that judges are concerned with compensating victims. That is, given that offenders have limited funds, judges may believe that it is better that those funds should go to victims rather than to the state.<sup>15</sup>**

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<sup>16</sup>In addition to analyzing restitution decisions by county, we also analyzed these decisions by judicial district. There are 67 counties in Pennsylvania, but, because 7 pairs of counties share at least one judge, there are only 60 judicial districts. We analyzed the data using both counties and judicial districts as contextual units. Here we report the data from the county-level analyses because each county has its own commissioners, district attorney, and probation officers, all of which mean that each county has its own political and bureaucratic climate. The analyses by judicial district provided results virtually identical to those using county as the contextual unit.

We also ran all of the above analyses excluding Philadelphia County and excluding both Philadelphia and Allegheny (Pittsburgh) Counties, because these counties differ on several dimensions from the other counties in the state (e.g., significantly larger population, higher

## Discussion

Research on sentencing has been of limited utility because researchers have generally focused only on individual, offender-level characteristics, often omitted the context in which sentencing occurs, and largely ignored the uses and effects of sentencing (Mears 1998). The present study directly addressed these common weaknesses. In addition, this paper presented a general method for inferring policy and for determining both apparent and actual policy. It also presented specific results concerning the imposition of restitution under conditions of both complete discretion and mandatory imposition.

### Specific Results of the Study

We found that restitution was ordered more for property offenders, offenders with no prior record, white offenders, and younger offenders. Surprisingly, with the exception of type of county, contextual factors had little significant influence on decisions to impose restitution. The lack of significant contextual effects on restitution decisions is consistent with the results Britt (2000) reported for incarceration decisions.

Although there was an increase in restitution after the statute, the change was not uniform across counties or types of cases. Results indicated that after the statutory change mandating restitution, urban counties showed a significant increase in the proportion of cases in which restitution was ordered, whereas in rural counties, where the pre-statutory change imposition level was higher, there was essentially no change. One possible explanation for this pattern is that the rural counties, whose representatives had been instrumental in pushing more crime control legislation, were satisfied with their own behavior and favored the change regarding restitution because they were primarily interested in prompting other counties (and especially the large cities) to change.

Moreover, the fact that offender demographic factors (i.e., race and age) were significant even after the statutory change mandating restitution raises the question of whether a simple mandate can eliminate disparity based on demographic characteristics. The results did suggest that there was a change in the importance of offense severity. For the period 1990-94, offense severity was not a significant predictor, whereas in 1996-98 (after the statutory change), it did matter. This pattern is consistent with the notion that the statutory change should make legally relevant factors more important and legally irrelevant factors (e.g., offender characteristics) less important.

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percentage of nonwhite residents). The results excluding these counties were basically the same as those presented here.

## **Summary**

**This research suggests that following the 1995 statutory change mandating restitution, rates of restitution imposition increased substantially. This result is not surprising given that the goal was clearly specified and only one type of decision maker (the judge) was involved. However, the imposition of restitution is simply the first step. For the law to be effective, offenders ordered to pay restitution must do so in a consistent and timely fashion. Whether they do is a question that awaits further research.**

Table 5-1. Description of the Sample, 1990-1998, and Separately for 1990-1994 and 1996-1998

<u>Variable</u>	<u>Overall</u>	<u>Pre-Change 1990-1994</u>	<u>Post Change 1996-1998</u>
<b>Restitution imposed</b>			
No	58%	65.5%	41.7%
Yes	42%	34.5%	58.3%
<b>Case Level Variables</b>			
<b>Offense type</b>			
Person	33.9%	33.0%	35.8%
Property	66.1%	67.0%	64.2%
<b>Offense severity<sup>a</sup></b>	<u>M</u> = .37	<u>M</u> = .40	<u>M</u> = .30
<b>Prior record</b>			
No	56.8%	56.4%	57.5%
Yes	43.2%	43.6%	42.5%
<b>Mode of conviction</b>			
Plea	93.2%	92.7%	94.5%
Bench trial	4.1%	4.4%	3.5%
Jury trial	2.7%	3.0%	2.0%
<b>Offender Demographics</b>			
<b>Gender</b>			
Female	17.2%	15.6%	20.8%
Male	82.8%	84.4%	79.2%
<b>Race</b>			
Non-white	40.0%	40.1%	39.7%
White	60.0%	59.9%	60.3%
<b>Age (in years)</b>	<u>M</u> = 29.2	<u>M</u> = 29.0	<u>M</u> = 30.0
<b>County Level Variables</b>			
<b>County type</b>			
Rural	18.0%	17.9%	18.4%
Urban	82.0%	82.1%	81.6%
<b>Percent Republican</b>	<u>M</u> = 38.1%	<u>M</u> = 37.6%	<u>M</u> = 39.0%
<b>Percent living below poverty</b>	<u>M</u> = 11.1%	<u>M</u> = 11.3%	<u>M</u> = 10.5%
<b>Percent males age 15-24</b>	<u>M</u> = 7.1%	<u>M</u> = 7.1%	<u>M</u> = 7.0%
<b>Crime rate</b>	<u>M</u> = .08	<u>M</u> = .08	<u>M</u> = .08
<b>Courtroom workgroup stability (in years)</b>	<u>M</u> = 5.88	<u>M</u> = 5.1	<u>M</u> = 7.6
<b>Statutory change</b>			
Pre-1995	68.5%		
Post-1995	31.5%		

n = 216,688

n = 148,524

n = 68,164

<sup>a</sup>Within each year, offense severity was measured as a proportion of the total possible severity.

**Table 5-2. Bivariate Analyses of the 1990-1994 Sample**

Variable	Percent Restitution Imposed
<b>Case Level Variables</b>	
<b>Offense type</b>	
Person	21.0%
Property	41.2%
<b>Offense severity<sup>a</sup></b>	
Low	36.3%
High	32.5%
<b>Prior record</b>	
No	36.9%
Yes	31.5%
<b>Mode of conviction</b>	
Plea	35.8%
Trial	19.0%
<b>Offender Demographics</b>	
<b>Gender</b>	
Female	34.0%
Male	37.6%
<b>Race</b>	
Non-white	26.4%
White	40.0%
<b>Age (in years)<sup>a</sup></b>	
Young	37.6%
Old	31.3%
<b>County Level Variables</b>	
<b>County type</b>	
Rural	47.2%
Urban	31.8%
<b>Percent Republican<sup>a</sup></b>	
Low	32.7%
High	39.5%
<b>Percent living below poverty<sup>a</sup></b>	
Low	34.0%
High	35.5%
<b>Percent males age 15-24<sup>a</sup></b>	
Low	36.4%
High	31.9%
<b>Crime rate<sup>a</sup></b>	
Low	32.4%
High	35.5%
<b>Courtroom workgroup stability (in years)<sup>a</sup></b>	
Low	33.4%
High	35.6%
<b>Average probation caseload<sup>a</sup></b>	
Low	38.2%
High	33.1%

Note. n = 148,524.

<sup>a</sup>These variables were divided at the median.

**Table 5-3. Hierarchical Logistic Models of Restitution Decisions, 1990-1994**

Predictor	<u>Base Model (1)</u> (No interactions)		<u>Modified Model (2)</u> (Level 2 Interactions)		<u>Full Model (3)</u> (All Interactions)	
	$\gamma$ t-ratio	Odds Ratio (s.e.)	$\gamma$ t-ratio	Odds Ratio (s.e.)	$\gamma$ t-ratio	Odds Ratio (s.e.)
<b>Case Level</b>						
Property offense	0.97 18.60***	2.64 (.05)	0.98 18.59***	2.66 (.05)	1.00 20.45***	2.72 (.05)
Offense severity	0.11 1.11	1.12 (.10)	0.11 1.17	1.12 (.09)	0.15 1.44	1.16 (.10)
Prior record	-0.08 3.05**	0.92 (.03)	-0.08 3.02**	0.92 (.03)	-0.08 2.83**	0.92 (.03)
Trial disposition	0.15 1.99*	1.16 (.07)	0.15 2.03*	1.16 (.07)	0.12 1.61	1.13 (.08)
Fines	0.06 0.75	1.06 (.08)	0.06 0.75	1.06 (.08)	0.07 0.91	1.07 (.08)
Incarceration	0.02 0.45	1.02 (.04)	0.02 0.48	1.02 (.04)	0.005 0.13	1.01 (.04)
<b>Offender Demographics</b>						
Male	-0.10 2.18*	0.90 (.05)	-0.10 2.19*	0.90 (.05)	-0.11 2.41*	0.90 (.04)
White	0.18 5.12***	1.20 (.04)	0.18 5.05***	1.20 (.04)	0.15 3.23**	1.16 (.05)
Age (in years)	-0.009 5.99***	0.99 (.002)	-0.009 5.99***	0.99 (.002)	-0.009 5.78***	0.99 (.002)
Intercept	-0.39 4.20***	0.68 (.09)	-0.39 4.18***	0.68 (.09)	-0.38 4.08***	0.68 (.09)
<b>County Level Variables</b>						
Urban county	0.15 0.83	1.16 (.18)	0.76 2.19*	2.14 (.35)	0.48 1.28	1.62 (.38)
Percent Republican 1992	-0.003 0.26	1.00 (.01)	0.007 1.34	1.01 (.005)	-0.007 1.32	1.01 (.005)
Percent living below poverty	-0.62 0.28	3.20 (2.25)	-1.71 0.76	0.18 (2.24)	-1.65 0.74	0.19 (2.23)
Percent males age 15-24	0.80 0.18	2.23 (4.49)	1.37 0.31	3.94 (4.41)	1.14 0.26	3.13 (4.37)
Crime rate	-0.00002 0.49	1.00 (.0001)	-0.00007 1.04	1.00 (.00007)	-0.0001 1.00	1.00 (.0007)
Courtroom workgroup stability	0.01 0.35	1.01 (.03)	-0.22 1.10	1.01 (.005)	-0.21 1.06	0.81 (.20)
Average probation caseload	-0.002 1.30	1.00 (.002)	-0.0005 0.32	1.00 (.002)	-0.0004 0.26	1.00 (.002)

Table 5-3 Continued

<b>Level 2 interactions</b>							
<b>Urban * Workgroup</b>	---	----	<b>-0.13</b>	<b>0.88</b>		<b>-0.13</b>	<b>0.88</b>
			<b>2.24**</b>	<b>(.06)</b>		<b>2.30*</b>	<b>(.06)</b>
<b>%GOP * Workgroup</b>	---	----	<b>0.007</b>	<b>1.01</b>		<b>0.007</b>	<b>1.01</b>
			<b>1.34</b>	<b>(.005)</b>		<b>1.32</b>	<b>(.005)</b>
<b>Cross-level interactions</b>							
<b>Urban * Property</b>	---	----	---	----		<b>-0.37</b>	<b>0.69</b>
						<b>3.80***</b>	<b>(.10)</b>
<b>Urban * Offense severity</b>	---	----	---	----		<b>0.05</b>	<b>1.05</b>
						<b>0.26</b>	<b>(.20)</b>
<b>Urban * Prior record</b>	---	----	---	----		<b>-0.09</b>	<b>0.91</b>
						<b>1.65</b>	<b>(.05)</b>
<b>Urban * Trial disposition</b>	---	----	---	----		<b>0.14</b>	<b>1.15</b>
						<b>0.96</b>	<b>(.15)</b>
<b>Urban* Fines</b>	---	----	---	----		<b>-0.15</b>	<b>0.86</b>
						<b>0.98</b>	<b>(.16)</b>
<b>Urban * Incarceration</b>	---	----	---	----		<b>0.08</b>	<b>1.08</b>
						<b>1.11</b>	<b>(.07)</b>
<b>Urban * Male</b>	---	----	---	----		<b>0.21</b>	<b>1.23</b>
						<b>2.49*</b>	<b>(.08)</b>
<b>Urban * White</b>	---	----	---	----		<b>0.02</b>	<b>1.02</b>
						<b>0.30</b>	<b>(.08)</b>
<b>Urban * Age</b>	---	----	---	----		<b>0.003</b>	<b>1.00</b>
						<b>0.86</b>	<b>(.003)</b>
<b>Multiparameter Tests</b>							
<b>Chi-square statistic</b>	<b>2.54</b>		<b>9.05</b>			<b>4.77</b>	
<b>Degrees of freedom</b>	<b>7</b>		<b>7</b>			<b>7</b>	
<b>p value</b>	<b>&gt;.50</b>		<b>.25</b>			<b>&gt;.50</b>	
<b>Level 2 interactions</b>							
<b>Chi-square statistic</b>			<b>6.91</b>			<b>7.11</b>	
<b>Degrees of freedom</b>			<b>2</b>			<b>2</b>	
<b>p value</b>			<b>0.031</b>			<b>0.028</b>	
<b>Cross-level interactions</b>							
<b>Chi-square statistic</b>						<b>41.44</b>	
<b>Degrees of freedom</b>						<b>9</b>	
<b>p value</b>						<b>0.00003</b>	

\*p < .05

\*\*p < .01

\*\*\*p < .001

Table 5-4. Hierarchical Logistic Models of Restitution Decisions, 1996-1998

Predictor	<u>Base Model (1)</u> (No interactions)		<u>Modified Model (2)</u> (Level 2 Interactions)		<u>Full Model (3)</u> (All Interactions)	
	$\gamma$ t-ratio	Odds Ratio (s.e.)	$\gamma$ t-ratio	Odds Ratio (s.e.)	$\gamma$ t-ratio	Odds Ratio (s.e.)
<b>Case Level</b>						
Property offense	<b>0.87</b> <b>17.82***</b>	<b>2.39</b> <b>(.05)</b>	<b>0.87</b> <b>17.85***</b>	<b>2.39</b> <b>(.05)</b>	<b>0.89</b> <b>18.24***</b>	<b>2.44</b> <b>(.05)</b>
Offense severity	<b>0.92</b> <b>8.90***</b>	<b>2.51</b> <b>(.10)</b>	<b>0.92</b> <b>8.83***</b>	<b>2.51</b> <b>(.10)</b>	<b>0.92</b> <b>8.07***</b>	<b>2.51</b> <b>(.11)</b>
Prior record	<b>-0.07</b> <b>3.50***</b>	<b>0.93</b> <b>(.02)</b>	<b>-0.07</b> <b>3.46***</b>	<b>0.93</b> <b>(.02)</b>	<b>-0.08</b> <b>2.76**</b>	<b>0.92</b> <b>(.03)</b>
Trial disposition	0.01 0.24	1.01 (.05)	0.01 0.27	1.01 (.05)	0.02 0.25	1.02 (.07)
Fines	0.03 0.27	1.03 (.09)	0.03 0.29	1.03 (.10)	0.009 0.10	1.01 (.09)
Incarceration	-0.002 0.06	1.00 (.04)	-0.002 0.06	1.00 (.04)	0.01 0.33	1.01 (.04)
<b>Offender Demographics</b>						
Male	-0.02 0.79	0.98 (.03)	-0.02 0.86	0.98 (.03)	-0.02 0.63	0.98 (.03)
White	<b>0.09</b> <b>4.12***</b>	<b>1.09</b> <b>(.02)</b>	<b>0.09</b> <b>4.14***</b>	<b>1.09</b> <b>(.02)</b>	<b>0.12</b> <b>2.82**</b>	<b>1.13</b> <b>(.04)</b>
Age (in years)	<b>-0.009</b> <b>9.35***</b>	<b>0.99</b> <b>(.001)</b>	<b>-0.009</b> <b>9.45***</b>	<b>0.99</b> <b>(.001)</b>	<b>-0.008</b> <b>6.40***</b>	<b>0.99</b> <b>(.001)</b>
Intercept	<b>0.35</b> <b>4.57***</b>	<b>1.42</b> <b>(.08)</b>	<b>0.35</b> <b>4.26***</b>	<b>1.42</b> <b>(.08)</b>	<b>0.34</b> <b>4.55***</b>	<b>1.40</b> <b>(.07)</b>
<b>County Level Variables</b>						
Urban county	-0.19 1.56	0.83 (.12)	0.22 0.65	1.25 (.34)	0.56 1.58	1.75 (.35)
Percent Republican 1992	0.009 1.26	1.01 (.007)	-0.009 0.52	0.99 (.02)	-0.009 0.86	0.99 (.02)
Percent living below poverty	-2.37 1.57	2.29 (1.51)	<b>-3.19</b> <b>1.98*</b>	<b>0.04</b> <b>(1.61)</b>	-3.11 1.94	0.04 (1.60)
Percent males age 15-24	3.22 0.98	25.03 (3.30)	4.19 1.24	66.02 (3.39)	4.10 1.22	60.34 (3.37)
Crime rate	-0.00005 1.04	1.00 (.00004)	-0.00008 1.52	1.00 (.00005)	-0.00008 1.45	1.00 (.00005)
Courtroom workgroup stability	-0.005 0.26	1.00 (.02)	-0.08 0.83	0.92 (.10)	-0.09 0.86	0.91 (.10)
Average probation caseload	-0.001 1.18	1.00 (.001)	-0.001 0.98	1.00 (.001)	-0.001 1.06	1.00 (.001)

Table 5-4 Continued

<b>Level 2 interactions</b>							
Urban * Workgroup	---	----	-0.06	0.94	-0.06	0.94	
			1.36	(.04)	1.34	(.04)	
%GOP * Workgroup	---	----	0.002	1.00	0.002	1.00	
			1.04	(.002)	1.06	(.002)	
<b>Cross-level interactions</b>							
Urban * Property	---	----	---	----	<b>-0.21</b>	<b>0.81</b>	
					<b>2.21*</b>	<b>(.09)</b>	
Urban * Offense severity	---	----	---	----	0.06	1.06	
					0.27	(.21)	
Urban * Prior record	---	----	---	----	0.01	1.01	
					0.29	(.05)	
Urban * Trial disposition	---	----	---	----	-0.04	0.96	
					0.37	(.12)	
Urban * Fines	---	----	---	----	<b>0.59</b>	<b>1.80</b>	
					<b>3.37***</b>	<b>(.17)</b>	
Urban * Incarceration	---	----	---	----	-0.097	0.91	
					1.29	(.07)	
Urban * Male	---	----	---	----	0.03	1.03	
					0.50	(.06)	
Urban * White	---	----	---	----	-0.08	0.92	
					1.09	(.07)	
Urban * Age	---	----	---	----	-0.002	1.00	
					0.96	(.002)	
Multiparameter Tests							
Chi-square statistic	26.95		14.46		15.87		
Degrees of freedom	7		7		7		
p value	0.0006		0.04		0.026		
Level 2 interactions							
Chi-square statistic			2.91		2.89		
Degrees of freedom			2		2		
p value			0.23		0.23		
Cross-level interactions							
Chi-square statistic					21.02		
Degrees of freedom					9		
p value					0.013		

\*p < .05

\*\*p < .01

\*\*\*p < .001

## VI. Statewide Survey of Judges, District Attorneys, and Chief Probation Officers

The second study, a statewide questionnaire survey of judges, prosecutors, and chief probation officers, was intended to investigate whether policy disagreements and practical limitations are likely reasons why the level of restitution imposition was not higher. To examine both broad policy questions and specific questions regarding implementation, we conducted a statewide survey of criminal court judges, district attorneys, and chief probation officers in each of the 67 counties in Pennsylvania. We included district attorneys and chief probation officers because these individuals often make recommendations to judges and, at least for chief probation officers, because they are more likely than judges to know the effects of restitution orders (e.g., who pays and how much).

We expected that respondents' role in the system would affect what they believe is appropriate and would determine the kind of knowledge they are likely to have about the operation of the system. In addition, we expected that the urban/rural nature of respondents' county would affect their responses on the survey, in that research indicates that, compared to rural counties, urban counties typically have a higher degree of bureaucratization, more formality, and more specialization. In addition, the criminal cases brought in urban counties are generally more serious than those brought in rural counties.

We were also interested in understanding how restitution operates generally. For example, how the amount of restitution is determined varies across programs, with some relying on replacement cost, others on original cost, and still others on original cost minus depreciation (Hudson & Galaway, 1990).

### Method

#### Participants

In September 2001, questionnaires were sent to all 454 criminal court judges in Pennsylvania, whose names were obtained from a list maintained by the Pennsylvania Commission on Sentencing. Questionnaires were also sent to the 67 district attorneys and to the 67 chief probation officers in the state (one for each of the 67 counties in the state). Of the 454 judges, 322 (72%) were judges in urban counties and 132 (28%) were judges in rural counties. **The determination of a county as urban or rural was based on the distinction made by the Center for Rural Pennsylvania. The location of the numbering on the questionnaire (centered or bottom right) was an unobtrusive indicator of whether the respondent was from an urban or rural county. All responses were anonymous, although 150 respondents (66%) did identify their county.**

The final sample consisted of 225 individuals, 147 judges (33% response rate),<sup>16</sup> 30 district attorneys (45% response rate), and 49 chief probation officers (73% response rate).

The overall response rate (39%) is low, although similar to other studies of judges. Although the percentage of judges responding from urban counties (72%) was significantly higher than district attorneys (37%) and chief probation officers (35%) responding from urban counties,  $\chi^2(2, 220) = 28.65$ ,  $p < .001$ , the proportions from urban and rural counties were not significantly different from their proportion in the population.

### **Questionnaire**

The questionnaire contained 85 items divided into 21 sections. Several of the questionnaire items were adapted from a national survey of judges regarding their use of fines (Cole, 1992; Cole, Mahoney, Thornton, & Hanson, 1987). Discussed here are the 56 survey items relevant to the understanding of the results from Study 1 (see Appendix A). These items concerned the goals of restitution (four items), specific factors that judges might use when deciding whether to order restitution (eight items), the appropriateness of giving restitution to specific types of victims and third parties (nine items), and the types of information that judges might use to determine the amount of restitution owed (six items).

Additionally, there were questions on the types of background information available (six items), the effect of restitution on fine orders (one item), the importance of restitution for three types of victims (three items), the amount of contact with victims (one item), responses to slow payment (four items), and enforcement difficulties (eight items). All of the ratings of these items were made on 7-point scales. In addition, there was one item assessing the degree to which respondents believed collecting restitution was a problem, which used a 4-point scale. There were also five questions relating to specific responses to nonpayment which called for yes/no responses.

The questionnaire sent to judges began with the following statement:

**This study is concerned with the kinds of factors judges use to make sentencing decisions. In particular, we are concerned with restitution orders: when judges think restitution is appropriate, how much restitution they order, and what they do if the offender does not pay the restitution. This survey should take about 10 minutes to complete.**

The questionnaires sent to district attorneys and to chief probation officers contained the same items, although they were reworded slightly to reflect the fact that judges make the

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<sup>16</sup>An additional 15 judges responded: 9 judges said they did not engage in criminal sentencing, 1 was no longer a judge, 2 had not yet assumed office, 1 judge wrote that he could not reduce the factors that go into sentencing to numerical ratings, 1 judge wrote that her answers would be the same as those of her chief probation officer, and 1 judge wrote that his workload prohibited him from completing the questionnaire.

decision but that these individuals could make recommendations regarding sentencing decisions.

## Results

The results are presented in terms of the 12 sections of the questionnaire: the goals of restitution, factors used to determine an order of restitution, type of victims for whom restitution is ordered, factors used to determine the amount of restitution, background information available, the effect of restitution orders on fines, the importance of restitution for three types of crime-related expenses, the amount of contact with victims, the perceived difficulty in collecting restitution, actions taken in response to offenders' difficulty in making payment, responses to nonpayment, and difficulties in enforcement or collection.

### Goals of Restitution

Respondents were asked to rate the importance of four possible goals of restitution: compensation, punishment, rehabilitation, and deterrence. A 2 x 3 between (Type of County x Type of Respondent) x 4 within (Goals of Restitution) repeated measures analysis of variance of the extent to which restitution serves each of these four different goals revealed only one significant effect, for the within-subject assessment of the goals of restitution,  $F(3, 633) = 129.09, p < .001$ . Based on a post-hoc Newman-Keuls test ( $p < .05$ ), compensation ( $M = 6.45$ ) was rated significantly more important than punishment ( $M = 4.52$ ), punishment was rated significantly more important than rehabilitation ( $M = 4.29$ ), and all three were rated significantly more important than deterrence ( $M = 2.97$ ).

### Factors Used to Determine an Order of Restitution

Respondents were asked to rate the importance of eight factors used to determine restitution. A 2 x 3 between (Type of County x Type of Respondent) x 8 within (Determining Factors) repeated measures analysis of variance of ratings of the importance of these factors revealed significant effects for factors,  $F(7, 1428) = 83.02, p < .001$ , for the interaction of Factors and Type of Respondent,  $F(14, 1428) = 3.42, p < .001$ , and for the interaction of Factors and Type of County,  $F(7, 1428) = 2.60, p < .05$ . As can be seen in Table 2, respondents said that for determining whether to order restitution they relied primarily on victim input, the extent of the victim's injury, somewhat less on the type of offense, less on the type of sentence imposed, the offender's employment, and the offender's ability to pay, and least on the offender's family obligations and the offender's prior record. All differences were significant except those between type of sentence imposed, offender's employment, and offender's ability to pay.

The means for the interaction of Factors and Type of Respondent are presented in Table 2. The interaction of Factors and Type of Respondent suggests that while all three types of actors said they relied primarily on victim input and the extent of the victim's

injury, the difference between these two factors and the remaining factors was greater for district attorneys and chief probation officers than for judges. Specifically, judges were the least likely to follow the law. That is, they were significantly more likely than district attorneys and chief probation officers to say that they relied on the offender's ability to pay, the offender's obligation to family, the offender's employment, and the type of sentence the offender was given.

The interaction of Factors and Type of County suggests that while victim input, the extent of the victim's injury, and the offender's prior record are about equally important in both urban and rural counties, actors in urban counties place significantly more weight on the offender's ability to pay, the type of offense, the offender's family obligations, the offender's employment, and the type of sentence imposed.

### Types of Victims

Respondents were asked to rate their likelihood of ordering restitution for nine types of victims, six direct victims and three third party reimbursers. A 2 x 3 between (Type of County x Type of Respondent) x 9 within (Type of Victim) repeated measures analysis of variance of ratings of the nine types of victims revealed a significant effect for Type of County,  $F(1, 202) = 8.28, p < .05$ . Respondents from rural counties were more likely to say they would give restitution to all of the types of victims ( $M = 6.24$ ) than did respondents from urban counties ( $M = 5.78$ ). There was also a significant effect for Type of Victim,  $F(8, 1616) = 82.59, p < .001$ . Overall, respondents said they would award restitution for individual victims ( $M = 6.88$ ), small stores ( $M = 6.76$ ), police officers ( $M = 6.54$ ), large stores ( $M = 6.43$ ), corporations ( $M = 6.26$ ), and the Commonwealth ( $M = 6.19$ ). Respondents were less inclined to give restitution to third parties such as the Victim Compensation Board ( $M = 5.65$ ) and insurance companies ( $M = 5.06$ ), and much less likely to award restitution to purchasers of stolen goods ( $M = 3.63$ ). Based on a post-hoc Newman-Keuls test ( $p < .05$ ), all differences were significant except the difference between police and large corporations.

### Factors for Determining the Amount of Restitution

Respondents were asked to rate the importance of six factors that can be used to determine the amount of restitution. A 2 x 3 between (Type of County x Type of Respondent) x 6 within (Factors) repeated measures analysis of variance of ratings of these six factors revealed a significant between-subjects effect for type of respondent,  $F(2, 202) = 9.77, p < .001$ . Chief probation officers ( $M = 5.01$ ) and district attorneys ( $M = 4.71$ ) used information about the same, but both used these factors significantly more than did judges ( $M = 4.20$ ).

There were also significant within-subjects effects for Determining Factors,  $F(5, 1010) = 39.72$ . Overall, respondents said they relied primarily on the replacement cost ( $M = 5.97$ ), to a somewhat lesser extent, on insurance estimates ( $M = 5.03$ ), next most on original cost ( $M = 4.34$ )

and the victim's personal estimate ( $\underline{M} = 4.26$ ), and least on the police estimate ( $\underline{M} = 3.78$ ) and the victim's need ( $\underline{M} = 3.30$ ). All differences were significant except between original cost and victim's personal estimate.

### Background Information Available

**Respondents were asked to rate the availability of six types of background information.** A 2 x 3 between (Type of County x Type of Respondent) x 6 within (Types of Information Available) repeated measures analysis of variance of ratings of these six types of information revealed both significant between-subjects effects and significant within-subjects effects. In terms of the between-subjects analysis, there were significant effects for respondent type,  $F(2, 210) = 6.42, p < .01$  and for type of county,  $F(1, 210) = 18.58, p < .001$ . Overall, chief probation officers ( $\underline{M} = 5.80$ ) and judges ( $\underline{M} = 5.90$ ) had significantly more information available than did district attorneys ( $\underline{M} = 5.05$ ), and significantly more background information was available in rural counties ( $\underline{M} = 6.02$ ) than in urban counties ( $\underline{M} = 5.15$ ). The interaction was due to the fact that district attorneys in urban counties were especially likely to report not having background information available.

In terms of the within-subjects analysis, there were significant effects for type of background information,  $F(5, 1050) = 74.51, p < .001$ , for the interaction of background information and type of respondent,  $F(10, 1050) = 4.40, p < .001$ , and for the interaction of background information and type of county,  $F(5, 1050) = 2.80, p < .05$ . The main effect for background information was due to the fact that overall, respondents reported knowing the offender's prior record, aggravating or mitigating factors about the offense, and the offender's employment status, and were unlikely to know the offender's assets. All differences were significant.

The means for the interaction of background information and type of respondent are presented in Table 6-2. The interaction was due to the fact that whereas chief probation officers were likely to report knowing all of the information except the offender's assets, judges were likely to report knowing only the offender's criminal record, family status, employment status, and aggravating or mitigating factors of the offense, and district attorneys reported knowing only the offender's criminal record and any aggravating or mitigating factors about the offense. The interaction between background information and type of county was due to the fact that the differences between urban and rural counties, although all significant, were smaller for legally relevant factors (factors about the offense and criminal record), but much larger for information about the offender.

### Fines

Respondents were asked whether fines should be lowered in order to reduce the total economic burden on offenders. A 2 x 3 (Type of County x Type of Respondent) analysis of

variance of this item yielded a significant effect for type of respondent,  $F(2, 207) = 11.90, p < .001$ . Both chief probation officers ( $M = 1.73$ ) and district attorneys ( $M = 1.75$ ) rated this item significantly higher than did judges ( $M = 1.38$ ).

### **Importance of Restitution**

Respondents were asked to rate how important it is to order restitution for property crimes, for violent crimes, and for mental health counseling. A 2 x 3 between (Type of County x Type of Respondent) x 3 within (Importance) repeated measures analysis of variance of these three ratings revealed significant effects, for type of respondent,  $F(2, 210) = 2.90, p < .058$ , for type of fact,  $F(2, 420) = 43.29, p < .001$ , and for the interaction of Importance and Type of Respondent,  $F(4, 420) = 2.42, p < .05$ . Both chief probation officers ( $M = 6.39$ ) and district attorneys ( $M = 6.48$ ) rated restitution as significantly more important than did judges ( $M = 6.11$ ). Overall, respondents believed restitution was significantly more important for property crime victims ( $M = 6.64$ ) and violent crime victims ( $M = 6.57$ ), which did not differ significantly, than for reimbursement of mental health counseling ( $M = 5.40$ ). In terms of the interaction, the pattern of means indicated that for property and violent crimes, judges, district attorneys, and chief probation officers did not differ significantly in how important they rated restitution. For mental health counseling, however, district attorneys ( $M = 6.17$ ) rated restitution for mental health counseling significantly more important than did judges ( $M = 5.21$ ) and chief probation officers ( $M = 5.51$ ), whose ratings did not differ significantly.

### **Victim Contact**

Respondents were asked how much contact they had with victims. A 2 x 3 (Type of County x Type of Respondent) analysis of variance of this item yielded significant effects for type of county,  $F(1, 212) = 3.71, p < .055$  and for type of respondent,  $F(2, 211) = 37.74, p < .001$ . More victim contact was reported in urban counties ( $M = 3.56$ ) than in rural counties ( $M = 3.07$ ). In addition, judges ( $M = 2.11$ ) reported significantly less victim contact than did chief probation officers ( $M = 4.10$ ) and district attorneys ( $M = 3.73$ ), whose responses did not differ significantly.

### **Collecting Restitution**

Respondents were asked how difficult it is to collect restitution in their county. A 2 x 3 (Type of County x Type of Respondent) analysis of variance of this item yielded significant effects for type of county,  $F(1, 204) = 13.08, p < .001$ , and for type of respondent,  $F(2, 204) = 4.36, p < .05$ . Respondents believed collecting restitution was significantly more difficult in urban counties ( $M = 3.08$ ) than in rural counties ( $M = 2.60$ ). Judges ( $M = 2.94$ ) and district attorneys ( $M = 3.02$ ) believed collecting restitution was significantly more difficult than did chief probation officers ( $M = 2.56$ ). The interaction was not significant.

### Reactions to Difficulty in Making Payment

Respondents were asked to indicate the extent to which they took each of four actions if offenders had difficulty paying the ordered restitution. A 2 x 3 between (Type of County x Type of Respondent) x 4 within (Reactions) repeated measures analysis of variance of ratings of these four types of reactions revealed a significant between-subjects effect for type of respondent,  $F(2, 208) = 8.39, p < .001$ . Judges reported taking more actions ( $M = 3.45$ ) than district attorneys said they recommended ( $M = 2.90$ ), who in turn reported recommending significantly more actions than did chief probation officers ( $M = 2.85$ ).

There were also two significant within-subjects effects: for restitution adjustment,  $F(3, 624) = 260.55, p < .001$ ; for the interaction of restitution adjustment and type of county,  $F(3, 624) = 2.58, p < .055$ . The main effect for restitution adjustment was due to the fact that the main adjustment was to allow offenders a longer time to pay (see Table 6-3).

In terms of the interaction, actors in urban and rural counties were about equally likely to endorse allowing the offender a longer time to pay. However, actors in urban counties were more likely than actors in rural counties to endorse suspending restitution, imposing a lower restitution, and imposing community service in lieu of restitution.

### Response to Nonpayment

Respondents were asked to indicate how their county responds when an offender fails to pay a restitution order. Urban and rural counties were not significantly different in their use of notification letters (93% and 99%, respectively), telephone calls (66% and 76%, respectively), and warrants (84% and 83%, respectively). However, actors in rural counties (85%) were significantly more likely to initiate proceedings for indirect criminal contempt than actors in urban counties (69%),  $\chi^2(1, 206) = 6.28, p < .05$  [Yates' correction]. Actors in urban counties (34%) were more likely than actors in rural counties (16%) to turn the account over to a private or government collection agency,  $\chi^2(1, 203) = 7.04, p < .01$  [Yates' correction].

### Enforcement Difficulties

Respondents were asked to indicate the extent to which eight factors (five system-related and three offender-related) accounted for difficulties in enforcement or collection of restitution orders. A 2 x 3 between (Type of County x Type of Respondent) x 8 within (Factors) repeated measures analysis of variance of ratings of these eight factors revealed significant effects for enforcement difficulties,  $F(7, 1358) = 27.29, p < .001$ , for the interaction of Enforcement Difficulties and Type of Respondent,  $F(14, 1358) = 1.75, p < .05$ , and for the interaction of Enforcement Difficulties and Type of County,  $F(7, 1358) = 3.79, p < .001$ . The effect for the repeated measure was due to the fact that the three factors about

the offender (the last three factors in Table 6-4) were judged to be more important than were the five factors about the system (the first five factors).

As can be seen in Table 6-4, the interaction of Enforcement Difficulties and Type of Respondent is due to the fact that, in terms of system factors, judges were significantly more likely than chief probation officers to believe that the county had inadequate collection methods, too much time elapses, and there is inadequate notification. In terms of individual factors, district attorneys were significantly more likely than chief probation officers to believe that offenders do not believe that anything will happen to them if they do not pay and that offenders cannot be located.

The interaction of Enforcement Difficulties and Type of County was due to the fact that the urban counties had more problems with four of the five system difficulties and with two of the offender-related difficulties (see Table 6-4). There was one factor (inability to locate the offender) that was more problematic in rural counties than in urban counties.

### Discussion

There was clear agreement among respondents that the primary purpose of restitution was to compensate victims and that secondary purposes were the punishment and rehabilitation of offenders. Although not surprising, this finding is interesting because it is somewhat inconsistent with the law of Pennsylvania. For example, one court declared that "... while restitution is acknowledged to have a deterrent and penal effect, ... it is clear that its primary purposes are completely remedial: compensation to the victim for loss occasioned by the crime and rehabilitation of the defendant" (Commonwealth of Pennsylvania v. Kline 1997, at 877). Moreover, multilevel analyses of statewide data suggest that orders of restitution are more consistent with the purposes of punishment and rehabilitation than with victim compensation.

In general, the survey results indicate that judges' ratings are less consistent with the mandatory statute than are those of district attorneys and chief probation officers. This pattern was especially evident in connection with factors used to determine restitution. That is, judges were significantly more likely than the other two groups to rely on information, such as the offender's ability to pay and the offender's family obligations, that is specifically prohibited by the law. Relatedly, judges were more likely than the other actors to believe it is appropriate to make more adjustments for failing to pay.

These results may be due to the possibility that judges have less information than the other groups. This alternative has some support in that judges were significantly more likely than the others, especially chief probation officers, to say that they did not know whether offenders paid restitution and how much. However, this possibility is not

completely supported, in that questions on the amount of background information available indicated that judges have the same amount of information as do probation officers about the offender's income and family status/ties, although they have significantly less information about the offender's assets. Despite the fact that they probably have the same access to presentence reports as do probation officers and judges, district attorneys said they had significantly less information about these factors than did both of the other groups.

Rather than differential access to information, the reason judges' ratings are less consistent with the law may be that they have significantly less contact with victims than do the other two groups. This insulation from victims, coupled with the fact that they are generally more secure in their jobs, may mean that they can exercise more independence.

Aside from role differences, the results of this survey also indicate that there are differences between counties in their handling of restitution. For example, in terms of enforcement difficulties, actors in rural counties reported significantly fewer problems on seven of the eight items. In general, urban and rural counties took the same actions, although overall rural counties took more actions themselves (i.e., they are less likely to turn it over to a collection agency).

## GENERAL DISCUSSION

The survey results provide some help in understanding the analyses of the actual decisions. That is, the fact that restitution was imposed in only 58% of restitution-eligible cases appears to be due to judges' disagreement with some goals of the policy, constraints on the system's ability to provide alternative mechanisms to enforce the law, and the system's inability to provide information about those alternatives.

### Policy Disagreements

One reason why restitution was not imposed at higher rates concerns disagreements with the statute. Although judges, prosecutors, and probation officers all agreed that the primary goal of restitution is victim compensation, they also said that it serves both to rehabilitate and punish the offender. Given that punishment is not supposed to be a goal of restitution but that decision makers believe that in fact it is, they may be inclined to avoid imposing restitution in order to avoid punishing the offender further. Consistent with this explanation for why restitution was not imposed in all situations where it might have been, one judge wrote the following on his survey: **"Many judges give stiff sentences in lieu of restitution, less stiff sentences if restitution is ordered. This practice is incompatible to the given situation and dissatisfies the victims and breaks down the reasons for restitution and its effective collection."**

Moreover, even though the statute requires restitution to third parties, such as the Victim Compensation Board and insurance companies, all three groups of respondents said they believed

restitution was significantly less appropriate for third parties than for individuals or businesses. Judges' written comments on the survey also emphasized this point. For example, one judge said, **"Although I order restitution in every case where it is claimed, I believe it is far more important that an individual, rather than a corporate entity, is made whole. Such losses are a part of doing business. For insurance companies, I do not see an insured getting a rebate because a defendant reimbursed the company. ..."**

#### Practical Constraints

Aside from policy disagreements, judges might not impose restitution in all cases because of practical limitations on the system's ability to collect it. Or, as one judge from a large city put it, **"I hear only major crimes where 90+% of the time the offenders are indigent. You can't get blood out of a stone. When you have rapes, aggravated assaults, gun-point robberies [by] those with no skills [and] who have never held a job, what good is restitution? They will be in jail for five to ten years and have no assets. It's the exception, not the rule, in the major cases in a large city."**

#### Symbolic Nature of Restitution

One judge wrote that "Many judges in my county feel criminals are not capable of paying restitution. My experience has been they will pay if they face jail." Even so, it was much more common for judges to indicate that they had no real expectation that the restitution would be paid. For example, one judge said, **"This court expends significant resources, including regularly scheduled collection court proceedings, to collect limited amounts of ordered restitution due to low income levels and poverty. Nevertheless, even collection of small amounts reinforces the restorative nature of the judicial system and the need to reinforce accountability to offenders."** This recognition that much of the imposed restitution will not be paid suggests that judges' purpose in ordering it is primarily symbolic.

**Table 6-1. Factors Used to Determine Restitution, Overall, by Type of Respondent, and by Type of County**

<b><u>Factors</u></b>	<b><u>Overall</u></b>	<b><u>Type of Respondent</u></b>			<b><u>Type of County</u></b>	
		<b><u>Judges</u></b>	<b><u>District Attorneys</u></b>	<b><u>Chief Probation Officers</u></b>	<b><u>Urban</u></b>	<b><u>Rural</u></b>
Ability to pay	3.31 <sup>c</sup>	3.66 <sup>ef</sup>	2.83 <sup>cd</sup>	2.49 <sup>abcd</sup>	3.64 <sup>e</sup>	2.85 <sup>cd</sup>
Victim input	5.79 <sup>f</sup>	5.62 <sup>ghi</sup>	6.21 <sup>i</sup>	6.09 <sup>hi</sup>	5.79 <sup>i</sup>	5.79 <sup>i</sup>
Type of offense	4.15 <sup>d</sup>	4.09 <sup>f</sup>	4.25 <sup>f</sup>	4.31 <sup>f</sup>	4.40 <sup>g</sup>	3.80 <sup>ef</sup>
Extent of victim's injury	5.51 <sup>e</sup>	5.51 <sup>gh</sup>	5.25 <sup>g</sup>	5.64 <sup>ghi</sup>	5.65 <sup>i</sup>	5.30 <sup>h</sup>
Offender's prior record	2.54 <sup>a</sup>	2.75 <sup>bcd</sup>	2.04 <sup>ab</sup>	2.16 <sup>abc</sup>	2.59 <sup>abc</sup>	2.48 <sup>ab</sup>
Offender's family obligations	2.78 <sup>b</sup>	3.18 <sup>de</sup>	1.96 <sup>a</sup>	1.96 <sup>a</sup>	3.06 <sup>d</sup>	2.36 <sup>a</sup>
Offender's employment	3.39 <sup>c</sup>	3.69 <sup>ef</sup>	2.67 <sup>abcd</sup>	2.84 <sup>cd</sup>	3.85 <sup>ef</sup>	2.73 <sup>bcd</sup>
Type of sentence imposed (e.g., prison, probation)	3.42 <sup>c</sup>	3.84 <sup>ef</sup>	2.75 <sup>bcd</sup>	2.49 <sup>abcd</sup>	4.02 <sup>f</sup>	2.56 <sup>abc</sup>

**Note.** Ratings were made on a 7-point scale, with 7 indicating more importance placed on the factor. Between the vertical lines, means that share a common superscript are not significantly different according to a post-hoc Newman-Keuls test ( $p < .05$ ).

**Table 6-2. Background Information Available Overall, by Type of Respondent, and by Type of County**

<u>Background Information</u>	<u>Overall</u>	<u>Type of Respondent</u>			<u>Type of County</u>	
		<u>Judges</u>	<u>District Attorneys</u>	<u>Chief Probation Officers</u>	<u>Urban</u>	<u>Rural</u>
Offender's criminal record	6.78 <sup>f</sup>	6.81 <sup>fg</sup>	6.89 <sup>g</sup>	6.63 <sup>fg</sup>	6.72 <sup>gh</sup>	6.88 <sup>h</sup>
Offender's family status/ties	5.93 <sup>c</sup>	6.07 <sup>efg</sup>	5.14 <sup>cd</sup>	5.98 <sup>defg</sup>	5.73 <sup>d</sup>	6.22 <sup>ef</sup>
Offender's income	5.38 <sup>b</sup>	5.45 <sup>cde</sup>	4.32 <sup>b</sup>	5.86 <sup>cdef</sup>	5.12 <sup>c</sup>	5.77 <sup>d</sup>
Offender's employment status	6.08 <sup>d</sup>	6.21 <sup>efg</sup>	5.14 <sup>cd</sup>	6.28 <sup>efg</sup>	5.91 <sup>de</sup>	6.33 <sup>efg</sup>
Offender's assets	4.32 <sup>a</sup>	4.27 <sup>b</sup>	3.50 <sup>a</sup>	5.02 <sup>c</sup>	4.01 <sup>a</sup>	4.77 <sup>b</sup>
Aggravating/mitigating factors	6.18 <sup>e</sup>	6.19 <sup>efg</sup>	6.11 <sup>efg</sup>	6.21 <sup>efg</sup>	5.99 <sup>de</sup>	6.45 <sup>fg</sup>

Note. Ratings were made on a 7-point scale, with 7 indicating greater availability of the information. Between the vertical lines, means that share a common superscript are not significantly different according to a post-hoc Newman-Keuls test ( $p < .05$ ).

**Table 6-3. Interaction of Adjustments for Failure to Pay Restitution by Type of County**

<u>Type of Adjustment</u>	<u>Overall</u>	<u>Type of County</u>	
		<u>Urban</u>	<u>Rural</u>
Suspend the restitution	1.77 <sup>a</sup>	1.99 <sup>c</sup>	1.46 <sup>a</sup>
Impose a lower restitution	2.08 <sup>b</sup>	2.32 <sup>d</sup>	1.76 <sup>b</sup>
Allow offender a longer time to pay	6.40 <sup>d</sup>	6.45 <sup>g</sup>	6.33 <sup>g</sup>
Impose community service instead	2.84 <sup>c</sup>	3.00 <sup>f</sup>	2.63 <sup>e</sup>

**Note.** Ratings were made on a 7-point scale, with 7 indicating greater likelihood of taking the action. Between the vertical lines, means that share a common superscript are not significantly different according to a post-hoc Newman-Keuls test ( $p < .05$ ).

**Table 6-4. Enforcement Difficulties with the Use of Restitution Overall, by Type of Respondent, and by Type of County**

<u>Enforcement Difficulties</u>	<u>Overall</u>	<u>Type of Respondent</u>			<u>Type of County</u>	
		<u>Judges</u>	<u>District Attorneys</u>	<u>Chief Probation Officers</u>	<u>Urban</u>	<u>Rural</u>
<u>System Related</u>						
Inadequate collection methods	3.55 <sup>b</sup>	3.84 <sup>bcde</sup>	3.45 <sup>abcd</sup>	2.80 <sup>a</sup>	3.87 <sup>c</sup>	3.15 <sup>ab</sup>
Too much time elapses	3.79 <sup>c</sup>	4.02 <sup>cdef</sup>	3.86 <sup>bcde</sup>	3.09 <sup>ab</sup>	4.07 <sup>cd</sup>	3.43 <sup>b</sup>
Inadequate notification	3.50 <sup>b</sup>	3.81 <sup>bcde</sup>	3.17 <sup>abc</sup>	2.84 <sup>a</sup>	3.93 <sup>c</sup>	2.97 <sup>a</sup>
Inadequate warrant services	3.70 <sup>c</sup>	3.81 <sup>bcde</sup>	3.41 <sup>abcd</sup>	3.58 <sup>abcde</sup>	3.89 <sup>c</sup>	3.46 <sup>b</sup>
No penalty for not paying	3.31 <sup>a</sup>	3.26 <sup>abc</sup>	3.59 <sup>abcd</sup>	3.27 <sup>abc</sup>	3.41 <sup>b</sup>	3.19 <sup>ab</sup>
<u>Offender Related</u>						
Offenders do not believe anything will happen for not paying	4.90 <sup>e</sup>	4.90 <sup>gh</sup>	5.59 <sup>h</sup>	4.44 <sup>efg</sup>	5.03 <sup>fg</sup>	4.73 <sup>efg</sup>
Offenders cannot be located	4.56 <sup>d</sup>	4.68 <sup>fg</sup>	4.83 <sup>g</sup>	4.04 <sup>cdef</sup>	4.37 <sup>de</sup>	4.80 <sup>fg</sup>
Offenders cannot afford to pay	4.89 <sup>e</sup>	5.10 <sup>gh</sup>	4.93 <sup>gh</sup>	4.29 <sup>defg</sup>	5.09 <sup>g</sup>	4.64 <sup>ef</sup>

**Note.** Ratings were made on a 7-point scale, with 7 indicating that the factor is perceived to account more for enforcement or collection difficulties. Between the vertical lines, means that share a common superscript are not significantly different according to a post-hoc Newman-Keuls test ( $p < .05$ ).

## VII. County-Level Analyses of Restitution Decisions

In addition to the state-level analyses, we conducted three county-level analyses. The first was of decisions in Allegheny County in 1994. The second was of decisions in Blair, Centre, Dauphin, and Erie Counties in 1994 and 1996. The third was of decisions in Philadelphia County from 1994-2000.

### A. Allegheny County (Pittsburgh)

**In 1994, Pennsylvania was one of only twenty states that did not mandate restitution under any circumstances (Sarnoff 1996), meaning that judges had discretion in deciding when and to whom restitution should be ordered.** This project investigated factors related to the imposition and payment of restitution orders and the relationship between restitution payment and recidivism. Additionally, subsequent analyses were conducted with regard to payment of fines in order to examine whether payment of fines affects recidivism in the same way as the payment of restitution.

#### Data and Sample

**Data for the study came from Allegheny County (Pittsburgh) probation records, court records, and Integrated Court Information System files, which provide payment information on each defendant for both restitution and fines. The primary source of data for the present study was 1994 probation records, the last year in which judges had complete discretion in the imposition of restitution. Probation cases were sampled because only such cases are likely to involve restitution orders under the 1994 sentencing guidelines. Records were quota sampled from six separate months (January, March, May, July, September, and November) in 1994, providing a final sample of 903 cases. Cases were sampled from every other month in the year in order to avoid possible seasonal effects relating to the commission of crime and court scheduling.**

#### Design and Measures

**Information on all of the relevant measures was coded directly from the files of the sampled cases. Background data for the cases, such as the offender's sex, race, prior record, employment, and type of crime, were obtained from the face sheet contained in the probation records. Prior record was indicated by the number of prior convictions in Allegheny County. The offender's employment score was a dichotomous (1-0) variable, with a score of one indicating some evidence that the offender was employed during the probation period and a score of zero otherwise. Type of crime was coded directly from the court and probation records. For all of the analyses presented here, crimes were recoded as violent or non-violent based on the first three charges. In cases where there were both violent and non-violent charges, the crime was coded as violent. Additionally, sentence length (in months) was recorded as a proxy for seriousness.**

Finally, a variable was created based on the type of crime in order to capture the ease in quantifying the harm to the victim. It may be the case that when the amount of damages is easier to assess (in monetary terms), the deservedness of the victim is more clear-cut. For each case, this measure, called quantifiable damage, was coded into one of three levels: not quantifiable (e.g., indecent exposure; 16% of victim cases), potentially quantifiable (e.g., assault; 42% of victim cases), or definitely/easily quantifiable (e.g., robbery, forgery; 42% of victim cases). In order to assess the reliability of this coding, a second independent rater coded a random subset of 100 cases. As measured by both percent agreement (92%) and kappa (.87), the reliability was acceptable.

The measure of whether or not there was a restitution order was dichotomous. The amount of restitution and/or fines ordered was measured in dollars and was obtained through the Integrated Computer Information System (ICIS), a computer database used by the probation office and the clerk of courts to track payment records of defendants. Payment of restitution was recorded from ICIS in terms of the amount and the percent of the total order paid.

The indicator of recidivism in this study was an arrest for a new criminal offense that occurred between the date of sentencing and the beginning of data collection (August 1997) and that was not subsequently dismissed. For two reasons, arrests for technical probation violations were not counted as recidivism. First, arrest for a new offense directly reflects subsequent offending. Second, using probation violation is problematic because it encompasses a wide range of behavior, not necessarily just criminal offending. In fact, failure to pay is itself a probation violation, creating a tautology in the prediction of recidivism. Using the time period between the beginning of probation and the beginning of data collection allows for the maximum opportunity to detect recidivism but creates a problem with regard to differential exposure. Those offenders who were put on probation earlier in 1994 were 'at risk' for rearrest for a longer period of time than were those put on probation at the end of 1994. Unfortunately, arrest dates for the new offenses were not available for many of the offenders, so the exposure time could not be standardized. Instead, a chi-square analysis was conducted to ensure that the timing of probation (starting probation early in the year versus late in the year) was independent of rearrest. The test indicated that those who began probation early in the year were not more likely to be rearrested than those who began it late in the year (Chi-square = .70,  $n = 481$ ,  $p > .40$ ).

## Results

The majority of probationers were young, single, male, had little or no prior record, and were not ordered to pay restitution. This pattern holds for both the entire sample and the sub-sample of cases involving victims. Logistic regression analyses were used to examine restitution order, payment/non-payment, and rearrest. Linear regression was used to estimate effects on the percent of restitution paid. All analyses included control variables for race, sex, age, marital status, employment, and whether the crime was violent or non-violent. Additional variables included in particular analyses are discussed in each analysis section.

Imposition of restitution. This analysis was conducted only on those cases ( $n = 481$ ) in which there was a victim. Coefficients for the analysis are presented in Table 2. Five controls were added to the base model in this analysis: sentence length, the number of prior convictions, the non-violent crime indicator, the type of victim, and the measure of ‘quantifiable damage.’

Few of the variables significantly influenced the imposition of restitution. Sentence length approached statistical significance ( $p = .051$ ), suggesting that a longer sentence slightly increased the likelihood of a restitution order. This trend could be interpreted in two ways. First, it may be that those who commit more serious crimes are more likely to receive restitution. Such an interpretation makes sense in that offenders who commit more serious offenses are often subjected to additional sanctions. On the other hand, the effect could be an artifact of sentence length itself rather than seriousness. That is, it may be that with very short sentences (less than six months), judges believe that the offender will not have adequate time to pay the restitution order. Quantifiable damage was the only significant effect, suggesting that a 1-unit increase in the ease of quantification made a restitution order 2.21 times more likely. That is, it seems that judges find monetary offenses more appropriate candidates for restitution orders. On the other hand, it may just be that judges order restitution when it is easier to do so (i.e., when the amount of damage is clear).

Payment of restitution. There were 127 restitution orders in the sample, with a mean amount of \$1642.07 and a median amount of \$315.00. About half (48%) of the defendants paid their restitution in full, 36% paid some of their restitution, and 16% did not pay any of their restitution. Of those who paid ‘some’ of their restitution, 69% (25% of the total sample) paid less than half of the restitution ordered. The payment of restitution was examined in two ways. First, a logistic regression with added control variables for type of victim, available payment time, and rearrest estimated effects on payment versus non-payment. Then, an ordinary least squares regression with the same control variables estimated the effects on the amount of restitution paid (in percent).

The multivariate analyses on both payment of restitution and rearrest were conducted only on unmarried individuals. When the marriage indicator was included, the coefficient was undefined, which creates difficulties with model convergence. This effect occurred because there were few married persons who received an order of restitution ( $n = 11$ ), and the distribution of their payment behavior was highly skewed: all of the married people paid some of their restitution, and nine paid all of the restitution ordered. These eleven subjects were predominantly white (81%), male (72%), and employed (63%). Most had little or no prior record, were older ( $M = 42$ ), and had committed crimes that were financial in nature (i.e., theft, fraud). In other words, these defendants were not high-risk offenders. However, these data do suggest that payment is related to marriage.

The results of the logistic regression on payment/non-payment are presented in Table 3. Three significant effects emerged in this analysis. First, as is consistent with previous work, females were significantly less likely to pay their restitution, presumably because they have fewer resources. Second, business victims were more likely than individual victims to receive restitution payment. This result could reflect the fact that many of the cases that received

restitution orders involved white collar offenses, the perpetrators of which may be more able to pay. Alternatively, it is possible that businesses were more persistent in pursuing restitution payment or that the system provides more consideration to business victims. Third, rearrest was significantly related to payment, such that those who were rearrested were less likely to pay restitution. This last effect is not surprising, especially for offenders who may have been jailed as a result of the new offense.

Given this possibility, a variable reflecting the time available for payment was included in order to control for the time during which the offender could have paid restitution. If the offender was rearrested, the measure was equal to the number of months that he or she was on probation prior to the arrest. If the offender was not rearrested (or if the rearrest occurred after probation had expired), the measure was equivalent to the length of his or her sentence. Although such a bound is somewhat artificial because offenders could have continued to pay after their sentence had expired, it was the closest approximation available for those who were not rearrested during their probation period. Because the effect of rearrest on payment was significant even after controlling for the amount of time available for the offender to pay, the effect of rearrest on payment probably does not simply reflect payment time being cut short by a new offense, a conclusion that is reinforced by the two stage least squares analysis discussed below. The examination of what percentage of the restitution was paid revealed effects relatively consistent with the payment/non-payment analysis.

Effects of payment on recidivism. Two logistic regression analyses using different indicators of restitution payment were conducted to examine the effects of payment on rearrest. One analysis was conducted with the payment/non-payment dichotomy, and a separate analysis was conducted with the percent paid measure. Both analyses also controlled for available payment time. As is consistent with prior research, for both equations, sex, race, and age were significant predictors of rearrest; males, minorities, and younger people were more likely to be rearrested, regardless of payment. Although the dichotomous indicator of restitution payment did not reach statistical significance in predicting rearrest, the indicator reflecting the percentage of restitution paid was significantly negatively related to rearrest. That is, it seems that restitution may reduce recidivism, but its effectiveness is largely a function of how much of the ordered amount is paid. Interestingly, the amount of time allotted for payment is significant in both equations, suggesting that the more time probationers have to pay restitution, the less likely they are to be rearrested. This finding is counterintuitive in one sense, as previous research suggests that extended time under supervision (operationalized as the time allotted for payment) increases the odds of both probation violation and rearrest (Schneider et al., 1980). It is possible, however, that increased time makes the sanction seem more reasonable and fair, decreasing defiance of law. The finding might also reflect an artifact of the direct effect of rearrest on the allotted time for payment. Caution must be exercised in interpreting the effects of the amount of restitution paid on rearrest, because the direction of causation is unclear. That is, probationers may experience benefits from restitution and therefore abstain from crime, or probationers who are rearrested may simply be unable to complete payment because they were rearrested. Because the causal relationship is uncertain, only an analysis that allows for a reciprocal relationship between payment and rearrest can adequately determine the likely nature of the relationship.

Two-stage least squares on payment and rearrest. In order to untangle the reciprocal effects of payment and rearrest and isolate each of these effects, a two-stage least squares regression was conducted. The statistical problem created by simultaneous effects is that the error from the dependent variable is correlated with one of the predictor variables. To overcome this problem, two-stage least squares regression uses instrumental variables which are directly related to one of the problem variables but not to the other. These instrumental variables are then used to create proxy or replacement variables that can be utilized in the analysis because they are not correlated with the error, thereby separating the simultaneous effects and removing the correlation among the errors (Foster & McLanahan 1996).

In the present study, two-stage least squares analyses were needed because the error associated with rearrest was correlated with restitution payment. The instrumental variable used here for rearrest was sentence length, which had a direct relationship with rearrest but not with payment. The instrumental variable used for payment was the type of victim.

In stage one, the logistic regression analyses were conducted on both payment (including the sentence length instrument) and rearrest (including the type of victim instrument), and the predicted values (of payment and rearrest) were then saved as new variables. In stage two, the analyses were run again with the new variables (predicted values) for payment and rearrest. The results indicated that the primary causal direction of the effect was from payment to rearrest. That is, those who paid restitution were less likely to be rearrested, controlling for the reciprocal effect rearrest may have had on the offender's ability to pay restitution. Although causality cannot be ascertained from these correlational data, the results from the two-stage least squares analysis are promising with regard to the potential of restitution. That is, the results of the two-stage least squares, together with the fact that there was no selection effect detected for either restitution order or payment, suggest that restitution payment may offer some benefits to offenders and the justice system generally. Although payment reduced rearrest overall, the effect was far stronger with married individuals, and somewhat stronger with employed and older individuals.

Effects of fine payment on rearrest. In order to determine whether restitution payment is different from making payment generally, we conducted analyses on fines to determine whether predictors and outcomes of fine payment are the same as those for restitution. The analyses were conducted only on those cases that involved a victim but did not have a restitution order ( $n = 246$ ). Cases with restitution orders could not be included because Allegheny County rules required probationers who had to pay both restitution and fines to pay restitution first.

The most noteworthy finding is that fine payment was not significantly related to rearrest. The only significant predictors of rearrest when fine payment was included were sentence length, non-violent crime, and employment. That is, those with longer sentences, those who committed non-violent crimes, and those who were unemployed were more likely to be rearrested. The absence of a finding supporting an effect of payment of fines on rearrest suggests that there is something distinct about restitution orders that affects rearrest.

## Discussion

This study provided a systematic examination of the predictors and outcomes of adult victim restitution in its most common application: as a condition of probation. It found that the imposition of restitution was predicted primarily by the ease of quantifying harm, rather than by factors that made offenders ‘good risks.’ The analyses regarding the payment of restitution revealed that in the majority of cases offenders paid most of what they were ordered to pay. However, there was also a substantial minority (41%) who paid nothing or less than half of their restitution orders. Female defendants were less likely than male defendants to make any payment, and black defendants paid a smaller proportion of the ordered amount than did white defendants. Both of these effects likely resulted from females and minorities having fewer resources than males and whites, although specific data regarding offenders’ resources was not available. In terms of victim characteristics, business victims were more likely than individual victims to be paid something and they were paid a larger percentage of what had been ordered. This finding suggests that restitution practices in Allegheny County in 1994 did not provide the benefits to individual victims that had been sought by victims’ advocates.

Moreover, the results indicated that the payment of restitution lowered rearrest, especially among those who were more integrated into the community. That is, those who paid their restitution were less likely than those who did not pay their restitution to be rearrested. Further, the analyses suggested that payment provided more benefit when offenders were integrated in the community (i.e., married, employed, older). It seems likely that community integration may act as a form of social capital to allow offenders to reintegrate more easily into society, as defiance theory suggests. Although there is clearly a reciprocal relationship between payment and rearrest, the two-stage least squares analysis revealed that primary effect was from payment of restitution to rearrest rather than rearrest curtailing payment.

Finally, the analyses on fine payment revealed that the payment of fines had little or no effect on recidivism. Thus, it seems that the effects of restitution were specific to the act of repairing damage to the victim, rather than being an artifact of payment.

To test the generalizability of these findings, we collected an additional 490 cases from 1996 probation files. Analyses of these data indicated that restitution was imposed more frequently for whites, for offenders with no history of violence, for property crimes, for crimes against individuals rather than businesses, and for damages that were easily quantified. Larger restitution amounts were ordered for crimes against businesses than for crimes against individuals. A greater proportion of restitution was paid when damages were easily quantifiable. In sum, most of the findings from the original study using 1994 data were replicated with the new data set.

## B. Four-County Study

The study of restitution in Allegheny County can be extended in two ways. First, because the sample came from only one county, possible contextual effects could not be investigated, especially those factors that might be expected to affect judges' imposition of restitution and the system's ability to ensure that offenders make their required payments. Second, the sample was taken from a one-year period when judges were not mandated to impose restitution. Because there was a statutory change the next year making restitution mandatory, the Allegheny County study did not investigate whether and how the statutory change affected the imposition of restitution.

The present study addresses these limitations by collecting sentencing information from 1,785 offenders in four counties and by sampling cases from both before and after the statutory change. Of particular theoretical importance is that the four counties included in the study allow an examination of two contextual factors: the population size of a county and the presence/absence of a special unit devoted to the collection of economic sanctions. In terms of size, two counties had relatively large populations and two had relatively small populations. In terms of collecting restitution, two counties had specialized collections units and two did not.

### Population Size

Counties with small populations are more likely than counties with large populations to have greater acquaintance density. That is, in less populated counties, individuals are likely to have both more acquaintances in their community and to have a higher percentage of all their acquaintances who live in the community than are individuals in more populous counties (Weisheit, Wells, & Falcone, 1995). One likely effect of this acquaintance density is that actors in the criminal justice system are more likely to know personally a higher percentage of individuals in the county, to be more aware of victims' needs and offenders' problems, and thus to be more responsive to those conditions under which restorative sanctions would work best. In contrast, in more populous counties, where criminal justice personnel are simply trying to process cases and where they are less likely to know victims personally, victims' needs and offenders' problems would be expected to have less effect on decisions about restitution.

These implications of population size for restitution led us to two hypotheses. First, we hypothesized that smaller counties would impose restitution more frequently than larger counties because of the closer social ties between all of the actors involved, as compared to the greater anonymity in larger counties. Second, we hypothesized that offenders residing in smaller counties would pay more of their restitution than would offenders in larger counties because probation officers in these counties would be more likely to respond to the needs of both the victim (in terms of ensuring payment) and the offender (in terms of making accommodations so that the offender would be able to pay).

### Specialized Units vs. Overall Responsibility

In addition to the population of a county, we suspected that organizational factors, specifically whether or not there was a specialized collection unit, would affect the imposition and payment of restitution. In organizing a probation office, it is possible to make probation officers responsible for all aspects of probation supervision or to divide those responsibilities, such that, for example, some workers are responsible for monitoring the payment of economic sanctions and others are responsible for the remaining aspects of probation supervision.

This issue relates more generally to theories about organizations. Whether to assign workers to perform specific tasks that are coordinated hierarchically or to make workers responsible for a large cluster of tasks is a central decision in the design of organizations (Scott, 1992, p. 264). In particular, the division of labor is assumed to make individual workers more productive because workers hone their skills for a narrow task, becoming experts through learning and repetition (Scott, 1992, p. 154). Weber (1947) believed that the ideal bureaucracy, like the ideal industrial organization, involved technical expertise and a division of labor, in that this professional bureaucracy would be the most efficient, precise, and reliable. Similarly, Simon (1996, p. 207) argued that complex systems often can be described and understood in terms of a hierarchical structure of subsystems. In such systems, solving a component issue will lead to the solution of the larger problem.

With respect to probation supervision, the question is whether the component tasks are independent, in which case, dividing the tasks among groups would lead to optimal performance or whether they are overlapping, in which case dividing probation supervision tasks would not be optimal. More specifically, the question is whether separately monitoring and collecting restitution payments from offenders facilitates the goals of getting money to the victim (to repair the harm) and increasing the offender's awareness of the victim's harm (to rehabilitate the offender) or whether monitoring offenders' payments separately from their other probation responsibilities interferes both with offenders' actual payment of the ordered sanctions and with their ability to avoid future crime.

In terms of restitution collection, there are three reasons why specialized collection units should be better than having probation officers monitor and enforce collection as part of their overall responsibilities. First, specialized collection units decrease the overall burden on probation officers and permit them to focus more time on monitoring other aspects of offenders' supervision conditions (e.g., employment, substance use, travel, absconding). Second, probation officers' role can be difficult because there is likely to be ambiguity about whether their primary responsibility is counseling, supervision, or the collection of fees (Olson & Ramker, 2001). Thus, specialized units would lessen the conflict that many probation officers face when they attempt to build a working rapport with an offender in an effort to establish trust and, at the same time, demand monetary payments.

Despite these potential advantages of separate collection units, there are also reasons why specialized units might be worse. First, because specialized collections officers are under pressure to justify their continued utility, as measured in terms of total monetary collections and particularly collections that support the office, they may be unwilling to accept small "good faith" payments in the short term, even if doing so would increase the likelihood that the offender

would remain in the community and ultimately pay more in the long run. They may also be more likely to subvert the rules governing the allocation of offenders' payments among restitution, court costs, fines, and supervision payments by diverting more of the payment toward supervision costs. Second, specialized collection officers are probably less able to respond to the needs of individual offenders than are probation officers. The rules governing specialized collection units generally permit less discretion in decisions about when to penalize an offender for failing to pay than those governing probation offices. In general, specialized collection agents' knowledge about offenders is limited to factors related to the monetary penalties owed, whether they have paid these penalties, and offenders' capacity to pay them. But specialized collection officers are probably unaware of whether offenders are in compliance with their other supervision conditions and of whether probation officers have complaints about offenders. Consequently, it may be difficult for specialized collection officers to judge when an offender is putting forth a sincere effort to meet the terms of his or her probation but is simply having difficulty making the payments versus when an offender is simply failing at community supervision altogether.

Third, the establishment of specialized units separates restitution and other monetary penalties from the other components of an offender's supervision, and, consequently, from the larger goals of rehabilitation and deterrence that restitution is intended to meet. Specifically, excepting ARD cases,<sup>17</sup> with specialized units an offender's successful completion of his or her probation or parole conditions is not tied to the successful payment of court ordered monetary penalties; an offender can successfully discharge his or her probation or parole supervision without having fully paid costs, fines, restitution, and supervision fees. Instead, the collections unit continues to monitor and enforce the payment of monetary penalties. Thus, there may be a disconnect between the punishment of the crime (e.g., payments, community service, or supervision) or the treatment of the offender (e.g., increasing her awareness of the victim's harm, substance abuse programs, counseling) and the payment of monetary penalties, ultimately making it difficult for restitution to achieve rehabilitation goals.

Taking into account these conflicting rationales, we hypothesized that judges would impose restitution more often in counties with specialized versus nonspecialized units, due to the presumed belief that specialized units would have higher rates of collection. Although arguments could be made both ways regarding the relationship between type of unit and payment, we expected that offenders would pay higher rates of restitution in counties with nonspecialized rather than specialized units. Because they are largely isolated from the other components of offenders' community supervision, specialized units may seem to many offenders to reflect another bill collector they seek to avoid, whereas nonspecialized units in which

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<sup>17</sup>Accelerated Rehabilitation Disposition (ARD) is a program that allows particular types of offenders (generally minor, first time, substance-use related, or special needs offenders) to have their record expunged after successfully completing all probation conditions, which typically include community service, counseling, or training.

probation officers are responsible for all aspects of clients' supervision, including collection of monetary sanctions, may invoke fear of more criminal penalties because of the direct link between clients' payment and the legal system.

With regard to rearrest, offenders who pay more of their ordered restitution should be at decreased odds for rearrest. First, making payments is evidence that the offender is reintegrating into the community. Second, if there are any rehabilitative effects of restitution, offenders who are making payments and paying a higher percentage of what they owe are presumably getting more of the rehabilitative benefits of restitution.

### Statutory Change

In addition to examining the effects of the two county factors relating to population size and specialized units, we were also interested in looking at the effect of the 1995 statutory change making restitution mandatory. In 1995 Pennsylvania made paying restitution to victims whose property was stolen or damaged or who suffered personal injury as a direct result of a crime mandatory (18 Pa. C.S.A. §1106). Moreover, judges were to impose full restitution regardless of the offender's financial resources. This statutory change meant that judges, probation officers, and prosecutors had to consider restitution in every case in which a victim had suffered harm, even if the judges ultimately decided not to impose it. In addition, the mandatory statute meant that restitution would be imposed in more cases and more monetary payments would be made, both of which meant that the administrative burden would increase.

We expected that the proportion of cases in which restitution was ordered would increase after the statute. However, we also expected that the total amount of monetary sanctions would remain constant before and after the statutory change. Specifically, we expected that, given offenders' limited financial resources, judges would impose lower amounts of other types of financial penalties after restitution was made mandatory, so that the total amount of financial penalties would remain at the same level as it had been before the law was enacted. Thus, as a result of the statutory change, we expected restitution awards to increase but fines to decrease.

In addition to predictions based on the timing of the case (i.e., before or after the statute) and the context of the court (population size and presence/absence of a specialized collections unit), we expected some individual and offense factors to be important predictors of restitution. Specifically, as with the Outlaw and Ruback (1999) study, we expected restitution to be imposed more for property crimes and for crimes for which the harm could be easily quantified. We also expected restitution to be more likely to be imposed when the defendant was convicted by a guilty plea than at trial, in that restitution is often an explicit condition of a negotiated plea agreement (Maiolino, O'Brien, & Fitzpatrick, 1990).

## Method

### Data

The data for this study came from 1994 and 1996 court, probation, and costs and fines records from four Pennsylvania counties: Blair, Centre, Dauphin, and Erie. We collected data from 1994 and 1996 because these years bracket 1995, the year restitution became a mandatory sentencing component in Pennsylvania for crime involving an identifiable victim with a tangible loss. The use of 1994 and 1996 cases also provides a reasonable follow-up period for examining offenders' payment and recidivism.

Prior to data collection, which began in 1998, approval was granted by the Penn State Institutional Review Board and the president judge of each of the counties. Before data collection began in each county, the data collection team met with someone from the Clerk of Courts office, the Director of the Probation and Parole office, and, in two counties, the director of the specialized collections unit, in order to inform them about the research project and to learn about the location and handling of case files. Almost all of the data were collected by trained graduate students; in Erie County, probation staff coded some of the information.

Nature of the counties. All four counties in this study are urban counties, according to the census bureau definition. However, based on 2000 census estimates (U.S. Bureau of the Census, 2002), two of them are relatively larger, having populations over a quarter of a million (Dauphin – 251,798; Erie – 280,843), and two of them are relatively smaller, having populations only about half as large (Blair – 129,144; Centre – 135,758).

In addition, two counties, Blair and Erie, have specialized collection units. In Blair County, the Victim Restitution Program operates out of the District Attorney's Office under the Victim Witness Coordinator, although collections activities are handled by the Blair County Office of Costs and Fines (Blair County Commissioners, 1997), which has been in operation for at least 30 years. Erie County established a separate Collections/Enforcement Bureau in 1993 in order to increase collection of the financial obligations ordered by the Erie County Criminal Court (Lightner, 1998). The Bureau set up a computerized system and hired individuals who had previously worked in revenue recovery in the private sector.

In both counties, the specialized collections unit sets up a payment plan for probationers based on their income and expenses. If they are delinquent in making payments, they receive computer-generated collections letters and a telephone follow-up. If they remain delinquent after 91 days, they have a preliminary hearing before the collections supervisor. If they are still delinquent, they are scheduled for a contempt of court hearing.

Sampling. We drew a random sample of cases from the adult criminal court records in each county, which represent the universe of prosecuted offenses in each county. In all but one county, we sampled criminal cases directly from the chronological docket files for all of the criminal cases within each year. In Erie County, we sampled from computerized lists of dockets. In all counties, when a docket file had been "checked out," we returned later to code the data.

Within each year, 1994 and 1996, we selected every second or fifth case depending on the number of cases prosecuted in the county. For example, in Centre County, with about 1500 cases in 1994, we selected every other case, whereas in Erie County, with about 4000 cases in 1994, we selected every fifth case. A case was included if it involved an identifiable victim, either an individual or a business, and if the offense involved some harm to the victim for which restitution was possible. Cases were excluded from the sample if they involved a defendant who had already been included in the sample for that year or if they involved only nonrestitution eligible crimes (e.g., prostitution, drug possession, DUI). In addition, we excluded those cases in which charges were dismissed or the defendant was found not guilty, cases that were still on appeal, cases where the defendant fled before sentencing, and cases that had been sealed by the court because they involved crimes against juveniles.

Our final sample size for these analyses was 1,785 cases: 547 cases from Blair County (262 cases from 1994 and 285 from 1996); 340 cases from Centre County (149 cases from 1994 and 191 from 1996); 450 cases from Dauphin County (246 cases from 1994 and 204 from 1996); and 448 cases from Erie County (173 cases from 1994 and 275 from 1996). The sample size in Centre County is smaller than for the other counties because of the unusually high number of DUI's committed in this county.

For each case, we coded directly from the court records all of the data relevant to the crime (e.g., charged and conviction offenses, crime severity, judges's sentence, mode of conviction). Defendants' demographic information (e.g., race, education, marital status, criminal history) and information about the offender's behavior after sentencing (e.g., probation/parole violations) were coded from the court file and the probation file. Finally, data about whether and how much defendants paid were coded from the records of the office in charge of collecting and recording defendants' costs, fines, and restitution payments. In Centre and Dauphin Counties this information came from the probation records. In Blair and Erie Counties this information came from the records of the special collection units that are responsible for ensuring that defendants pay the monetary penalties imposed by the courts.

To determine the reliability of the coding, in three of the counties three coders each independently coded the 17 most important demographic, offense, sentencing, and outcome variables from a number of randomly selected cases. As a percentage of agreement, interrater reliability was high: Blair County ( $n = 45$  cases) – agreement = 97%; Centre County ( $n = 75$  cases) – agreement = 94%; Erie County ( $n = 66$  cases) – agreement = 96%.

## Results

Table 7-1 presents a description of the samples from the four counties. In general, the figures were comparable across counties. Most of the individuals in the sample were male, and in three counties, most were white. About half of the offenders were employed, a somewhat lower than expected figure, but understandable because students were counted as unemployed. As compared to the two smaller counties, individuals in the two larger counties were more likely to have some indication of substance abuse in their files, to have prior convictions, and to have a

history of violence. Restitution orders were significantly more likely in the two smaller counties than in the two larger counties.

In addition to the effects of county-level differences in restitution, we were interested in the effects of the 1995 statutory change making restitution mandatory. Table 1 also provides descriptive information about the cases from 1994 and 1996, which bracketed the effective date of the statute. Across the two years, there were more whites, more employed individuals, more individuals with substance use problems, fewer violent crimes, and more property crimes. There were slightly more restitution orders in 1996 than in 1994.

One of our hypotheses was that judges would be more likely to adjust the total amount of economic sanctions, so that the “going rate” (Sudnow, 1965) of the punishment would remain constant. Thus, if restitution amounts increased after the statutory change, we expected that fines would decrease, so that the total amount would remain constant. Mean comparisons suggested just that. For those offenders ordered to pay restitution, there was a significant drop in the average amount of fines between 1994 ( $\underline{M} = \$303.11$ ) and 1996 ( $\underline{M} = \$177.57$ ),  $t(947) = 1.98$ ,  $p < .05$ .

### Multivariate Analyses

In our multivariate analyses, we used factors about the case (type of offense, type of victim, whether convicted by a guilty plea), factors about the offender (age, race, sex, whether employed, whether in the labor market, prior record, history of violence, history of substance use problems), and factors about the context (relative population size, presence/absence of a specialized collection unit) as predictors of five dependent measures (a) the imposition of restitution, (b) the amount of restitution imposed,<sup>18</sup> (c) the imposition of fines,<sup>19</sup> (d) the payment of restitution, and (e) recidivism.

Imposition of restitution. Table 7-2 presents the results of a logistic regression analysis of the imposition of restitution. Restitution was significantly more likely to be ordered in 1996 than in 1994, for quantifiable harms, for business rather than individual victims, for property crimes, in cases in which fines were not ordered, and for smaller than larger counties.

In addition to these main effects, there were two significant interactions. First, larger counties were significantly more likely to order restitution in 1996 than in 1994, whereas the difference between years was not significant in smaller counties. This finding suggests that the 1995 statute making restitution a mandatory sentencing component had a greater effect on larger counties than on smaller counties and is consistent with our hypothesis that smaller counties are more responsive to the needs of victims, in that, prior to the statutory change, smaller counties were ordering restitution at higher rates than were larger counties. Second, counties with

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<sup>18</sup>This variable, measured in dollars, was capped at \$10,000 in order to reduce the positive skew and because there were few cases (less than 2%) that had large amounts imposed.

<sup>19</sup>The imposition of costs was not modeled because virtually all offenders were ordered to pay costs.

specialized collections units were significantly less likely to order restitution in 1996 than in 1994, whereas the difference between years was not significant in counties without specialized collections units. This pattern suggests that, after the statutory change, judges in counties with specialized units were likely to order restitution only in cases in which collection was likely.

Imposition of fines. Also presented in Table 7-2 are significant predictors of the imposition of fines. Fines were significantly more likely to be ordered in 1994 than in 1996, for males, for employed offenders, in cases in which restitution was not ordered, in cases in which costs were not ordered, in cases with shorter sentences, for offenders who pleaded guilty, in counties without collection agencies, and in smaller counties.

Amount of restitution. The amount of restitution ordered was significantly higher for older offenders, for offenders who did not have substance abuse problems, for employed offenders, for offenders who were also ordered to pay higher fines and higher costs, for offenders who had longer sentences, for offenders who were convicted at trial than who pleaded guilty, and for offenders in more populous counties (see Table 7-3).

Payment of restitution. The percentage of restitution paid was significantly higher for sentences in 1994 than 1996, for offenders who also paid higher proportions of their fines and costs, for offenders in counties *without* collection units, and for offenders in the less populous counties, and was marginally higher for white offenders (see Table 7-4). There were also two significant interactions, such that offenders in larger counties who were sentenced in 1996 paid more and offenders in counties with specialized collection units who were sentenced in 1996 paid more.

One possible reason why the two counties with specialized units had lower collection rates is that they required offenders to pay off restitution mandates in the order in which they were imposed. Thus, for example, if an offender owed restitution for three prior offenses, payment on the fourth, the one we sampled, would be zero because the offender was making payments on the first of the four, then on the second, and then on the third. To test whether this possibility explained the lower collection rates, we conducted additional analyses in which we excluded all cases than had any prior convictions, that is, those for which the offender might have been paying restitution. Looking only at first convictions, we found results that were the same as those with the full sample. Thus, making payments on prior convictions is not a likely explanation for the results we found.

Recidivism. Recidivism, as measured by a new arrest,<sup>20</sup> was significantly more likely for offenders sentenced in 1996 than in 1994, for younger offenders, for offenders with a history of substance abuse problems, for offenders with a prior record, for offenders who committed

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<sup>20</sup>In practice, these new arrests are primarily new arrests in the original sentencing county, in that arrests in other counties may not be known to the sentencing court.

property offenses, for offenders who paid a lower proportion of their ordered restitution, for offenders in counties without collection agencies, and for offenders who were at risk for a longer period of time<sup>21</sup> (see Table 7-5).<sup>22</sup> As in the Outlaw and Ruback (1999) study, there was some suggestion that paying restitution led to lower rearrest rates than the reverse.<sup>23</sup>

## Discussion

Consistent with prior research, this study found that case and individual demographic factors affected the imposition and payment of restitution. Similar to the Allegheny County study, we found that restitution was more likely to be ordered when the harm was quantifiable, when the victim was a business, and when the offense was a property crime. Also consistent with that study, we found that the greater proportion of restitution paid, the lower the likelihood of a new arrest, an effect that was not present for the payment of fines or costs.

### Qualifications of the Study

There are two qualifications to the study. First, it may be that restitution was not imposed in some cases because the offender had already made restitution prior to sentencing (e.g., by returning stolen property or by paying the victim the cost of damaged property), even though there was no indication in the record that such restitution had been made. The only way to discount this possibility is to observe sentencing hearings to determine whether judges learn that restitution has been made.

A second, more important, qualification of the study concerns how victims influence judges' decisions about whether to order restitution. Specifically, victims who are aware of their right to an order of restitution, who become more upset, or who go to doctors may be more likely to get restitution than victims who just want to move on. If so, orders of restitution may reflect victims' reactions to crime rather than judges' behavior. To investigate that possibility, we looked in more depth at Dauphin County, the only county in our study in which information about victims' estimates of the monetary damages they suffered as a result of the crime was

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<sup>21</sup>Time at risk was operationalized as the number of years from offenders' date of sentence until the data collection team coded data in the sentencing county.

<sup>22</sup>County size was not included in the analysis because follow-up information was much more complete in the two larger counties than in the two smaller counties.

<sup>23</sup>Two-stage least squares estimation techniques are not appropriate given the dichotomous nature of the dependent variable. We attempted to estimate these effects (Foster, 1997), but we were unable to find the appropriate instruments.

routinely available. Analyses of these data indicated that cases in which victims provided the court with an estimate of their monetary damages were significantly more likely to result in an order of restitution than were cases in which the victim did not provide an estimate of their damages. Moreover, in a multivariate logistic analysis, whether or not the victim provided an estimate of damages was the strongest predictor of whether or not restitution was imposed. However, the addition of this variable did not change the substantive results reported above, in that, with one exception, the results of this model were basically the same as the results reported in Table 7-2. In the logistic model including the variable indicating whether the victim provided the court with an estimate of damages, whether or not a fine was ordered was not a significant predictor of restitution orders, whereas it was in the model presented in Table 7-2.

This finding in one county that victims' actions, in this case providing a damages estimate, can influence orders of restitution suggests that future research should focus on understanding whether and how victims influence the decision to impose restitution, the decision about the amount of restitution imposed, and the amount of restitution offenders ultimately pay. Our informal interactions with probation and collections officers suggested that some victims follow up on judges' orders of restitution with phone calls to the office responsible for collecting monetary sanctions and with letters to judges and other court actors. It may be the case that these victims are more likely to receive the money owed to them than victims who are more passive.

### Perceptions of Specialized Units

Consistent with intuition, our informal interactions with individuals in the two counties with specialized collection units believed that their counties had effective collections bureaus. Also, not surprisingly, in an anonymous statewide survey of judges (Ruback & Shaffer, 2002), two judges in Erie County and one judge in Blair County identified their county and made just this comment. For example, one judge in Erie County stated: "We have instituted a very active and aggressive collections bureau as an offshoot of our probation department and have collected millions in restitution."

### Policy Implications

Despite these positive perceptions, our research in this study suggests that a bureaucratic decision to divide labor in connection with probation conditions, including the payment of economic sanctions, does not produce the expected positive results and, in fact, appears to lead to negative effects. Aside from the fact that special collections units do not seem to collect higher proportions of ordered restitution, additional analyses indicated that these units do not collect higher proportions of ordered fines although there is some evidence that they do, marginally, collect higher proportions of ordered costs. This pattern suggests that specialized units are better at collecting funds that enable them to be self-supporting.

Table 7-1. Description of the Samples by County and by Study Year

<u>Variables</u>	<u>Counties</u>				<u>Study Year</u>	
	<u>Blair</u>	<u>Centre</u>	<u>Dauphin</u>	<u>Erie</u>	<u>1994</u>	<u>1996</u>
Males	80%	84%	79%	86%	82%	82%
Whites	90%	85%	49%	65%	71%	73%
Mean Age	29.6	28.2	30.5	29.6	28.9	30.1
Employed	52%	45%	63%	44%	51%	51%
Substance Use	27%	36%	73%	67%	48%	53%
Violent Offense	35%	39%	33%	42%	40%	34%
Property Offense	56%	53%	54%	43%	49%	54%
Prior Convictions	36%	30%	62%	56%	45%	48%
History of Violence	12%	14%	20%	30%	19%	19%
Restitution Ordered	63%	77%	43%	39%	54%	55%
N	547	340	450	448	830	955

Table 7-2. Logistic Regression Analyses of Imposition of Restitution and Fines

	<u>Restitution Ordered</u>		<u>Fines Ordered</u>	
	<u>B (s.e.)</u>	<u>Exp(B)</u>	<u>B (s.e.)</u>	<u>Exp(B)</u>
Year	.44* (.22)	1.55	-.66** (.23)	.52
Age	-.005 (.001)	1.00	.005 (.006)	1.01
White	.09 (.14)	1.09	-.18 (.14)	.84
Substance use problem	-.09 (.13)	.91	.19 (.13)	1.21
Male	-.21 (.16)	.81	.32* (.15)	1.37
Quantifiable	1.26*** (.16)	3.53	-.06 (.17)	.94
Out of labor market	.04 (.24)	1.04	-.39 (.22)	.67
Individual victim	-.58 (.14)	.56	.21 (.13)	1.23
Prior record	-.15 (.13)	.87	.06 (.13)	1.06
Property crime	.45*** (.13)	4.25	-.21 (.14)	.81
Employed	.14 (.12)	1.15	.27* (.12)	1.31
History of violence	.01 (.16)	1.01	-.12 (.16)	.88
Fine ordered	-.40*** (.14)	.67	----	----
Restitution ordered	----	----	-.37** (.14)	.69
Costs ordered	-.66 (1.21)	.52	2.59* (1.14)	13.32
Length of sentence	.002 (.02)	1.00	-.07*** (.02)	.94
Conviction by guilty plea	-.17 (.28)	.85	.85*** (.25)	2.33
Collection Agency	-.07 (.17)	.94	-.38* (.19)	.69
County Size	-.94*** (.18)	.39	-.74*** (.20)	.48
County Size * Year	.51* (.23)	.60	.08 (.24)	1.08
Collection Agency * Year	-.45# (.23)	.64	.25 (.24)	1.28
-2 Log Likelihood		1896.09		1881.74
Nagelkerke R <sup>2</sup>		.362		.112

#p < .10

\*p < .05

\*\*p < .01

\*\*\*p < .001

Table 7-3. Linear Regression Analysis of Amount of Restitution Imposed

	Amount of Restitution Ordered	
	<u>Beta</u>	<u>t</u>
Year	-.06	1.01
Age	.17	5.10***
White	.001	.04
Substance use problem	-.08	2.26*
Male	-.007	.20
Quantifiable	.04	1.12
Out of labor market	-.03	.89
Individual victim	-.05	1.36
Prior record	-.06	1.68
Property crime	.003	.08
Employed	-.07	2.18*
History of violence	-.07	1.89#
Amount of fine ordered	.13	3.96***
Amount of costs ordered	.17	5.11***
Length of sentence	.13	3.93***
Conviction by guilty plea	-.09	2.69**
Collection Agency	-.13	2.65**
County Size	.12	2.38*
County Size * Year	-.04	.83
Collection Agency * Year	.09	1.46
Regression F		8.69***
Adjusted R <sup>2</sup>		.15

#p < .10

\*p < .05

\*\*p < .01

\*\*\*p < .001

Table 7-4. Linear Regression Analysis of Percent of Restitution Paid

	Percent of Restitution Paid	
	<u>Beta</u>	<u>t</u>
Year	.21	3.93***
Age	-.04	1.49
White	.05	1.95#
Substance use problem	.05	1.72
Male	.87	.28
Quantifiable	-.01	.36
Out of labor market	-.01	.35
Individual victim	.04	1.51
Prior record	-.03	1.00
Property crime	-.02	.58
Employed	-.01	.48
History of violence	.01	.27
Percent of fine paid	.22	4.64***
Percent of costs paid	.57	12.03***
Length of sentence	-.01	.45
Conviction by guilty plea	-.03	1.08
Collection Agency	-.10	2.42*
County Size	-.25	5.50***
County Size * Year	.21	4.76***
Collection Agency * Year	.12	2.16*
Regression F		51.44***
Adjusted R <sup>2</sup>		.62

#p < .10

\*p < .05

\*\*p < .01

\*\*\*p < .001

Table 7-5. Logistic Regression Analyses of Recidivism (New Arrest)

	Recidivism	
	<u>B (s.e.)</u>	<u>Exp(B)</u>
Year	1.85*** (.56)	6.34
Age	-.04** (.01)	.96
White	-.48 (.34)	.62
Substance use problem	1.30*** (.26)	3.66
Male	-.13 (.31)	.88
Quantifiable	-.27 (.41)	.77
Out of labor market	-.30 (.43)	.74
Individual victim	.44 (.27)	1.55
Prior record	.64* (.26)	1.89
Property crime	.76** (.29)	2.14
Employed	.39 (.26)	1.48
History of violence	.61 (.39)	1.84
Percent fine paid	.003 (.004)	1.00
Percent costs paid	.001 (.005)	1.00
Percent restitution paid	-.01*** (.004)	.99
Length of sentence	.03 (.07)	1.03
Conviction by guilty plea	-.89 (.89)	.41
Collection agency	-1.93*** (.52)	.15
Collection agency * Year	.41 (.52)	1.50
Time at risk	1.11*** (.19)	3.04
-2 Log Likelihood		462.98
Nagelkerke R <sup>2</sup>		.418

\* $p < .05$

\*\* $p < .01$

\*\*\* $p < .001$

## C. Philadelphia

The final county-level study examined the imposition and effect of restitution, fines, and costs in Philadelphia during the seven-year period 1994-2000. During this period, there were two statutory changes regarding restitution, one making restitution mandatory (1995) and one giving priority to restitution payments over fines and costs (1998). Analyses were conducted separately for crimes in which private individuals and businesses were the victims ( $n = 79,555$ ) and for crimes in which the State was the victim ( $n = 5,415$ ).

### Method

#### Description of the Sample

Data were taken from computer files maintained by Philadelphia. Cases were sampled on the basis of crimes that were considered to be “restitution eligible,” that is, cases with an identifiable victim (an individual, a business, or a state agency). **For the most part, this classification excludes DUI and drug offenses. Not included in this category are cases determined to have no identifiable victim, based on crimes listed in Title 18 (Crimes and Offenses) of Pennsylvania Consolidated Statutes Annotated. Because we were specifically concerned with crimes against identifiable individuals and businesses, and not with crimes against society, we also dropped cases that were not brought under Title 18.**

For each case there were 20 items of information. The first, the variable on which cases were selected for inclusion in the study, was the major charge. Excluded from the sample were all drug and DUI crimes. Under this selection procedure, there were 108 crimes for the years 1994 through 2000. Of the 84,970 cases in the data set, 84,185 (99%) were accounted for by 33 crimes with at least 50 cases: robbery (14,494), aggravated assault (13,718), theft by unlawful taking (9,610), retail theft (7,616), burglary (7,384), receiving stolen property (6,491), simple assault (5,895), public assistance act violations (5,294), forgery (2,643), murder (1,733), unauthorized use of an automobile (1,307), attempted theft by unlawful taking (1,189), recklessly endangering another person (1,149), criminal trespass (956), harassment (801), terroristic threats (784), first degree murder (624), attempted burglary (381), theft by deception (365), arson (351), intimidation of witness or victim (327), stalking (228), causing or risking catastrophe (110), homicide by vehicle while DUI (71), involuntary manslaughter (105), attempted theft by deception (105), robbery of motor vehicle (77), copying through recording devices (76), aggravated assault by vehicle while DUI (67), voluntary manslaughter (66), insurance fraud (61), ethnic intimidation (57), and buying or exchanging federal food stamps (50). The remaining 75 types of crime accounted for 778 cases, and 13 cases were missing this information. Across crime types, several dummy variables were created to capture the nature of these crimes: (a) attempt vs. not, (b) conspiracy vs. not, and (c) violent vs. property.

The data contained information about whether or not there was a private criminal complaint, whether the court was municipal or Common Pleas, the date of arrest, the type of attorney (coded as public Defender or court-appointed attorney versus a private attorney), the date of sentencing, the amount of fines imposed, the amount of restitution imposed, whether costs were imposed, whether probation was imposed, the starting date of probation, the expiration date of probation, the actual termination date of probation if it were different from the expiration date, the gender of the offender,

the race/ethnicity of the offender, the method of case termination, the reason a case would still be open after the expiration date, the date of rearrest (if any), and the number of days between the date of sentencing and rearrest.

There were a total of 84,970 cases in the data set, broken down by year as follows: 1994 - 12,146; 1995 - 12,210; 1996 - 12,683; 1997 - 12,445; 1998 - 12,704; 1999 - 12,017; and 2000 - 10,765. Of these cases, 54,812 were processed in Common Pleas Court and 30,151 were processed in Municipal Court (7 cases did not have information about which court was involved). In Philadelphia, felonies are heard in Common Pleas Court, and misdemeanors are generally heard in Municipal Court.

Table 7-6 presents a description of the cases in the data set, by type of victim (private individual/business vs state) and overall. As can be seen there, most of the offenders were black, committed property crimes, and did not have a private attorney.

The 5415 cases in which the state was the victim were analyzed separately because they differed substantially from cases in which the victim was a private individual or business. Most importantly, there were gender differences. Women committed 13% of the violent crimes and 23% of the property crimes. Women committed 14% of the crimes where the state was not the victim, but 83% of the crimes in which the state was the victim. Blacks committed 71% of the crimes in which private individuals or businesses were the victim but 83% of the crimes in which the state was the victim. The analyses were limited to those individuals who were 16 years or older.

## Results

Three types of economic sanctions were investigated: restitution, fines, and costs. The results are presented in three parts, relating first to the imposition of each sanction overall, and specifically by year. Second, there is an analysis of the imposition, and third to the effect of the imposition and payment on recidivism. First, with regard to imposition, the results contain (a) a description of the rate at which each type of sanction was imposed, (b) bivariate predictors of each type, including an analysis of each type over time, and (c) multivariate predictors of each type of sanction. Second, with regard to the effects of the imposition and payment on recidivism, the results describe bivariate predictors of recidivism and then present a multivariate model.

### Change Over Time

One of the issues we were interested in was whether the imposition and payment of restitution changed over time, and, if so, what factors might be related to this change. Although there was an increase over time in the proportion of cases in which restitution was imposed in cases in which private individuals/businesses were the victims, there was a decrease in the proportion of cases in which costs and fines were imposed (see Table 2). Although there was a significant increase in the average amount of restitution ordered, there has not been a comparable increase in the average

fine ordered. A pre/post test of the impact of the 1995 mandatory statute indicated a significant increase in the percentage of cases in which restitution was ordered, from 16% (for the year 1994) to 22% (for the years 1996-2000),  $\chi^2(1, 72760) = 239.95, p < .001$  (Yates' correction). A pre/post test of the impact of the 1998 statute indicated a significant increase in the percentage of cases in which restitution was ordered, from 21% (for the years 1996 and 1997) to 24% (for the years 1999-2000),  $\chi^2(1, 47910) = 72.09, p < .001$  (Yates' correction).

### Individual and Business Victim Cases

Cases in which individuals and businesses were the victims were analyzed in terms of the imposition of economic sanctions, the payment of economic sanctions, and the effect of economic sanctions on recidivism.

Imposition of economic sanctions. Table 7-7 presents the results of logistic regression analyses of the imposition of restitution, fines, and costs in those cases in which the private individuals and businesses were the victims. Restitution was significantly more likely to be ordered for younger individuals, for whites, for individuals who had private attorneys, for cases in Common Pleas court, for cases after the 1995 statute was imposed, for probation cases, and for cases in which costs were imposed, and were significantly less likely to be imposed for cases in which fines were imposed. Fines were significantly more likely to be imposed for males, for older individuals, for whites, for offenders with private attorneys, in Municipal Court, when costs were also imposed and were significantly less likely to be imposed when restitution was imposed. Costs were significantly more likely to be imposed for older offenders, for black offenders, for cases after the 1995 statute, for offenders who had private attorneys, in Municipal Court, when fines were also imposed, and when restitution was also imposed. Overall, then, fines and costs were positively related; restitution was negatively related to both fines and costs.

Payment of economic sanctions. Of the 12,813 cases in which restitution was imposed, the offender failed to pay anything in 1,659 (12.9%).

We examined those cases in which restitution was imposed to predict what factors predicted payment. Looking only at those individuals who were on probation and who were ordered to pay restitution, nonpayment was predicted by gender, race, type of crime, type of court, whether fines were imposed, whether costs were imposed, and whether costs/fines were paid. Among these individuals, nonpayment was significantly more likely by males, blacks, violent crimes, for cases in Common Pleas Court, if fines were not imposed, if costs were not imposed, and if they paid costs/fines.

The analyses of payment of restitution and fines/costs, presented in Table 7-8, were restricted to those individuals who were ordered to make the payment and who were on probation, because, although some incarcerated individuals may be able to make payments, most cannot. A logistic

regression analysis of the nonpayment of restitution indicated that nonpayment was significantly more likely for male offenders, for black offenders, for offenders sentenced in Common Pleas Court, and was significantly less likely for individuals who had made payments toward fines/costs. A logistic regression analysis of the nonpayment of fines/costs indicated that nonpayment was significantly more likely for blacks, for cases before the mandatory statute, and for those who had been sentenced in Municipal Court and was significantly less likely for those who had been ordered to pay restitution and for those who had made payments of restitution. These results again suggest the obvious: individuals who were ordered to pay both restitution and fines/costs have difficulty paying both.

Recidivism. A little over half of the cases (44,697) terminated normally, while the remainder (40,273) had a different termination date than the expected termination date. Across all cases, 31% of the offenders committed a new crime.

Recidivism was measured in two ways, probation revocation and arrest for a new crime (see Table 7-9). Probation revocation was significantly more likely for males, younger individuals, blacks, cases decided during the years 1994-1995 than for later years, for cases where the offender did not have a private attorney, for offenders sentenced in Common Pleas Court, and for cases where costs were imposed. Cases in which fines were imposed were less likely to result in a revocation. Arrest for a new crime was significantly more likely for males, for younger offenders, for black offenders, during the years 1994-1995 than for later years, for offenders who did not have a private attorney, for offenders sentenced in Municipal Court, and if costs were imposed. Cases in which restitution and fines were imposed were significantly less likely to result in a new arrest.

### State Victim Cases

The 5415 cases in which the state was the victim were analyzed separately from the other cases because they differed in substantial ways from cases in which private individuals or businesses were the victims. Ten different property crimes were included in this category (e.g., tax violations, medicaid fraud, food stamp fraud), but public assistance violations accounted for 5,295 (98%) of the cases. Offenders in this category of state victim crimes were primarily female (83%) and black (83%). Restitution was imposed in 4,494 cases (83%). The range of restitution orders was from \$15 to more than \$100,000 (M = 4,382; Mdn = 3000; Mode = 2500). Fines were imposed in only 53 cases (1%). The range of fines was from \$50 to more than \$100,000 (M = 6,406; Mdn = 750; Mode = 500). Costs were imposed in 1880 cases (35%).

Table 7-10 presents the results of logistic regression analyses of the imposition of restitution, fines, and costs in those cases in which the state was the victim. Restitution was significantly more likely to be ordered for welfare cases, for individuals who had private attorneys, and for cases after the 1995 statute was imposed and was significantly less likely for male offenders, for cases in which fines were imposed, and for cases in which costs were imposed. Fines were significantly more likely

to be imposed when costs were also imposed and were significantly less likely to be imposed when the offender was black, for welfare cases, in Common Pleas Court, and when restitution was imposed. Costs were significantly more likely to be imposed for male offenders, for offenders who had private attorneys, in Common Pleas Court, and when fines were also imposed, and were significantly less likely after the mandatory statute and for welfare fraud cases. Overall, then, fines and costs were positively related; restitution was negatively related to both fines and costs.

The analyses of payment of restitution and fines/costs, presented in Table 7-11, were restricted to those individuals who were ordered to make the payment and who were on probation, because, although some incarcerated individuals may be able to make payments, most cannot. A logistic regression analysis of the nonpayment of restitution indicated that nonpayment was significantly more likely for female offenders, for the years 1994-1995 than for later years, for offenders who had private attorneys, for offenders sentenced in Municipal Court, and, marginally, for individuals who were ordered to pay fines, costs, or both. A logistic regression analysis of the nonpayment of fines/costs indicated that nonpayment was significantly more likely for those who had been sentenced in Municipal Court and for those who had been ordered to pay restitution. These results suggest the obvious: individuals who were ordered to pay both restitution and fines/costs have difficulty paying both.

As with the primary sample, recidivism was measured in two ways, probation revocation and arrest for a new crime. Probation revocation was significantly related to only two variables: for the years 1994-1995 than for later years and for offenders sentenced in Municipal Court rather than Common Pleas Court. Arrest for a new crime was significantly more likely for males, for younger offenders, during the years 1994-1995 than for later years, for offenders who did not have a private attorney, for offenders sentenced in Municipal Court, if costs were imposed, and if the crime was not welfare fraud.

## Discussion

One of the clear findings from this study was that the 1995 statute making restitution mandatory had an effect: both restitution imposition rates and restitution amounts ordered were higher after the statute than before. For crimes against private individuals and businesses, the increase was significant, but not as large as appeared in the data from the Pennsylvania Commission on Sentencing. Using that data, imposition rates were more than twice as high as those obtained using data from the Philadelphia computer files. The difference is probably due to underreporting of cases to the Commission. For example, the Commission does not receive Philadelphia Municipal Court cases.

The increase in imposition rates for crimes against private individuals and businesses after the statute was not greater for three likely reasons. First, despite the mandatory nature of the statute,

it may be that in practice restitution is ordered only if the victims request it. It is likely that in Philadelphia, where many victims are poor and the victims assistance agency is overworked that these requests are not always made. Second, most of the victims are probably poor and the odds are not good that they would be able to make payments. Third, the amounts of money involved are relatively small, and judges, prosecutors, and probation officers may not believe that the money is worth bothering about.

In contrast to private victims, offenders of most crimes with the state as the victim were ordered to pay restitution. This difference is probably due to the fact that the state agencies involved asked for restitution, the offenders in the non-welfare fraud cases probably did have money (since they were relatively more likely to have private attorneys), and the average amounts of money involved were relatively large.

This study also found, consistent with prior research, that there is a “going rate” for the imposition of economic sanctions. That is, judges appeared to make tradeoffs between restitution and fines for both individual/business victims and state victims. Thus, when the statute required higher rates of restitution, judges appeared to balance that increase with a decrease in the imposition of fines and costs.

With regard to payment, we found that, at least for crimes in which the state was the victim, there was a tradeoff such that offenders made payment toward restitution or toward fines/costs but not both. That result makes sense, in that if offenders have limited funds, their payment to one precludes payment to the other. For crimes in which the victims were private individuals or businesses, there was a positive relationship between payment of restitution and payment of fines/costs. This finding suggests that among this group of offenders, individuals who were able to pay one type of economic sanction were also able to pay other types.

In September 2001, an anonymous statewide survey was sent to all criminal court judges in the state. Of the 147 responses, 17 judges identified their county as Philadelphia. Typical of these judges’ views of restitution is the statement of one: “Except in fraud and theft/burglary cases, we rarely see requests for restitution. Most of our offenders are too poor to pay anything substantial.” Another judge wrote, “You can’t get blood out of a stone. When you have rapes, aggravated assaults, gun-point robberies of those with no skills who have never held a job, what good is restitution? They will be in jail for five to ten years and have no assets. It’s the exception, not the rule, in the major cases in a large city.”

More quantitative responses were also consistent with the view that most offenders in Philadelphia could not afford to pay restitution. A set of t-tests comparing the responses of these 17 judges from Philadelphia to the remaining judges indicated several significant differences.<sup>24</sup>

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<sup>24</sup>This test likely underestimates the difference between the judges in Philadelphia and the judges in the rest of the state, in that there are almost certainly some Philadelphia judges who did not identify their county and whose responses are therefore included with the non-Philadelphia

Compared to the judges in the rest of the state, Philadelphia judges were more likely to take type of offense into account, more likely to lower fines in order to reduce the total economic sanctions, less likely to say they impose restitution for violent victims, more likely to say collecting restitution is a problem, more likely to impose indirect criminal contempt charges for failing to pay, more likely to believe too much time elapses before payment is made, more likely to believe there is inadequate contact with offenders, more likely to believe there is inadequate priority given to warrants, and more likely to believe that offenders think nothing serious will happen to them. They were also marginally more likely to believe that their county had inadequate collection methods and that there is no punishment for failing to pay.

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sample.

Table 7-6. Description of the Philadelphia Data Set, by Type of Victim and Overall

<u>Variable</u>	<u>Private Victims</u> <u>(n = 79,555)</u>	<u>State Victim</u> <u>(n = 5415)</u>	<u>Overall</u> <u>(n = 84,970)</u>
Percent Male	86	17	81
Percent Black	71	83	71
Median Offender Age	27.6	35.1	28.2
Percent Property Crimes	59	100	62
Percent Private Attorney	20	40	22
Percent Probation Imposed	70	36	68
Percent Restitution Imposed	17	83	21
Percent Fine Imposed	2	1	2
Percent Costs Imposed	88	35	85
Percent Probation Revoked	18	12	18
Percent New Crime	33	8	31

Table 7-7. Predictors of the Imposition of Restitution, Fines, and Costs - Individual and Business Cases Only (n = 78,559)

Predictors	Restitution		Fines		Costs	
	<u>B</u>	<u>Exp(B)B</u>	<u>Exp(B)B</u>	<u>Exp(B)B</u>	<u>Exp(B)</u>	<u>Exp(B)</u>
Male	-.02	.98	.25***	1.28	-.04	.97
Age	-.01***	.99	.03***	1.03	.01***	1.01
Black	-.27***	.77	-.65**	.52	.11***	1.11
Post-1995 Statute	.13***	1.14	.01	1.01	.04***	1.04
Private Attorney	.05***	1.05	.50***	1.65	.83***	2.29
Common Pleas Court	.77***	2.15	-1.07***	.34	-.42***	.66
On Probation	.69***	2.00	.25	1.29	-.07	.93
Fine Imposed	-.45***	.64	----	----	1.04***	2.83
Costs Imposed	.88***	2.40	1.09***	2.97	----	----
Restitution Imposed	----	----	-.41***	.66	.87***	2.39
Post-1995 Statute x Probation	.30***	1.35	.01	1.01	-.02	.98
-2 Log Likelihood	66920.21		16655.31		53835.62	
Nagelkerke R <sup>2</sup>	.075		.107		.079	

\*p < .05

\*\*p < .01

\*\*\*p < .001

120 nonwelfare cases

Table 7-8. Predictors of Nonpayment of Restitution and of Fines/Costs -  
Individual and Business Victim Cases on Probation Only (n = 78559)

Predictors	Restitution Imposed (n = 10684)		Fines/Costs Imposed (n = 48458)	
	<u>B</u>	<u>Exp(B)</u> <u>B</u>	<u>Exp(B)</u>	
Male	.53***	1.70	.06	1.06
Age	-.003	1.00	.001	1.00
Black	.19**	1.21	.30***	1.34
Post-1995 Statute	-.04	.96	-.52***	.60
Private Attorney	.06	1.06	-.07	.93
Common Pleas Court	.38***	1.46	-.75***	.47
Costs Imposed	-.10	.91	----	----
Fine Imposed	-.34	.71	----	----
Restitution Imposed	----	----	-.41***	.66
Nonpayment of Fines/Costs	-6.56*	.001	----	----
Nonpayment of Restitution	----	----	-6.29***	.002
-2 Log Likelihood	9234.08		22781.40	
Nagelkerke R <sup>2</sup>	.036		.061	

\*p < .05

\*\*p < .01

\*\*\*p < .001

Table 7-9. Predictors of Probation Revocation and Rearrest - Individual and Business Victim Cases on Probation Only (n = 55146)

Predictors	Probation Revocation		Arrest for a New Crime	
	<u>B</u>	<u>Exp(B)B</u>	<u>Exp(B)</u>	
Male	.25***	1.28	.52***	1.68
Age	-.02***	.99	-.03***	.98
Black	.19**	1.21	.29***	1.34
Post-1995 Statute	-.42***	.66	-1.07***	.34
Private Attorney	-.55***	.58	-.56***	.57
Common Pleas Court	.24***	1.27	-.66***	.52
Costs Imposed	.12***	1.13	.06*	1.06
Fine Imposed	-.42***	.66	-.56***	.57
Restitution Imposed	.02	1.02	-.26***	.77
-2 Log Likelihood	61674.80		69105.11	
Nagelkerke R <sup>2</sup>	.040		.145	

\*p < .05  
 \*\*p < .01  
 \*\*\*p < .001

Table 7-10. Predictors of the Imposition of Restitution, Fines, and Costs - State Victim Cases Only (n = 5415)

Predictors	Restitution		Fines		Costs	
	<u>B</u>	<u>Exp(B)B</u>	<u>Exp(B)B</u>	<u>Exp(B)B</u>	<u>Exp(B)B</u>	<u>Exp(B)B</u>
Male	-.19	.83	-.09	.91	.30***	1.34
Age	.00	1.00	.03	1.03	-.02	.98
Black	-.02	.98	-1.15**	.32	.006	1.01
Post-1995 Statute	.70***	2.03	-1.28	.28	-.62***	.54
Welfare Fraud Case	2.54***	12.71	-4.15***	.02	-1.42***	.24
Private Attorney	.73***	2.08	-.03	.97	.79***	2.20
Common Pleas Court	.29	1.33	-1.44**	.24	2.33***	10.25
On Probation	-.25	.78	-.47	.62	-.15	.86
Fine Imposed	-2.51***	.08	----	----	1.81***	6.10
Costs Imposed	-.35***	.70	1.71**	5.51	----	----
Restitution Imposed	----	----	-2.53***	.08	-.30***	.74
Post-1995 x Probation	.23	1.98	1.29	3.62	.38***	1.47
-2 Log Likelihood		4304.21		234.48		5880.07
Nagelkerke R <sup>2</sup>		.170		.592		.239

\*p < .05

\*\*p < .01

\*\*\*p < .001

Table 7-11. Predictors of Nonpayment of Restitution and of Fines/Costs - State Victim Cases on Probation Only

Predictors	Restitution Imposed (n = 1550)		Fines/Costs Imposed (n = 758)	
	<u>B</u>	<u>Exp(B)</u>	<u>Exp(B)</u>	<u>Exp(B)</u>
Male	-.70***	.50	-.25	.78
Age	-.01	.99	.04	1.04
Black	-.18	.84	1.14	3.12
Post-1995 Statute	-.70***	.50	.65	1.92
Welfare Fraud Case	.71	2.04	-1.14	.32
Private Attorney	.29*	1.33	.75	2.12
Common Pleas Court	-1.72***	.18	-1.97*	.14
Costs Imposed	-.21	.81	----	----
Fine Imposed	2.29*	9.90	----	----
Restitution Imposed	----	----	-2.32**	.10
Nonpayment of Fines/Costs	-5.99	.002	----	----
Nonpayment of Restitution	----	----	-8.53	.00
-2 Log Likelihood		1849.90		90.38
Nagelkerke R <sup>2</sup>		.181		.442

\*p < .05

\*\*p < .01

\*\*\*p < .001

## VIII. Summary and Implications

This multimethod research program was designed to answer questions about the imposition, payment, and effects of restitution. In addition, the research examined the effects of statutory changes on the behavior of judges.

### A. Imposition of Restitution

Across studies, we found that restitution was more likely to be imposed for property offenses, for offenses for which the loss could be easily quantified, and for whites than for nonwhites. There was also evidence that the imposition of restitution was influenced by contextual factors. Statewide analyses indicated that rural counties were more likely than urban counties to impose restitution. Among urban counties of approximately the same size, more populous counties were less likely to impose restitution but more likely to impose restitution of larger amounts.

**In general, the survey results indicate that judges' ratings are less consistent with the mandatory statute than are those of district attorneys and chief probation officers. This pattern was especially evident in connection with factors used to determine restitution. That is, judges were significantly more likely than the other two groups to rely on information, such as the offender's ability to pay and the offender's family obligations, that is specifically prohibited by the law. Relatedly, judges were more likely than the other actors to believe it is appropriate to make more adjustments for failing to pay.**

Whereas chief probation officers were likely to report knowing all of the information except the offender's assets, judges were likely to report knowing only the offender's criminal record, family status, employment status, and aggravating or mitigating factors of the offense, and district attorneys reported knowing only the offender's criminal record and any aggravating or mitigating factors about the offense. The interaction was due to the fact that the differences between urban and rural counties were small for legally relevant factors (factors about the offense and criminal record), but much larger for information about the offender.

Restitution has widespread support because many people believe that it can compensate victims and both punish and rehabilitate offenders. Consistent with this general belief, the judges, district attorneys, and chief probation officers who responded to our statewide survey believed that victim compensation was the most important goal of restitution, but that punishment and rehabilitation were also important goals. Our analysis of the statewide data from the Pennsylvania Commission on Sentencing suggests that the primary purpose of restitution is punishment.

### B. Payment of Restitution

One of the purposes of this series of studies was to determine how well those goals are being met. Overall, the evidence was mixed for each of the three goals. With regard to compensation, our research suggests, consistent with prior studies, that only about half of all restitution ordered is in fact paid. In

general, restitution was more likely to be paid by those who would be expected to be able to pay – particularly employed individuals. In some of the findings, we found that characteristics expected to be related to the ability to pay were related to payment: older individuals, males, and whites were, depending on the analysis, more likely to make payment.

Contrary to the expectation of individuals in Blair and Erie Counties, the two counties we investigated that had specialized collection units, we found that these units were related to lower likelihood of making full payment.

### C. Effect of Restitution

In addition to imposition and payment, we were also interested in the effects of restitution on offenders' subsequent behavior. It has been argued that restitution should promote rehabilitation because it makes offenders responsible for their behavior. Consistent with that idea, our results from Allegheny County for 1994 indicated that paying restitution is in fact related to lower recidivism, controlling for other factors. Paying fines did not produce the same effect, suggesting that it is not simply paying money that produces this positive effect. The results from Philadelphia were not quite as clear, although there was an indication that the imposition of restitution was related to lower recidivism as measured by an arrest for a new crime.

### D. Evaluation of Pennsylvania Statutory Changes

Results indicate that the mandatory statute has not been fully implemented. Analyses of the Pennsylvania Commission on Sentencing data indicated that, after the 1995 statute making restitution mandatory, restitution was imposed in only 58% of cases in which restitution could be imposed. Although this figure was significantly higher than the pre-1995 figure of 35%, it is still lower than what might be expected. Analyses of the data from the four-county study indicated that, although there was an increase in restitution orders after the 1995 statute, it was not as large as that evidenced in the Sentencing Commission data. Moreover, with the exception of crimes in which the state was the victim, the analyses of the Philadelphia data indicated that the imposition of restitution was relatively infrequent. As noted earlier (see pages 46-48), the questionnaire study suggests that judges' failure to implement the mandatory statute more fully is likely due to disagreements with the policy and practical constraints.

The increase in imposition rates for crimes against private individuals and businesses after the statute was not greater for three likely reasons. First, despite the mandatory nature of the statute, it may be that in practice restitution is ordered only if the victims request it. It is likely that in Philadelphia, where many victims are poor and the victims assistance agency is overworked that these requests are not always made. Second, most of the victims are probably poor and the odds are not good that they would be able to make payments. Third, the amounts of money involved are relatively small, and judges, prosecutors, and probation officers may not believe that the money is worth bothering about.

In contrast to private victims, offenders of most crimes with the state as the victim were ordered to pay restitution, and the increase after the statutory change was even more dramatic. This difference is

probably due to the fact that there is no possibility of victim precipitation or victim responsibility, the state agencies involved asked for restitution, the exact amounts of loss are known, the offenders in the non-welfare fraud cases probably did have money (since they were relatively more likely to have private attorneys) and therefore there is a greater probability of payment, and the average amounts of money involved were relatively large.

## E. Policy Implications

Aside from providing a general understanding of how judges impose restitution and of how judges respond to mandatory legislation, this research has three specific policy implications: one relating to the imposition of restitution, one concerning the efficacy of specialized collection units in terms of payment and recidivism, and the last concerning the effects of economic sanctions on two measures of recidivism.

### 1. Imposition of Restitution

Results from three studies indicated that business victims are more likely to get restitution than individual victims and that the State is more likely to get restitution than private victims. It is likely that neither of these outcomes was the intended result of the restitution legislation. In both instances, restitution is more likely because requests for restitution are more likely to be made and the amounts of loss are more easily determined.

Judges' and chief probation officers' responses on the survey confirmed what we had learned from conversations with probation officers that, despite the mandatory statute, restitution is imposed in many cases only if the victim requests it. In practice, many victims do not know of this requirement and the victim/witness assistance agency in many counties is probably so understaffed that contacts with victims and, consequently, requests for restitution are not always made. Our research suggests that there should be stronger links between the victim/witness assistance office and the probation office, so that victims' restitution needs can be better tied to the sentencing process. Moreover, the consistent finding that quantifiability is strongly related to the imposition of restitution suggests that helping victims document their losses will increase the likelihood that restitution will be ordered.

### 2. Specialized Collection Units

With regard to specialized collection units, qualitative information suggests that there is a generally positive view of such units. On their questionnaires, judges from both Blair and Erie Counties commented on the amount of money that their units collected. Moreover, in informal discussions, probation officers in these counties indicated that they believed the specialized collection units reduced the burden on them. Despite these positive qualitative remarks, our quantitative analyses suggest that such units are no more effective and may, in fact, be less effective than having probation officers perform this responsibility. Although we found no effect on specialized units on the imposition of restitution, we found that it had a significantly negative effect on the imposition of fines and a significantly negative effect on the collection of restitution. We also found that these units were related to a significantly higher likelihood of arrest for

a new crime. Thus, despite the perceived advantages of these specialized units, the data suggest that there are clear disadvantages.

In terms of specialized collection units, we found that offenders in the two counties with these special units were less likely to have fines imposed overall, less likely to have restitution imposed in 1996, more likely to have lower amounts of restitution ordered, and more likely to pay a smaller proportion of the ordered restitution, but less likely to have a new arrest. These generally counterintuitive results are consistent with our position that specialized collections units may be less effective at collecting economic sanctions because special collection unit officers, relative to probation officers, have fewer resources to encourage offenders to pay and less information about how well the offender is managing community supervision overall. The finding that offenders in counties with specialized collections are less likely to be rearrested is also consistent with our perspective. Specifically, the apparent positive effect of special collection units on recidivism is probably an artifact of the fact that offenders in these counties can successfully be discharged from their probation supervision before completing payment of their monetary sanctions. Thus, offenders in these counties are able to avoid close criminal justice supervision, which means that any subsequent offenses may not be discovered.

These results suggest that probation officers should supervise all aspects of probationers' behavior, including the payment of economic sanctions. As suggested earlier, when probation officers handle economic sanctions, they are likely to know more about the entire case and can make adjustments if problems arise, as they inevitably do. Probation officers have a working rapport with their clients, in that offenders know that probation officers have the power to invoke further mechanisms of formal control and to ease current formal controls. In short, probation officers typically have more resources to bargain with than do collections officers. Probation officers can use discretion about such matters as whether and when to arrest offenders for a technical violation, whether and when to revoke offenders' probation/parole, whether to allow the offender to travel out of the county, and whether to facilitate or hinder offenders' access to treatment and training programs. Given that probation officers have such broad discretion, it should not be surprising that offenders would make payments to garner favor with their probation officers. Alternatively, if probation officers do not have responsibility for the entire case, including the payment of economic sanctions, collections units might be tied more closely to probation units, collections officers and probation officers might be asked to work more closely together, or collections officers might be given more discretion and resources.

A related implication of the results concerns what happens to the economic sanctions offenders pay. Specialized collection units require funds, and one would suspect that this pressure would affect how the money was spent. Consistent with that reasoning, in one of the two counties that had special collection units, the monthly supervision fees were rarely waived, and in the other county there was an additional fee in order to make the special collections unit self-supporting. In contrast, in one of the counties without the specialized collections unit, the probation office routinely waived supervision fees, in order to apply to the restitution debt most of the money that had been paid.

### 3. Payment of Restitution

Across studies, we found that individuals who paid higher percentage of their ordered restitution were less likely to commit a new crime. Obviously, the causality could work the other way. That is, individuals who did not commit a new crime were more likely to pay more of their ordered restitution. However, in one study (Allegheny County) we were able to test and discount this plausible alternative hypothesis. Moreover, in that study and in the four-county study we found that not only was the payment of restitution beneficial, but the payment of fines was not beneficial. In other words, our results suggest that paying restitution has beneficial effects, and that these beneficial effects are unique to restitution. This finding suggests that judges and probation officers should be especially concerned with monitoring and collecting offenders' restitution payments.

#### Summary

In summary, restitution should be strengthened both because it is strongly supported by judges, district attorneys, and probation officers and because payment is linked to lower recidivism. Imposition rates can be increased if losses can be more easily quantified and if victims are more involved. Payment rates can be increased if probation officers, rather than specialized collection officers, monitor the payment of restitution.

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## Appendix A - Questionnaire

This study is concerned with the kinds of factors judges use to make sentencing decisions. In particular, we are concerned with restitution orders: when judges think restitution is appropriate, how much restitution they order, and what they do if the offender does not pay the restitution. This survey should take about 10 minutes to complete.

1) To what extent does restitution serve each of the following goals of sentencing?

Compensation to the Victim	Not at All	1	2	3	4	5	6	7	Very Much
Offender Rehabilitation	Not at All	1	2	3	4	5	6	7	Very Much
Punishment of the Offender	Not at All	1	2	3	4	5	6	7	Very Much
Deterring Future Crime	Not at All	1	2	3	4	5	6	7	Very Much

2) How important are the following factors in determining whether to order restitution?

Offender's ability to pay	Not at All	1	2	3	4	5	6	7	Very Much
Victim input	Not at All	1	2	3	4	5	6	7	Very Much
Type of offense	Not at All	1	2	3	4	5	6	7	Very Much
Extent of victim's injury	Not at All	1	2	3	4	5	6	7	Very Much
Offender's prior record	Not at All	1	2	3	4	5	6	7	Very Much
Offender's family obligations	Not at All	1	2	3	4	5	6	7	Very Much
Offender's employment	Not at All	1	2	3	4	5	6	7	Very Much
Type of sentence imposed (e.g., probation vs. incarceration)	Not at All	1	2	3	4	5	6	7	Very Much

3) How likely are you to impose restitution for each of the following types of victims?

Individuals	Not at All	1	2	3	4	5	6	7	Very Much
Small stores	Not at All	1	2	3	4	5	6	7	Very Much
Large stores	Not at All	1	2	3	4	5	6	7	Very Much
Corporations	Not at All	1	2	3	4	5	6	7	Very Much
Police officers	Not at All	1	2	3	4	5	6	7	Very Much
The Commonwealth	Not at All	1	2	3	4	5	6	7	Very Much

4) How likely are you to impose restitution for each of the following types of third parties?

Insurance companies	Not at All	1	2	3	4	5	6	7	Very Much
Purchasers of stolen goods	Not at All	1	2	3	4	5	6	7	Very Much
Crime Victims Compensation Board	Not at All	1	2	3	4	5	6	7	Very Much

5) For property losses and damage, how likely are you to use each of the following to determine restitution?

Original cost	Not at All	1	2	3	4	5	6	7	Very Much
Replacement cost	Not at All	1	2	3	4	5	6	7	Very Much
Victim's personal estimate	Not at All	1	2	3	4	5	6	7	Very Much
Insurance estimate	Not at All	1	2	3	4	5	6	7	Very Much
Police estimate	Not at All	1	2	3	4	5	6	7	Very Much
Victim's need	Not at All	1	2	3	4	5	6	7	Very Much

7) When you impose restitution, do you impose lower fines to reduce the total burden on the offender? Yes No

12) How often do victims contact your office to complain about an offender not paying the court-ordered restitution? Not at All Often 1 2 3 4 5 6 7 Very Often

13) For victims of property crime how important do you think it is that restitution be ordered? Not at All 1 2 3 4 5 6 7 Very Much

14) For victims of violent crime how important do you think it is that restitution be ordered? Not at All 1 2 3 4 5 6 7 Very Much

15) How important do you think restitution is to cover the costs of mental health counseling for crime victims? Not at All 1 2 3 4 5 6 7 Very Much

**16) When determining the sentence, judges may have background information on the offender and/or the circumstances of the offense. In general, how frequently is the following information available to you prior to sentencing?**

- Offender's criminal record** Not at All Often 1 2 3 4 5 6 7 Very Often
- Offender's family status/ community ties** Not at All Often 1 2 3 4 5 6 7 Very Often
- Offender's income** Not at All Often 1 2 3 4 5 6 7 Very Often
- Offender's employment status** Not at All Often 1 2 3 4 5 6 7 Very Often
- Offender's assets** Not at All Often 1 2 3 4 5 6 7 Very Often
- Aggravating or mitigating circumstances regarding the offense** Not at All Often 1 2 3 4 5 6 7 Very Often

**17) In your view, to what extent does a problem exist in the collection and enforcement of restitution in your court?**

No problem      Minor problem                      Moderate problem      Major problem                      Not sure

**19) If you decide that restitution is appropriate in a case and you believe that the offender might have difficulty paying it, to what extent are you likely to take the following actions?**

- Suspend the restitution** Not at All 1 2 3 4 5 6 7 Very Much
- Impose a lower restitution** Not at All 1 2 3 4 5 6 7 Very Much
- Allow the offender a longer period in which to pay the restitution** Not at All 1 2 3 4 5 6 7 Very Much
- Impose community service in lieu of the restitution** Not at All 1 2 3 4 5 6 7 Very Much

**20) Which of the following procedures are followed in your court when an offender fails to pay a restitution that you have imposed? Please circle yes or no for each action.**

- Phone call to offender**                      Yes      No
- Notification letter sent to offender**      Yes      No
- Warrant issued**                              Yes      No
- Indirect criminal contempt order**          Yes      No
- Delinquent account turned over to private/governmental collection agency**      Yes      No

21) To what extent do you think that the following reasons account for enforcement or collection difficulties in your court?

**System Related**

<b>Court's collection methods are inadequate</b>	Not at All	1	2	3	4	5	6	7	Very Much
<b>Too much time elapses between default of a restitution payment and the Court's issuance of a warrant for nonpayment</b>	Not at All	1	2	3	4	5	6	7	Very Much
<b>There is inadequate contact with or notification of offenders who fail to pay on time</b>	Not at All	1	2	3	4	5	6	7	Very Much
<b>Law enforcement agencies give low priority to serving warrants for nonpayment of restitution</b>	Not at All	1	2	3	4	5	6	7	Very Much
<b>Nothing serious ever does happen to offenders who fail to pay their restitution</b>	Not at All	1	2	3	4	5	6	7	Very Much

**Offender Related**

<b>Many offenders think that nothing serious will happen to them if they fail to pay their restitution</b>	Not at All	1	2	3	4	5	6	7	Very Much
<b>Many offenders leave the area or are too difficult to locate</b>	Not at All	1	2	3	4	5	6	7	Very Much
<b>Many offenders are poor and cannot afford to pay their restitution</b>	Not at All	1	2	3	4	5	6	7	Very Much

Comments:

Your county (optional) \_\_\_\_\_

Thank you for your help.