get into and I'm not sure we'll be able to conclude that today. So I would like to perhaps enter that for the committee members you have a packet of information, some can perhaps make reference to a suit by the United States, some of the Department of Justice, outlining concern of the non-competitive, non-bidding policy. I'm reading through the information I understand that the Attorney General, on at least two occasions, have asked that the Board rescind its regulation having, what is it, to do with the non-competitive and the non-bid factor. How do you respond? Or how would you as an engineer respond to that and address the suit, the Federal suit?

Number 290 Vernon Akin: Are you referring ...

Number 291 Chairman Furnace: I'm referring to Rule 36.233 which provides that each architectural, engineering and land survey shall seek professional employment on the basis of qualifications, etc., etc. And that has been I guess challenged by ...

Number 295 Vernon Akin: DOJ.

Chairman Furnace: ... attorney.

Vernon Akin: Right. It's been challenged by DOJ based on some different suits that have happened there in various states. They had Supreme Court hearing, NSEP, of course, were rejected on this. According to the information I have received this rejection was essentially on a technicality or it wasn't on the main basic subject. In answer to your question, I would say I am very, we are very much in favor of leaving that clause, that restriction in. Right now it's under rules and regulations on that statute. There is a proposed bill, I think that is one that you are eluding to, that takes it out of there and puts it in a statute; and if they want that they would try to get that statute through the Legislature which under the, as I understand it, the Attorney General's Office said that if they would take it out of the regulation and put it in the statute it would mute the suit, the DOJ suit. And I believe this is one of the subjects that they wanted to discuss at this meeting. So is this not inflated to bring up at this meeting by talking on the proposed bill?

Number 318 Chairman Furnace: Yes. Well, in fact, let me just read, to address the question again. Just my brief reading of the packet here tells me that the Department of Justice is concerned with the restraining phrase that that particular statement, that particular rule in your, I guess, administrative procedure is a restraining phrase, and on how do you, Sir, the thing we're trying to do here is address the concern or whatever; I hope you realize that. We're aggressively moving forward on to do that. But where

there's a pending law suit and as I read the AG has said hold off and let us try and handle this legislatively, and it appears that one of the ways to handle this legislatively is to to do away either with the non-competitive nature of bidding or approach it in some other way. And that's what we're attempting to do here, is to address it. Perhaps I should pose that question to, let's see well, Mitch, can you answer that?

Mitch Gravo: Yes, Mr. Chairman. It is my understanding that the interpretation of our Attorney General is that if this legislation to have the Department of Justice to go away because the regulation will therefore become mute and the legislation will be the commanding, the commanding rule. And that the concern of the Department of Justice. There are other states that have what their, there are other states that have Mini-Brooks legislation, the kind of legislation what you're looking at, and they don't have a problem with the Department of Justice. The reason this State has the problem is because we don't have any legislation however we do have the regulation. And it is my understanding that the Department of Justice said passed legislation that is the same as your regulation and you can do it by legislation but you can't do it just by ... through regulation.

Number 347 Chairman Furnace: Does that answer your question?

Vernon Akin: Maybe I can explain it a little bit more. The Mini-Brooks law and this House Bill 211 what it does is says the State will not put the jobs out for bidding, that what this is written for, the State will not put the jobs out for bidding. And I understand from Mr. Barry that this is legal, they can do whatever they want, the State can do whatever they want to, put what restrictions on the money that they are spending. Now if this 211 passes, it will catch the State and borough and the cities; it will not affect, it will not prohibit bidding of private jobs, private owners that want to put a job out to bid. The proposed bill which the DOJ suit is against this clause, the prohibitive bidding in the regulations. The proposed bill moves it from the regulations to a statute. If that were passed, if that bill were passed, then that would prohibit it for everyone. What it does is it gets the other end of it; it prohibits the engineers and architects from accepting work for bids. In my estimation we need both bills. One of them is to prohibit the jobs from being put out on a bid basis by the governmental entities. The other one is to prohibit the people from accepting it. As I say, the 211 can only get the public works but they can still, unless we have this other bill, well they can still bid on privately.

Number 373 Chairman Furnace: Let me recognize Representative Koponen.

Number 374 Representative Koponen: Thank you, Mr. Chairman. I was wondering, I see that was the original language of the bill suggested by the Board or by the Attorney General?

Number 377 Chairman Furnace: Which original language?

Representative Koponen: The original version of 211.

Number 378 Chairman Furnace: I'm trying to think. I don't recall. Jeff, do you recall?

Number 379 Jeff Barry: Yes. Maybe I can clarify something on that. 211 has not really addressed by the Attorney General's Office for the simply reason ...

Number 382 Chairman Furnace: No, Jeff ...

Jeff Barry: Well ...

Chairman Furnace: No, wait a minute. The question was, where did this original language come from? Please address that ...

Number 383 Jeff Barry: Okay, the original language in 211 is the Mini-Brooks bill and it came from the Board and the members in the profession.

Number 385 There is discussion on where the original language came from with committee members and Wallace DeBoff.

Number 387 Chairman Furnace: Let me ask Mitch. Mitch, I think you, in turn can give us, where did you get this original language?

Number 388 Mitch Gravo: The original language came from the group that testified on Friday, the Consulting Engineers Council of Alaska which is a group of 32 principals in architectural and engineering firms in the State that represent 500 individual architects and engineers.

Number 392 Chairman Furnace: Was this gleamed from the Mini-Brooks Act?

Number 393 Mitch: It was ... The Mini-Brooks was used as a model. It's not exactly like the Mini-Brooks but very close to it.

Number 394 The question is asked, the Washington State legislative model?

Number 395 Mitch Gravo: The ABA model and the Mini-Brooks model, both of those. They're slightly different but that's the model that was used in drafting the original 211.

Number 398 Chairman Furnace: Okay. Representative Koponen?

Representative Koponen: The reason I raised the question is that the Attorney General Designate Gorsuch apparently replying to the U.S. District Court did indicate that they would be ...

Number 401 Chairman Furnace: Which document?

Representative Koponen: This is one of the ones in the law case ... Civil Act from filed November 12th, '82. ... And it doesn't include anything, it's merely the agreement that they would, move to the about the tenth one down in that pile we got, it essentially reviews the case. It's in support of the defendant's motion for state proceeding.

Number 408 Chairman Furnace: Okay, I'm still trying to find the same thing that you have.

Number 409 Representative Koponen: It begins on Introduction and Summary after the court has informed by letter, a new attorney general undertook a review of this status ... I was just wondering whether the Attorney General had reviewed the matter since he is now the defending attorney whether, you know, it's the matter that he had drawn up, whether he feels that this would satisfy the case or, you know, in other words since he is your and our lawyer in the case, and he feels that this would satisfy. That's the only reason why I raised the question. I'm curious. And whether we should ask his opinion on this. So that we do change, you know, put forth legislation that will satisfy the requirements, that's all.

Number 422 Chairman Furnace: Mitch, comment briefly.

Number 423 Mitch Gravo: Mr. Chairman. Representative Koponen. It is my understanding that the Attorney General's Office has taken a look at the initial 211. And correct me if I'm wrong Jeff, but has indicated that that would serve the purpose of making the DOJ suit ... that's their understanding.

Number 427 Jeff Barry: No. Well, no. They drafted up a specific bill to address the law suit. The 211 is the State as a consumer in its choice of what it wants to do in its contract and procedures. The Department of Justice suit is the State using its police powers through the regulation and the licensing of engineers, architects and land surveyors of saying that they shall not be allowed to continue in business if they give a price estimate or bid to anyone and the regulation is separate, it's totally separate. 211 addresses what the State as a consumer will do, it's perfectly legal, it's a choice for the State to make as to how they want to handle their own money. The law suit has to do with the regulatory power of the State delegated to the Board of saying that if a person, a member of the profession, responds

to a request for a price. If saying if an individual walks in and says how much will you survey my plot of land for and they give him the answer they may loose their license. That's using the police power and the allegation is that's in violation of Sherman Anti-Trust Act. And there were three suits brought that were settled that said yes it was. They proposed some other legislation, the Governor would not introduce that legislation and they sent the Board down here saying maybe you guys will introduce that particular legislation. The law suit this is totally separate and apart; this is a choice matter; it's perfectly legal and doesn't impact that at all; and it should be treated separately as that being ...

Number 450 — Representative Koponen: Mr. Chairman, there was a reason I raised the question. I was wondering whether we were going to be looking at other legislation and that, you know, as a bundle to meet these questions.

Number 453 — Chairman Furnace: It's quite possible, Representative Koponen. The one we have in front of us now, the one that I would like to resolve first, get that in place, is either go with the original version of 211 or go to the recommended amended which in turn would be a Committee Substitute.

Number 456 — Representative Koponen: It's just in reading this and listening to the testimony made me realize that there are other matters pending that are not addressed by the bill.

Number 457 — Chairman Furnace: It's going to be important now for committee members to read all of this material, get a good handle. And what I propose to do today again is to walk through this, try to mark it up and then let's make sure we do our homework. This is a substantial piece of legislation and we need to have a good handle on it. But let's get on with the business of the hearing. Mr. Akin, are there additional questions?

Number 462 — Vernon Akin: I would like to correct one thing that Mr. Barry said. Using an example that you could not [illegible], the engineer or the architect or land surveyor, anyway, could go in and give a price. This is not what the legislation, not the regulations, says, it says he may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding. That's the way, that's what is prohibited. The fact that someone says how will you do this job for me that is essentially what we're doing now is we get the job, I mean the architect or engineer, they talk over the scope and then at the tail end of the negotiation is the how much do you want for doing this. That's not what we're objecting to, we're objecting to competitive bidding. This is the main crux of it. That you put it in and you're bidding against another professional man. And this we say is detrimental if you go on this basis, it's detrimental to

the owner because you're putting the services on a monetary basis rather than a expertise basis.

Number 477 Chairman Furnace: Good. Thank you, Mr. Akin. Let's go now to the next gentlemen to be heard ... Mr. DeBoff.

Number 479 Wallace DeBoff: Chairman Furnace, I wasn't really planning on testifying.

Chairman Furnace: For the record, Sir, would you again state your name and who ...

Number 480 Wallace DeBoff: My name is Wallace DeBoff. I'm Chairman of the Board of Engineers, Architects and Land Surveyors. My last name is D E capitol B O F F. I really wasn't planning on testifying for 211 today. I was really more interested in what we're going to do with the bill that the Board proposed. And I understand that you'd like to take one thing at a time. So I believe that I'm on the back burner again. Is that ...

Number 485 Chairman Furnace: Okay. Are you speaking of the original draft of 211?

Number 486 Wallace DeBoff: No, I'm speaking of a bill that was brought down and given to Jeff and asked, you know, we asked him if he'd ask you to introduce it for us.

Number 487 Chairman Furnace: I've not seen that, do you have that?

Number 488 Chairman Furnace calls an at ease.

Number 499 Chairman Furnace: ... let's now concentrate the energy, if we will. There are no other persons to be heard. We do have two potential pieces of legislation. What the Chair would propose we do is to go through these and make some determination of support. Jeff, would you take the seat down here, walk through an analysis on 211, and then we'll go through the recommendation.

Number 505 Jeff Barry: On 211 or also with 'a'?

Number 507 Chairman Furnace: Let's walk through 211 first, then we'll go through the recommend ...

Number 508 Jeff Barry: 211 basically is a change to chapter 36.98 which is professional services and that's this, and it fits within this as an exemption to the normal requirements for the professional services contracting, and I think it's helpful that way to see exactly how it fits in the whole scheme of things. Section 1 on architectural, engineering and land surveying contracts, as it would be straight 211 version, is language which defines how the architectural, engineering and land surveying contracts will be handled by

the State and it's political subdivisions. In the various methodology that's proposed in Section 1. Section 2 adds a new paragraph under 36.98.080 which is a definition that defines an emergency where under Section 1 the procedures would not apply. Section 3 amends AS 37.05.240 which is, with its sister portion AS 37.05.230, has to do with competitive bids, Alaska preference, definition of responsible and the competitive bid aspect and various other sections. And what it does is put a reference back to Section 1 in there that for contracts and architectural, engineering and land surveying shall be treated under Section 1 and not under 230 or 240. Section 4 is adding a new definition under the definitions; that just reiterates that 36.98.041 of Section 1 will be used in the architects, engineering and land surveying. Section 5 says that it will apply after the effective date. And Section 6 is the effective date clause. Did you ... In Section 1 did you want to go through what the methodologies are that are being proposed?

Chairman Furnace responds yes.

Number 541 — Jeff Barry: Section A says not withstanding the provisions of AS 36.98.040, and 36.98.040 has to do with the evaluation of proposals and award of contract. The significant part in there it says that only on the basis of demonstrative competence and qualification, 040 provides for both for the competence qualification but it also, under Part C of 36.98.040, says the contract, well, it defines a number of specific criteria that have to be meet the evaluation, the contracting agency, and it requires the request for proposal which is part of the area of whether or not that constitutes a competitive bidding, and that's what this is clearly trying to get away from is competitive bidding or pricing. B is in awarding the contract and it's a selection that it shall be strictly on the basis of demonstrative competence and professional qualifications. C, and that is your basis criteria, is that C it says subject to the criteria in B of this section a particular procedure for the selection of architects, engineers or land surveyors or for the award of contract is not required. And it says the State may publicly rank proposes or offers received in response to a request for services. That's pretty well leaves it wide open, whereas in 36.98 there are some set procedures because of various problems that occurred in the past. D and E, D is an exemption to this procedures for emergencies and E a definition that in this section State includes political subdivisions of the State and agencies of the state and its political subdivisions. It's a straight definition. And basically, ...

Number 573 — Chairman Furnace: Let's go through A, then ...

Number 575 — Jeff Barry: A again goes back basically to 36.98 which was legislation that was passed last year and tries to bring and

set forth a procedure to be followed. And Part A is just stating that it's the policy of the State to publicly announce the requirements and to negotiate contracts only on the basis of demonstrative competence and qualification for the type of professionals services required and a fair and reasonable prices not withstanding the provisions of 36.98.040. Part B says the section this section chapter, applies to contracts for architectural and engineering services provided to a State agency unless one total amount of the contract does not exceed 25 thousand.

Number 587 Chairman Furnace: Jeff, where did that language come from?

Jeff Barry: That language comes from 36.98.010. It's the exact language ...

Number 588 Chairman Furnace: Statute?

Jeff Barry: Yes, Sir. It's on the small printout putting that in Session Laws '82. The 25 thousand dollar figure was a compromise reached among all parties. Last year when this, what was then House Committee Substitute for Senate Bill 156, was going through the process there were about four or five bills rolled into to clean up the abuses in the professional services area not aimed at architects, engineering and land surveying, but the consultants and across the board in those. The 25 thousand dollar figure was a compromised figure. There were components, the Ombudsman Frank Flavin, former Ombudsman, who it wanted zero, no exception. There were others saying well we have small contracts we need the flexibility to be able to sole source them if we want or anything else. So the 25 thousand figure was just a figure arrived at by compromise. That's saying that it goes over, this will apply, under 25 thousand basically do what you want.

Number 602 Chairman Furnace: Now that's total contract dollars as opposed to 25 thousand in fees?

Number 603 Jeff Barry: Well, it could be read either way. Quite honest ...

Chairman Furnace: ... Well, what was the intent there? What were they thinking? Are we talking contract dollars? ...

Number 604 Jeff Barry: The actual contract dollars to the individual or firm. So it, the interpretation that Mr. Akin had would be probably be correct. It would consistent with the history of 36.98 that the award or the contract to the individual firm would have to exceed 25 thousand.

Number 608 Chairman Furnace: Let me take Representative Ringstad, then Uehling.

Number 609 Representative Ringstad: My recollection was that, or my understanding was that, the intent here was for the larger contracts, contracts meaning or the interpretation I think was that the job was going to be more than 25 thousand, not necessarily the fee.

Number 613 Chairman Furnace: Okay, but that's just what he said, wasn't it?

Representative Ringstad: Well, I think it depends on how we look at it. Now, if we're going to give out a million dollar job, a million dollars is more than 25 thousand. Okay, that's a big job. We want, it would not qualify here as being under 25 thousand. But if the contract is written so that I'm contracting with you to do this million dollar, to oversee architectural million dollar project. The contract with you is only 20 thousand so it fars under this. It's two different contracts. I think that's where the misunderstanding was.

Number 621 Jeff Barry: It's ambiguous in the regard that basically the legislation was aimed at the consulting areas of which it would be a consulting contract, that's end of and in itself rather than a project where elements could be broken out. So it is ambiguous from that aspect.

Number 624 Chairman Furnace: I'm going to take a question here, Representative Uehling?

Number 625 Representative Uehling: Yes, maybe you can explain that further. What, well, what two types of contracts are you talking about? You said if there's a million dollar situation and then you've got 25 thousand what is the, I just don't understand at all.

Number 628 Jeff Barry: Well, it could read either way and that's what I think everyone is saying. That actually B should be changed in here, you know, applies to contracts unless and then under 1 the total amount of instead of putting in contract put in the word fee, in which case it would clearly designate that and then set whatever dollar amount you want or delete it. This was just taken from above but as specifically pertains to the profession would be appropriate to clarify that so that there is not ambiguity.

Number 636 Chairman Furnace: Rick, additional questions?

Representative Uehling: I just didn't see the difference between the fee and the contract. ...

Jeff Barry: Well, in the project contract if it were a building, the building itself in the total CIP may be two and a half million dollars, but the contract with the architect and engineer for that may be only 20 thousand.

Number 639 Chairman Furnace: ... Representative Koponen.

Jeff Barry: So which would be covered or not and that's ...

Representative Koponen: Thank you, Mr. Chairman.

Chairman Furnace: Representative Koponen.

Number 640 Representative Koponen: Mr. Akin's referred that it would open it up to competitive bidding if the low contract, it can also be read that under 25 thousand dollars that agency or department of the State is not required to inquire into the competency of the ...

Number 643 Chairman Furnace: Absolutely.

Representative Koponen: Which might be one of the things that we don't want to open up. Just grab somebody off the street.

Number 644 Chairman Furnace: Okay, thank you, Representative Koponen. Mr. Ringstad?

Representative Ringstad: I was just going to ...

Number 645 Chairman Furnace: I'm sorry. Let me, I think Mr. Cowdery was ...

Representative Cowdery: I'm going to be ...

Number 646 Chairman Furnace: Mr. Ringstad?

Representative Ringstad: No, I was just going to try and further explain the ...

Number 647 Chairman Furnace: Okay. Mr. Malone?

Representative Malone: I don't have any questions.

Number 648 Chairman Furnace: Let the record show that, did you note that? Continue. Suffice that number 1 under B needs some cleaning up if it is to ...

Number 650 Jeff Barry: Right. It should address B and then the figure amount is was just taken out of 010 and there's no rational basis. Whatever would be. In 2 is and it's bracketed because there's a question people wonder why that was the contract, is an employment contract for services to be performed under the direct supervision regardless of the existence. That basically has to do where people have brought in from outside right directly in-house whether it's to teach new techniques, to clean up, to work on the projects, specific because of a time crunch ... (END OF TAPE)

TAPE #39 (Side B)

Recording Number	
Number 002	Chairman Furnace: Let's break at that point again. I wanted to adjourn the meeting unless there's some objection to it. And have a chance to work with Mr. DeBoff and Mr. Gravo, and Jeff and I to work out some things here. We do have a floor session that's coming up here in about 20 minutes. Give the committee, you a chance to get back to your offices to get prepared for that. Representative Ringstad?
Number 010	Representative Ringstad: Can we get copies of these things so we can take them with us and play with them?
Number 012	Chairman Furnace: Do you want to take your file with you?
Number 013	There was discussion by the Chairman and committee members regarding the committee files. Chairman Furnace then spoke of the agenda for tomorrow's meeting regarding continuation of HB 211 and introduction of HB 197.
Number 031	The meeting is adjourned.

HOUSE LABOR & COMMERCE
STANDING COMMITTEE MEETING
RE: HOUSE BILL NO. 211
March 22, 1983

TAPE #40 (Side A)

Recording	
Number 005	Chairman Furnace: The Chairman has called the meeting to order. The day 3/22/83. Those persons present are: Representatives Wendte, Ringstad, Cowdery and Chairman Furnace present. The time is 8:50. The legislation for consideration today is the continuation of the discussion on House Bill 211, "An Act relating contracts for architectural, engineering and land surveying services; and providing for an effective date.". We have before you this morning an amendment that is recommended for substitution of the Section 1 of the bill. I'd like to walk through the amendment this morning and to see what the greatest importance here. Does everyone, do you have a copy of that?
Number 013	There is discussion regarding if committee members have a copy of the amendment.
Number 020	Chairman Furnace: All right, let's go to the amendment then.
Number 021	The question is asked, that's the one defined as 'a'? Chairman Furnace: Yes, that's the one that's defined as 'a'. First of all, has each member had a chance to read the amendment? Are there particular sections of it that you have concerns with? If not, we'll start from the top and just walk through it. ... Section A then is the policy of the State to publicly announce all requirements for architectural and engineering service and to negotiate contracts architectural and engineering services only on a basis of demonstrated competency and qualification for the type of professional service required and that a fair and reasonable price not withstand the provision of chapter 40 the section 36. Any problems with that? Representative Ringstad.
Number 029	Representative Ringstad: I've just one question maybe I'm off base but that's stating that this is the policy. Are we accomplishing what we want to accomplish? In that just 'cause that's policy doesn't mean that necessarily they have to do it that way.
Number 032	Chairman Furnace: What are you suggesting or recommending? I don't follow you.
Number 033	Representative Ringstad: Are we better off to state that this is the way it will be done? Rather than to establish general policies that always have exceptions to the rules and this and that and the other?

Number 035 Chairman Furnace: Well, it might be in our legal terminology. It appears to be that this to understand the language, Representative Ringstad. Would you other suggest language you would like to insert there?

Number 037 Representative Ringstad: Well, you know, and if you're trying to accomplish something, most legislation that I have dealt with is this is the way we shall do it.

Number 039 Chairman Furnace: I think you should read more into the bill and to the amendment shall and ...

Number 041 Representative Ringstad: That type of language is there.

Chairman Furnace: Yes.

Number 042 Representative Ringstad: Your first paragraph is kind of coming across as ...

Chairman Furnace: This is an amendment to be inserted into ...

Number 043 Representative Ringstad: Well, the way I read it, you're taking out this whole thing here. It's starting out as a rewrite of the whole bill the way I read it.

Number 045 Chairman Furnace: The question, Representative Ringstad, do you have a problem with Section A? If so what is your recommendation?

Number 046 Representative Ringstad: Well, it was just a question. To me this would read as intent language ...

Number 048 Chairman Furnace: It's a policy statement.

Representative Ringstad: Okay. Fine.

Number 049 Chairman Furnace: Okay. Section B. This chapter applies to contracts for architectural and engineering services provided to a State agency unless the total amount, and there was a recommendation to change contract to fees. does not exceed 25 thousand dollars. Any problem with that statement? Representative Cowdery.

Number 052 Representative Cowdery: Yes. It seems to me in the real world that the fees out there, the interpretation of whatever the architect or engineering fee would be to a particular project could be in the administration of contracts and everything, this could all be in the fee that was tithed. And I just have problems with the 25 thousand dollars or putting a figure on this with due respect to the qualifications, some maybe think that if we don't put a fee that we're overlooking the small individual, but I still think that in top here it says here demonstrative competence of qualifications that that is the key to me of what the intent of this is to try to get competence

and qualification into this bill, 211. And I think that if we, with due respect to the small guy, I think that the 25 thousand dollar figure is not what unlike a person trying to getting into the contracting business and he builds himself a reputation to the bonding markets to deal with the bond jobs and that is the process through tries to work for large firms or out on your own and demonstrating your competence 'til finally you can get the competence of a bonding company to back you. And too, to the larger amount then I think that's probably, I just have a little problems with putting a fee into the price.

Number 072 Chairman Furnace: So is there a recommendation?

Representative Cowdery: I don't think that there should be a dollar amount.

Number 073 Chairman Furnace: Is there a motion to that effect then? To exclude that language?

Number 075 Representative Cowdery: Yes, I would make a motion that we ...

Number 076 Representative Ringstad: A point of inquiry here. I want to address this to Representative Malone because he's had a little more experience on these. Can we be amending and adopting a draft substitute before we adopt a substitute?

Number 079 Representative Malone: I think that's a decision the Chair should make, Representative Ringstad.

Number 080 Representative Ringstad: I didn't know if the Rules addressed that ...

Number 081 Representative Malone: Committee procedures are fairly informal so whatever the best way to handle something as far as ...

Number 082 Chairman Furnace: Representative Cowdery has the floor. Are you proposing a motion to delete Line 1 under Section B?

Number 084 Representative Cowdery: Yes. With, I would like, we have heard from many people here mainly the architects, we haven't heard from Associated General Contractors I don't believe and from the Department of Transportation, you know, that's maybe that would be in order to get input from them on this issue. But right now I would propose that we delete the sentenced total amount from the fee or contract does not exceed.

Number 089 Chairman Furnace: Is that a motion then, Representative Cowdery?

Representative Cowdery: Yes.

Number 090 Chairman Furnace: We have a motion to delete Line 1, Section B, all in favor of that motion?

Number 091 Representative Wendte: Mr. Chairman, I would like to call a discussion.

Chairman Furnace: Discussion? Let me recognize Representative Wendte, then Malone.

Number 093 Representative Wendte: I note that the entire section there B is in the existing statute. Why are we proposing another bill to put this exact language in the statute when it's already in there? ... Although you're putting it in another section. Verbatim that's taken out of the existing statutes.

Number 098 It was stated: Representative Wendte. The entire section of the statute you are referring to before does no longer applies to this particular rule, if this is adopted. So there would be absolutely no procedures and this is establishing procedures for that particular group. So you're exempting them from the requirements of 36.98 and ...

Number 103 Representative Wendte: You mean you're re-establishing the same procedures in this bill?

It was responded: Or some procedures, yes.

Number 104 Representative Wendte: In this case, exact verbatim word-for-word procedure.

Number 105 Chairman Furnace: Let's see ... Where did you find that in the statutes?

Representative Wendte: 36.98.010.

Number 107 Chairman Furnace: 010?

Representative Wendte: Yes.

Number 110 Representative Wendte: That's my concern and I don't see any reason in the statute to exempt them from one and then completely redraft the same.

Number 112 There is brief discussion.

Number 115 Representative Wendte: Well, I guess my concern is that directly to the point of your motion ... The wording that you're trying to get out is already in the statute for professional contracts, professional services contracts.

There is more brief discussion.

Number 118 Chairman Furnace: Okay, let's, Representative Wendte has the floor ...

Representative Wendte: Sections for everything from section, all of Section B is in the statute; down to the start of

Section C; and really Section C is a restating of 36.98.020 except you're adjusting it some, though it's not verbatim but it's model after that as well.

Number 124 Chairman Furnace: Okay, Representative Malone, do you a comment concerning that?

Representative Malone: I guess, do we have a motion pending?

Number 125 Chairman Furnace: There's a motion of the floor we have to handle it.

Representative Malone: It would delete this total amount of the contract does not exceed 25 is what basic ...

Number 127 Chairman Furnace: That's the extent of the motion.

Number 128 Representative Malone: And so it that it would require even in the case of small contracts under this section the State or local government agency to go through all the steps except I guess they wouldn't have to have at least six firms ... That's in fact ...

Number 133 Chairman Furnace: That's one portion of it. Now, be mindful that 36.98.010 applies to the professional services contract; the new section 36.98.041 applies to architects and engineers, so it is a new section of the statute. And so the process here would be to repeat certain existing language in this to make it more conclusive, unless this committee elects to take some of this out and once we go through and adjust this document. The question is, have we violated any statute requirements or whatever, and that would the second effort. We're still on discussion, Representative Malone.

Number 143 Representative Malone: Well, it just .. basically then you'd have no exemptions from 041. Might be ... state operations, might not be ...

Number 147 Chairman Furnace: Additional discussions? Representative Ringstad.

Representative Ringstad: I tend to agree with Representative Wendte about that whole Section B. I'm not sure what ...

Number 149 Chairman Furnace: Well, Representative Ringstad, we're dealing with Section B, Number 1, at this time. That is the motion on the floor.

Number 151 Representative Ringstad: Okay. ... We're all going to amend the motion or you want me to discuss it?

Number 152 Chairman Furnace: We're having a discussion right now.

Representative Ringstad: Well, that's what I'm trying to discuss ... If you want a motion, we can do that too.

Number 152 Chairman Furnace: Well, we have a motion on the floor to deal with Section B, Item 1.

Number 154 Representative Ringstad: Okay.

Chairman Furnace: To take out the total amount of the contract does not exceed 25 thousand. Additional discussion on that. Are you ready to vote to delete that?

Number 156 The response is discussion.

Number 157 Chairman Furnace: Representative Ringstad.

Representative Ringstad: Well, to me in addressing what Representative Wendte's point, I think we can do without the whole Section. Why go through line-by-line and leave out every line?

Number 159 Chairman Furnace: Then would you wish to amend the motion to take out the entire section? ... that amendment.

Number 160 Representative Ringstad: Yes, I would with Representative Cowdery's concurrence I would amend to move the original motion to leave out Section B here.

Number 163 Representative Cowdery: Okay.

Chairman Furnace: Well, then the amendment to the motion is to take out Section B in its entirety. Discussion on the amendment? No discussion? All in favor of taking out Section B in its entirety show by a raise of hand. All opposed? The motion carries. Section B is deleted. Section C. You gentlemen can read as good as I can. Any concerns with Section C? Representative Wendte.

Number 171 Representative Wendte: Mr. Chairman, I guess I ... We have a section that address professional services, and now we're creating a whole new section for a series of statutes that deal with contracts with architectural and engineering services. So I guess as a drafting concern Section B, Section C rather and throughout, we go back to describing as professional services contracts when you have a whole set of statutes that deal with professional services contracts. Well, I guess it's our intent, as I understand it, to take a section of professional services contract and call them architectural and engineering services. Although that doesn't mean that your professional any more but we are, I can see problems throughout where going back and referring to professional services contracts. Does that mean that professional services contracts for architects and engineers, does that apply to both? Existing statutes do we got and then this one as well?

Number 186 Chairman Furnace: I'll restate my comments from a minute ago. What we're doing now is adding a new section of statute covering architectural and engineering services. In essence, I would assume here that has the intent of taking architectural and engineering services out of the professional services statute and setting up a different sections governing that. That is the request that we've had and that is what we are dealing with now.

Number 191. Representative Wendte: So my concern is let's not take out the wording where they use professional services contracts in this bill. Continue to call it to be consistent with what you just stated. Architectural and engineering services contracts.

Number 194 Chairman Furnace: I believe that that has been done in the amendment.

Representative Wendte: Well, if you go through if you read through C you'll see regular reference to professional services contracts.

Number 197 Chairman Furnace: I don't think, you know, that's not awardable I believe, but let's read that. The State agency proposes to enter into a contract architectural and engineering services the agency shall give public notice soliciting a request for qualification for the professional service contract by qualification at least three times i one more newspapers in general circulation. Now, that particular instance, we have professional services contract and that covers, excuse me, a wide array of other practioneers. In this particular instance, we're speaking of principally to architects and engineering services, that contract is still called a professional services contract. And that is perhaps the distinction you have professional service contract to land surveyors for example. One of the recommendations is to not include land surveyors in this particular bill only to the extent that in they may interact with an architect or engineer. That's another adjustment that we'll have to make. Does that make it plainer?

Number 211 Representative Wendte: Well, the only I guess the point is that if you wanted to add a definitional section that says in every instance in this statue where they discuss professional services contract ...

Number 214 Chairman Furnace: ... statute ...

Representative Wendte: ... that you're ... that you are in effect, you need a definition of what you're talking about when you're talking about that, so that you don't have the conflict between the two sections of the statutes.

Number 218 Chairman Furnace: So noted. We can put that definition in the ...

Number 219 Representative Wendte: You have a definition for, in this section, architects and engineering services includes professional services, so you define it that way ... It is mostly just a drafting ...

Number 222 Chairman Furnace: ... as a recommendation. Let's go back now. Sec. 3 is there a motion concerning Sec. 3? Is there a desire to delete portions or all of Sec. 3? Section C, I'm sorry. Representative Ringstad.

Number 227 Representative Ringstad: We're requesting, let's see, the agency should give public notice soliciting a request for qualifications. Under current statue what we're doing is giving public notice, soliciting proposals. So the change here is that we're requesting qualifications and not proposals?

Number 232 Chairman Furnace: Well, perhaps let me explain that. In the engineering and architectural situation, the company is judged upon its ability and its qualification, and that qualification often times is spread upon two particular documents, Form 255 and 254. If an engineering firm wishes to bid on sewer job for example, on 255 they would list their history and involvement in sewer jobs. Often times they would pick based upon their qualifications first, and then negotiation as to price and other design characteristics is somewhat of a second phase, you see. So the first solicitation is a request for qualification, and that is probably unique to the engineering and architectural ...

Number 246 Representative Ringstad: Well, ... address that to me, part of your proposal, to make a proposal, well that's the basis they're going to determine it on your proposal will have that. That's if you don't submit your qualifications as, and all you give them is money, then you have half a proposal and your proposal's no good.

Number 250 Chairman Furnace: Perhaps what we need to do, Representative Ringstad, is to walk through again the process of solicitation of a job, an A and E job. Mitch, can you share that with us? Can you join us here?

Number 254 Mitch Gravo: Mr. Chairman, as I understand it how the process works, Representative Ringstad, is that the State first advertises for a request for qualifications for a job. For example, design a bridge, and they solicit responses from qualified architectural and engineering firms. And the only thing that the A and E firms submit are their qualifications or their experiences to do a design for a bridge. And then once the State gets all of those, what are called RFQs, they take a look at them and they see who the six best or three best qualified firms are. And then once they make that short list, they talk to the person, most qualified firm based on the request for qualification. And that at time they ask the most qualified firm to submit a proposal to design the bridge. And then in

that proposal they ask for a request for proposal at that time. So there is a distinction between a request for qualification which occurs initially and up to the point when they determine who the short list is. Once they determine what the short list is, then they ask the most qualified firm of, they request a proposal to do the project. They're terms of ... they have very firm definition within the AE field.

Number 272 Chairman Furnace: Thank you. Representative Ringstad.

Number 273 Representative Ringstad: So basically that's the way they're doing it now?

Number 274 Mitch Gravo: Yes.

Number 275 Representative Ringstad: Effectively what they're doing then is a majority of the people submitting for the job don't put in a bid?

Number 277 Mitch Gravo: No.

Representative Ringstad: Price bid.

Mitch Gravo: No. No. Not at all.

Number 278 Representative Ringstad: So by putting this in here basically you aren't changing anything in this paragraph? ...

Number 279 Mitch Gravo: That qualifies pretty much the standard procedures, at least the Department of Transportation. Now, how Fairbanks or how Unalakleet or how the Anchorage School District solicits paying services may vary a little bit. But that's the standard procedure at least for the Department of Transportation. That's the one that I am most familiar with.

Number 284 Chairman Furnace: Representative Ringstad.

Representative Ringstad: Okay, so the testimony we had the other day, they were trying to get to the local, the local areas too, so this may or may not apply to them at this point?

Number 287 Mitch Gravo: It would apply to them because in the substitute draft that you have before you states that it's defined to include political subdivisions.

Number 289 Chairman Furnace: At this point?

Mitch Gravo: Yes.

Chairman Furna : It does not necessary apply, that's just the way DOT does i

Number 290 Mitch Gravo: Right.

Chairman Furnace: Representative Ringstad, one of the attempts here again is in this particular contracting there should be some predictability and some uniformity. Now, what we may be doing is asking other political subdivisions to comply with the statute if this indeed does go into statute. DOTPF has a pretty recognized and respected system and the burden would be upon the municipalities into coming to some type of compliance ... Is this section here okay? ... Representative Ringstad, additional questions? Representative Wendte?

Number 302 Representative Wendte: Mitch, would you, almost everything in this bill in fact aside from dropping out some sections in the existing statutes, would you go through and point out where this bill differs, is a difference from the existing statute? Which I understand was just adopted last year.

Number 306 Mitch Gravo: Representative Wendte, I didn't draft this Committee Substitute, so I'm not totally familiar with it. But I think that if you read it closely the first paragraph, if you turn back to the first paragraph, the only exception to 36.98 that is made here is the exception that 36.98.040, and that is the section in 36.98 that could allow price bidding. That's the only section in 36.98 accepted. So I think if you read it closely, the rest of 36.98 applies. Or could apply.

Number 315 Representative Wendte: I guess I get back to my original question. Why are we going through and putting all the same language back in?

Number 316 Chairman Furnace: How would you suggest handling that then, Representative Wendte?

Number 317 Representative Wendte: I would suggest that whoever drafted it go back and completely redoes it, the whole thing. All we're doing is duplicating statute.

Number 319 Chairman Furnace: Well, Representative Wendte, be mindful now, we're creating a new section of statute.

Number 320 Representative Wendte: I know that.

Chairman Furnace: New section to cover architectural and engineering. Now, I'm not totally positive on this but it appears when if you're going to do that I guess what you're saying, you want to reference back to professional contracts as opposed to making this a separate ... and section all of its own. Which means that you're going to repeat somethings which happens all the way through the statutes, if there is a redundancy here.

Number 326 Representative Wendte: I guess for all concerned I guess the present system isn't, is it working or does not properly apply to architectural and engineering services.

Number 328 Chairman Furnace: Perhaps the best statement is that it does not particularly address the concerns and the intent of codifying more specifically those contracts and the contractual relationship between architects and engineers in a State and political subdivision. I don't think it's a pertain question not necessarily working but an attempt to codify it.

Number 333 Representative Wendte: Well, as I understand it the intent of the bill is just to get competitive bidding out of the process in terms of the dollar figure going to essentially to inquire determinations be made on the basis of qualifications.

Number 336 Chairman Furnace: That is ...

Representative Wendte: If that's the case, it just seems to me that there would be a whole lot cleaner way to do that rather than going back and creating a whole new series of sections of statutes that repeats what's, you know, the previous section of statutes.

Number 339 Chairman Furnace: Yes, but do you have some recommendation for that, Representative Wendte.

Number 340 Representative Wendte: I guess my recommendation is we request whoever drafted this to start over again without doing that.

Number 342 Chairman Furnace: Well, you know we could request them to start over again without some specific direction; we've requested that and this is the information ... Now, without some specific recommendation as to what you'd like to see, going back to the drafters aren't going to accomplish what you want. Representative Ringstad.

Number 347 Representative Ringstad: Question to Mr. Gravo. Mitch, now you were saying that the first paragraph in our draft here exempts architects and engineers from section 040.

Number 351 Mitch Gravo: That's the only thing that architects and engineers are exempted for in this Title 36.98.

Number 353 Representative Ringstad: The way I read that that first paragraph that proposes scrutiny.

Number 354 Mitch Gravo: That's the section 36.98 that causes the A and Es some concern because that the section which could allow for question.

Number 356 Chairman Furnace: Which section is this again? Okay.

Representative Ringstad: 36.98.040 is what we're exempting then from. So I follow that one step further by exempting them only from the section, they're still under all the rest of this 36.98. And paragraph B matches up with 36.98.01, paragraph C matches up 36.98.030, and it kind just go back down, and as

Representative Wendte was saying, we're duplicating. So maybe what we need to do in drafting this thing is go back and only address 040, we're going to exempt from that, all we have to do is exempt from that and state specifically ...

Number 373 Mitch Gravo: Mr. Chairman?

Chairman Furnace: For the record, Mitch.

Mitch Gravo: Mr. Ringstad, I think that that is with original HB 211. It just addressed the issue of price bidding, precludes price bidding, and does not say anything about a procedure, and left that procedure up to DOT or the statutes that exist now or the local government or the local school district or whatever.

Number 379 Chairman Furnace: Representative Ringstad.

Representative Ringstad: So in leaving it up to the existing statues or whatever, this is the rest of this 36.98 is the existing statutes, the guideline that is already there. So what we need to do is just make sure that we exempt from 040 and it still by doing that it would still fall in to this and make sure that the State and all political subdivisions thereof fall into that.

Number 389 Chairman Furnace: Question? Continue.

Representative Ringstad: Mr. Chairman, in direction of where Representative Wendte was going is to how do we redraft this to address that. I think that that we are in fact duplicating in saying this still in the existing statute. Maybe what we ought to do is go back to the basis of addressing only the one section that we're exempting architects and engineers from. We don't have to address all the rest of this which we seem to be doing on several pages. I think we can leave to section page on that Page 1, 2, 3, and 4, or 5 out.

Number 401 Chairman Furnace: Are you putting that in motion, Representative Ringstad? Or is that simply ...

Number 401 Representative Ringstad: Well, let me keep working on it to make sure ... you know far we need to go here.

Number 403 Chairman Furnace: Let me recognize Representative Malone.

Number 404 Representative Malone: Well, Mr. Chairman, I understand that , I understand that the same way that we're duplicating a lot of the language and procedures set out in the earlier section, but we're also providing a new contracting mechanism different from 36.98.040 and when you do that you have to set out the procedures you're going to use. That's what this bill does. And I think on that basis it's properly drafted. I mean I suppose you can go in and say that the only section that doesn't apply under 36.98.010 to whatever the end of the chapter is, is 040,

but when you do that you're going to have to make some conformance changes to the rest of it and I think the cleanest way to do it is with a new section. Just from a procedural standpoint.

Number 421 Chairman Furnace: Representative Ringstad.

Representative Ringstad: Mr. Chairman, I would propose or if we so choose a motion form that we redraft this, have this redrafted for us basically so that we would include paragraph A and then paragraphs I, J, K and L. And if we need to we can state in there maybe ... that other procedures within this Title 36.98 would still apply. Something along that line. Within 36.98 it's stated in all these sections and then 36.98 is stated all over again. Perhaps what's already on the books all we have to do is, by implication I think it's there, but if not we can just refer back and say that A and E's still under the guidelines of other parts ...

Number 439 Chairman Furnace: Let's make sure what you're proposing to take out is. Your motion is to ...

Number 440 Representative Ringstad: Well, we've already taken out B, so ...

Number 441 Chairman Furnace: Your motion then addresses taking B through ...

Number 442 Representative Ringstad: Let me take on the positive form.

Chairman Furnace: Okay.

Number 443 Representative Ringstad: I would move to have this redrafted for us so as to include paragraph A, Section 1 on Page 1, Page 5, paragraph I, and all of Page 6. And I think once we get that and we get a chance to review that, we'll work with that and maybe we can see if we need to add something to reference it back to what's currently in statute or that's implied.

Number 453 Chairman Furnace: Okay, we have a motion on the floor. Discussion? Let's take a second to see ...

Number 468 Chairman Furnace: Additional time to review? Are you ready to handle the motion? Additional discussion? Are you ready for the vote on the motion? All in favor of the motion in its present state to adopt of this Section A ... Section 1 A and move to Page 5, Items A ... I, all of Page 6? That is ... A problem with that?

Number 480 Representative Ringstad: You're doing fine.

Chairman Furnace: All in favor of the motion show by a raise of hand. All opposed to the motion show by a raise of hand. The motion does carry. We'll redraft it to cover that. I want to have a chance again to read back between the two documents.

Number 484 Representative Ringstad: Mr. Chairman?

Chairman Furnace: Representative Ringstad.

Number 485 Representative Ringstad: I would suggest that in reviewing that, Billy can have ... for us and we can study that one a little bit and compare that to this one and compare it to existing statute, compare it to the original bill, and ...

Number 489 Chairman Furnace: Okay. Is there any more discussion on that? All right. We will have to reschedule this, I'll set a date. We've got a fairly heavy calendar ... we'll make it in relationship to another meeting. Are there persons to be heard on HB 211 at this time? Any other comments? If not, that ends discussion on 211.

Number 499 Chairman Furnace then brought the next item on the agenda, HB 197, before the committee.

A/ HB 211 3/18/83

*Section 1. AS 36.98 is amended by adding a new section to read:

Sec. 36.98.041 ARCHITECTS AND ENGINEERS.

(a) It is the policy of the state to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services only on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices notwithstanding the provisions of AS 36.98.040.

(b) This section chapter applies to contracts for architectural and engineering services provided to a state agency unless

(1) the total amount of the contract does not exceed $25,000;

[[[(2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner.]]]

(c) When a state agency proposes to enter into a contract for architectural and engineering services, the agency shall give public

notice soliciting a request for qualifications for the professional services contract by publication at least three times in one or more newspapers in general circulation in the state and, when appropriate, in a newspaper in local circulation where the work is to be performed. The first notice shall be published not less than 30 days before the date on which the agency expects to enter into the contract and each subsequent notice shall be published at intervals of no more than three days thereafter. The notice shall include

(1) a general description of the proposed project for which the agency is seeking professional services; and

(2) the procedure by which a person or firm interested in the professional services contract may submit its response to the agency for consideration for the contract.

(d) In addition to complying with the publication requirements of (c) of this section, when a state agency proposes to enter into a contract for architectural and engineering services it shall

(1) review the register of professional services contractors maintained by the commissioner under AS 36.98.020; and

(2) provide a notice of a request for qualifications for the proposed professional services contract to each prospective contractor who, after review of the register of professional services contractors under (1) of this subsection, the agency finds is qualified for consideration for the contract.

(e) Requests for qualification from at least six persons or firms with the required expertise shall be solicited for contracts equal to or greater than $100,000. Requests for qualification from at least three persons or firms with the required expertise shall be solicited for contracts of less than $100,000 if the expertise required is available. If the expertise required is not available to enable an agency to solicit the number of requests for qualification otherwise required under this subsection, the agency shall solicit requests for qualification

(1) from each person or firm listed on the professional services contractors register maintained under AS 36.98.020 who appears to possess the required expertise;

(2) from each person or firm responding to the public notice given under (a) of this section who appears to possess the required expertise.

(f) The provisions of this section do not apply if

(1) the contracting agency demonstrates that there is a single source of the expertise or knowledge required or that one person or firm can clearly perform the required tasks more satisfactorily because of the person's or firm's prior work; however, this exemption applies only if the head of the state agency has submitted a written request to the commissioner that details the reasons for the exemption and the commissioner or deputy commissioner has authorized in writing the state agency to enter contract negotiations with the single source;

(2) the commissioner makes a written determination that public necessity will not permit delay incident to the procedures otherwise required by this chapter; or

(3) the service is to be provided by another state agency, a federal agency, or a political subdivision of the state.

(g) The agency must provide a description of the work to be performed under the contract and the agency shall conduct discussions regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. The state agency must provide a description of the factors that will be considered when it evaluates the request for qualifications received.

(h) After the responses are submitted, the state agency shall publically evaluate them. The evaluation shall consist of assigning point values to factors considered by the agency in evaluating each proposal. Points shall be awarded for being a qualified Alaska firm..

(i) The state shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the state determines is fair and reasonable to the state. In making such determination, the state shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature of the services. Should the state be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, the state shall undertake negotiations with

the second most qualified firm. Failing accord with the second most qualified firm, the state shall enter negotiations with other contractors, in order of ranking until an agreement is reached. The state may reject all or part of a proposal.

(j) This section does not apply to contracts awarded in an emergency if the person responsible for execution of the contract on behalf of the state certifies in writing that an emergency exists.

(k) In this section "state" includes political subdivisions of the state and agencies of the state and its political subdivisions.

(l) In this section "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/11 , 1983

I. REQUEST
Bill/Resolution No.: CSHB 211
Title: Arch/Engr/Land Surveying Contracts
Sponsor: Furnace, Abood, Barnes, etc.
Requestor: House Labor & Commerce

II. FISCAL DETAIL
Agency Affected: DOT&PF
Program Category Affected: Transportation
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL			SEE ANALYSIS			
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Jonathan W. Scribner Phone: 364-4339
Division: Deputy Commissioner, S.E. Region Date: 4/13/83

Approved by Deputy Commissioner: Jonathan W. Scribner Date: 4/13/83
Department: Department of Transportation & Public Facilities

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8

ANALYSIS

One would be hard pressed to readily identify a cost of this Bill to the State, however, the prohibition against using price in any way to select consultants cannot help but impact the competition process with regard to the cost of the work done. The restrictive nature of this bill could conceivably increase the cost of capital projects as follows:

Assume:	Cost of Consultant fee for Design	=	7% of CIP
	Cost of Bill	=	5% of Consultant Fee
	CIP	=	$200 Million/year
	Cost of CSHB 211	=	0.05 X 0.07 X $200 Million
		=	$700,000 per year

CENTURY ENGINEERING, INC. CONSULTING ENGINEERS • PLANNERS

RECEIVED 3-22-83

March 17, 1983

Representative Mike Szymanski
Pouch V
Juneau, Alaska 99811

Dear Mike:

John and I have read over House Bill No. 211 concerning architectural and engineering services. The procedures outlined sound pretty much like the way things have been handled lately, at least as far as our recent experience is concerned.

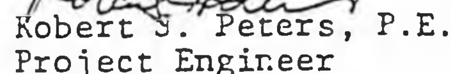
I would think something in the bill giving guildlines as to how "fair and reasonable prices" are determined might be helpful. Most national professional organizations, such as the National Society of Professional Engineers or American Institute of Architects have booklets to help owners determine fee ranges for project types.

On page 2 of the bill, line 23 makes reference to "bids". A bid is usually a monetary figure and would then seem to conflict with other portions of the bill. Possibly "offers of or proposals for" would be more suitable language.

Thanks for allowing me the time to comment on this legislation which affects an area of direct impact on my profession..

Sincerely,

CENTURY ENGINEERING, INC.



Robert J. Peters, P.E.
Project Engineer

RJP/css

500 "L" STREET, SUITE 200 | ANCHORAGE, ALASKA 99501 | (907) 277-0584/276-1248 | TELEX 26-364

Labor & Commerce

STUTZMANN ENGINEERING ASSOC., INC.

P. O. BOX 1420
FAIRBANKS, ALASKA 99707

907 452-4094

March 23, 1983

MAR 24 1983

John Ringstad
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Sir:

It has just come to my attention that committee revisions to H.B. 211 have the effect of deleting the profession of land surveying from the context of this bill.

As both a professional engineer and a professional land surveyor, I have supported this bill in its original form as introduced February 17, 1983 and strongly urge your support in passing it as such.

The deletion of land surveying and other amendments proposed in committee do a tremendous disservice to the land surveyor's profession, some two thousand strong in this State; also, its exclusion would have a deleterious effect on the quality of land surveys in the future by aiding in the degradation of this highly skilled profession into sub-professional status.

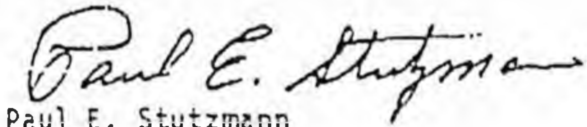
Sub-standard land survey work has already been a major problem in land title work in our State, one of the newest in the Union, and any regulation of land surveying out of professional status can only contribute to more disastrous results.

H.B. 211, as introduced, is a fine and much needed piece of legislation which brings State government procurement practices in line with professional standards in use in other States and by the Federal government.

Again, I urge you to support this bill in original form and resist any modifications thereto.

Very truly yours,

STUTZMANN ENGINEERING ASSOC., INC.



Paul E. Stutzmann

BRO-HB

SR 10113
P. O. Box 2522
Fairbanks, Alaska 99701

FAIRBANKS SOCIETY OF PROFESSIONAL LAND SURVEYORS

March 24, 1983

Rep. Niilo Koponen
Pouch V
Juneau, AK 99811

MAR 24 1983

Dear Rep. Koponen:

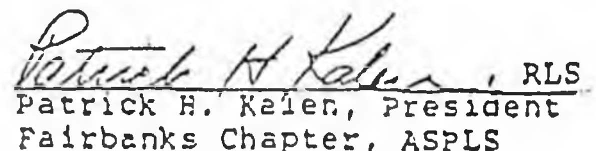
The Fairbanks Chapter of the Alaska Society of Professional Land Surveyors wants to express strong support for HB 211 in its original form. We also wish to express our strong objection and dismay at the Committee Substitute for HB 211 which eliminates Land Surveyors from this bill.

As a profession, we are classified under AS 48 in the same category as Architects and Enginners. We are registered by the same Board of Occupational Licensing and licenced by State of Alaska. Our Professional Certificates are signed by the "Board of Architects, Engineers, and Land Surveyors." Each Professional Land Surveyor receives a Professional License which must renewed annually by the the State of Alaska.

When a Registered Land Surveyor (RLS) signes and places his professional seal on a survey plat, his reputation and that of the entire profession are being offered as surety that the plat is correct and the land survey legal and complete. When a member of the profession is found guilty of unprofessional work, his license and professional status can be stripped by the State Board of Architects, Engineers, and Land Surveyors.

This attempt by the Committee Substitute to remove Professional Land Surveyors from the bill has the effect of removing one-third of the category which the bill addresses. We strongly urge you and others of the Fairbanks delegation, and members of the appropriate legislative committees, to re-instate Land Surveyors as a part of HB 211. It is a good bill, but the Committee Substitute must be rescinded.

Sincerely yours,



Patrick H. Kalen, RLS
Patrick H. Kalen, President
Fairbanks Chapter, ASPLS

Copy:
Rep. Bob Bettisworth
Rep. John Ringstad
Rep. Mike Davis
Rep. Mike Miller
Rep. Hugh Malone, RLS
Rep. Furnace, Chair, Labor & Commerce
Speaker Joe Hayes, PE, RLS
Sen. Bettye Fahrenkamp
Sen. Don Bennett

SUBCHAPTER VI—SELECTION OF ARCHITECTS AND ENGINEERS

§ 541. Definitions

As used in this subchapter

(1) The term "firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

(2) The term "agency head" means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

(3) The term "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

June 30, 1949, c. 288, Title IX, § 901, as added Oct. 27, 1972, Pub.L. 92–582, 86 Stat. 1278.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S.Code Cong. and Adm.News, p. 4767.

Library References
United States ⟹35.
C.J.S. United States §§ 35, 37, 62 to 64.

§ 542. Congressional declaration of policy

The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

June 30, 1949, c. 288, Title IX, § 902, as added Oct. 27, 1972, Pub.L. 92–582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S.Code Cong. and Adm.News, p. 4767.

Library References
United States ⟹35.
C.J.S. United States §§ 35, 37, 62 to 64.

1. Grant-funded procurements
Architectural and engineering procurement procedures contained in sections 543 and 544 of this title, mandatory for federal procurements for such architectural and engineering services, were not per se applicable to procurements by the Licking County Regional Planning Commission, a grantee under a community development grant by the Department of Housing and Urban Development. 1980, 59 Comp.Gen. 251.

§ 543. Requests for data on architectural and engineering services

In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

June 30, 1949, c. 288, Title IX, § 903, as added Oct. 27, 1972, Pub.L. 92–582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S.Code Cong. and Adm.News, p. 4767.

Library References
United States ⟹35
C.J.S. United States §§ 35, 37, 62 to 64.

§ 544. Negotiation of contracts for architectural and engineering services

(a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which

aking such determination, the agency head shall take into account the stimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

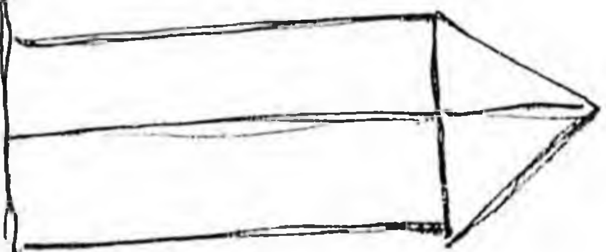
(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

June 30, 1949, c. 288, Title IX, § 904, as added Oct. 27, 1972, Pub.L. 92–582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S.Code Cong. and Adm.News, p. 4767.

Library References
United States ⟹35.
C.J.S. United States §§ 35, 37, 62 to 64.

1. Factors considered
Factors which were used in fulfilling requirement to negotiate contracts for architectural and engineering services on basis of demonstrated confidence and qualifications for type of professional services required and which included institutional maturity, organizational framework, management plans and approach, management group experience, and availability of disciplines were not violative of this chapter as unduly stressing those factors most likely to yield selection of a large, established firm than a small minority one with individual rather than institutional competence and qualifications. Mikkilineni v. United Engineers & Constructors, Inc., D.C.Pa.1980, 485 F. Supp. 1202.



(7)

4/14

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

Date: 4/11/83

2/17/83

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 211

"An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB (L+C) [X] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING DO PASS

[signatures]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature]
CHAIRMAN

H 60

STATE OF ALASKA
FISCAL NOTE

Revision Date: 4/11, 1983

I. REQUEST
Bill/Resolution No.: CSHB 211
Title: Arch/Engr/Land Surveying Contracts
Sponsor: Furnace, Abood, Barnes, etc.
Requestor: House Labor & Commerce

II. FISCAL DETAIL
Agency Affected: DOT&PF
Program Category Affected: Transportation
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL			SEE ANALYSIS			
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Jonathan W. Scribner Phone: 364-4339
Division: Deputy Commissioner, S.E. Region Date: 4/13/83

Approved by Deputy Commissioner: Jonathan W. Scribner Date: 4/13/83
Department: Department of Transportation & Public Facilities

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

ANALYSIS

One would be hard pressed to readily identify a cost of this Bill to the State, however, the prohibition against using price in any way to select consultants cannot help but impact the competition process with regard to the cost of the work done. The restrictive nature of this bill could conceivably increase the cost of capital projects as follows:

Assume:	Cost of Consultant fee for Design	=	7% of CIP
	Cost of Bill	=	5% of Consultant Fee
	CIP	=	$200 Million/year
	Cost of CSHB 211	=	0.05 X 0.07 X $200 Million
		=	$700,000 per year

HB

2/2

(7)

COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

Date: 24 March 83

2/17/83

Mr. Speaker:

The Committee on JUDICIARY has had CS HB 212

An Act relating to crime victim compensation; and providing for an effective date.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 212 (Jud) [ ] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [✓] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING DO PASS

[signature]

[signature]

[signature] Do Pass

[signature]

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature]

[signature]

CHAIRMAN

H 60

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

Department	Sponsor (Principal)	Bill Number
Public Safety	Pestinger & Clocksin	HB212

Department Position

Support

Division Director	Date	Commissioner's Signature	Date
Nola K. Capp	2/22/83		

GOVERNOR'S OFFICE USE

Comments:

☐ Position Noted	By	Date

SUMMARY

1. a) Related Bills (Similar or Conflicting	1. b) Other Agencies Affected by Bill
SB 86 HB 104 SB 107	

2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill

3. Program Effects of Bill

This bill would add a new paragraph which would enable the Board to pay the provider directly for services provided as a result of the personal injury or death of the victim. The bill also provides a new paragraph which would enable the Board to deny a claim if the claimant refuses to give reasonable cooperation to law enforcement in their efforts to apprehend and convict the offender for the crime resulting in the personal injury, unless good cause for the refusal is shown the Board. The bill would also repeal the Section of the Act which now excludes relatives and victims living with offenders. The bill, under Section 18.67.130(c), deletes the sentence, "all payments must be made in a lump sum." (continued on page 2)

4. Fiscal Impact: ☐ None ☒ Fiscal Note Attached

5. Amendments Proposed:

6. Comments:

The Board supports adding the paragraph in Section 18.67.080(a)(4), as many times in the past the provider has not been paid because the service had to be paid in a joint warrant and this warrant did not always get sent to the provider. This would also be less of a hassle for the claimant. The Board supports the deletion of the lump sum payment requirement as they feel long term payments would insure the award was not exhausted before the dependent reaches majority or the claimant is able to return to work. The Board also supports adding paragraph (5) to Section 18.67.130(b), as they feel there are a few cases where the claimant is justified in fearing retribution from the offender. The Board also supports repealing the Section 18.67.130(b)(1) and (2), as they feel many people in the bush and outlying areas are truly innocent victims, but are not included in the present act because they are living in the same residence as the offender. This repeal would also mean innocent dependent children could receive loss of support when one spouse killed the other spouse and left the children homeless. (continued on page 2)

Program Effects (continued from page 1)

A new paragraph is added stating a person awarded compensation is ineligible for subsequent compensation for additional personal injuries inflicted by the same offender if the offender is a relative or member of the same household as the victim.

Comments (continued from page 1)

The Board supports the deletion of the lump sum payment requirement, as they feel long term payments would insure the award was not exhausted before the dependent reaches majority or the claimant is able to return to work. Section 18.67.135 would keep the offender from benefitting from his actions and speaks to this concern.

from Rep. Tischer

CRIME VICTIMS IMPACT STATEMENT

A manual for crime victims citizen associations, judges and prosecutors to provide due process for victims in the criminal justice system.

Washington Legal Foundation

This Crime Victims Impact Statement Manual is prepared and distributed by the Washington Legal Foundation to State and Federal Judges and Prosecutors in all 50 States and the District of Columbia. The purpose of this manual is to help develop a system whereby the victim of crime participates in a constructive manner in the sentencing process of a criminal case.

The Washington Legal Foundation, a nonprofit public interest legal center with 80,000 members nationwide, has been a pioneer in the field of crime victims' rights. Besides the preparation of this manual, WLF has provided legal assistance to victims to enable them to file civil actions against the criminals and third parties for damages suffered by the victim. WLF has also submitted proposals with the United States Parole Commission that, if adopted, would require victim compensation as one of [illegible] conditions for parole. WLF also has participated in many programs concerning victims' rights as part of WLF's commitment to educate the public on this important issue.

We encourage users of this manual to submit comments and suggestions to the Foundation on the use of the Victim Impact Statement as well as on other crime victims' rights issues.

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INTRODUCTION

A violent crime now occurs every 24 seconds somewhere in the United States. Every 23 minutes, a murder is committed. A woman is raped every 6 minutes. There's a robbery every 58 seconds, and an aggravated assault every 48 seconds.

The striking truth about crime is that we are all vulnerable to its random selection, and becoming increasingly vulnerable as America's crime clock continues to tick at a faster rate, with violent crime increasing 11% in 1980.

There has been much written and spoken of the pervasive fear of violent crime which threatens the American way of life. The Chief Justice of the U.S. Supreme Court has recently and poignantly spoken out on the subject of violent crime, noting the "reign of terror" which has made Americans "hostages within the borders of our own self-styled, enlightened, civilized country."

Fighting violent crime has been declared a high priority of the Reagan Administration's Justice Department.

The Washington Legal Foundation believes the victim of violent crime should be given the highest priority in America's continuing struggle to deal with the issue of violent crime.

The diligent efforts of progressive criminologists, jurists and legislators over the past two decades have borne fruit. Caught up on providing social justice for the criminal offender, the American taxpayer has been footing the bill for the millions of dollars being spent on programs for criminal offender-oriented rehabilitation and court reform. We now offer criminal offenders every conceivable right and legal service interpreted to be due them under the law.

Law enforcement officials, the courts and the entire criminal justice system have focused their efforts on the rights of the accused, providing to the offender "massive safeguards" in the words of Chief Justice Warren Burger.

Unfortunately, no one has made such a zealous effort on behalf of the innocent victims of crime, who have become the forgotten factor in the criminal justice equation.

For far too long, the words "Criminal Justice" have been interpreted to mean "Justice for the Criminal." We have forgotten that for every crime, there is at least one victim.

The initial shock and dismay felt by the victim of a violent crime is exacerbated by a criminal justice system that seems to care more for the offender than the victim. Perhaps the saddest commentary on America's criminal justice system is that the victim of a violent crime is not only victimized by the crime itself, but he or she can expect to be re-victimized again and again by an archaic process which is supposed to administer justice, to right the wrong the victim has experienced. The process by which our society prosecutes the criminal is based on the theory of the law that the government itself, "society", is the victim of crime. The very manner in which criminal cases are titled provides an indication of the victim's status. No matter how severe the crime committed and the injury suffered by the victim, it is the State vs. Criminal, not Victim vs. Criminal. The victim of violent crime finds that he has become, at best, merely the State's witness in their case, a piece of evidence, his status collectivized by society.

The semantics of criminal prosecution would not be significant if the issue were merely one of how we title our court cases. However, the criminal justice system has failed to recognize that every person who commits a criminal act not only violates the law, but also violates a person. The victim of violent crime learns firsthand that America's law enforcement mechanisms are geared to apprehending, prosecuting, and allegedly punishing those who criminally offend society. In the process, the victim is neglected, his rights as an injured person subrogated.

As if it isn't bad enough that the victim of crime has been relegated to an observer status in the prosecution of the offender, the crime victim is further denied the right to even observe. It is well recognized that the crime victim does not even receive complete and timely information regarding the status of the case, from arrest on through to prosecution, plea bargaining, and sentencing, if any.

It is no wonder the victim feels detached from the criminal justice system.

The Washington Legal Foundation proposes that Courts throughout the United States can and should assist in improving the rights of the victims of violent crime by establishing a system whereby the victim participates in a constructive manner in the sentencing process of a criminal case.

The Sentencing Process

In all states, criminal procedure laws require a pre-sentence investigation prior to the imposition of a sentence upon a defendant who has been found guilty. The primary focus of the investigation, which is usually conducted and presented to the court by a probation or corrections officer, is on the person to be sentenced, the criminal. The particular areas of pre-sentence investigation include the past delinquencies of the criminal, his employment history, family background, economic status, education and personal habits.

In theory, the court weighs these factors with the circumstances of the criminal offense to determine a just and proper sentence. The investigation report may also include a recommendation of an appropriate sentence. Although a judge is not bound by the report's findings and recommendation, he usually shows deference to the reporting officer's judgment. Thus, the pre-sentence investigation and report is an important element in the judge's decision on an appropriate sentence, including whether the offender should be released on probation or confined to prison, and, if imprisoned, the duration of the jail term.

It seems, then, that this is a crucial juncture along the road to justice, and it is exactly at this juncture that the victim's views should be considered. The use of a Victim Impact Statement provides a mechanism by which the crime victim may directly participate in the sentencing process.

What is a Victim Impact Statement?

Simply put, a Victim Impact Statement is a tool to be used by prosecutors and judges in an effort to make the criminal justice system more accountable to the victims of violent crime.

The "Statement" itself is a questionnaire intended to be voluntarily completed by the crime victim and included in

the information provided to the Court prior to the imposition of sentencing.

The answers to questions included in the Victim Impact Statement will provide the Court with the physical, psychological and economic effects which the crime has had on the victim and his or her family. The information is provided directly by the victim, who has an opportunity to also set forth his attitude and concerns as the victim of a violent crime.

The Washington Legal Foundation recognizes that the weight which the Court places on a Victim Impact Statement [illegible] depend on the particular circumstances of each case, taken on an individual basis. In no way does the Washington Legal Foundation wish to suggest that the Court should be necessarily bound by the contents of the Victim Impact Statement. Rather, the Victim Impact Statement is meant to provide the Court with additional assistance in the discretionary exercise of its sentencing powers.

At the same time, the solicitation of a Victim Impact Statement will demonstrate to the crime victim that the criminal justice system is concerned with the victim's plight.

CONCLUSION

This Victim Impact Statement Manual includes not only a sample Victim Impact Statement, but a thorough analysis of all State laws that relate to the input by the victim in the criminal justice system. The Foundation hopes that the information provided in this Manual will serve as a catalyst to advance the rights of all victims of violent crime.

The Foundation strongly suggests that members of the public and citizens' groups encourage their local judges and prosecutors to utilize Victim Impact Statements in the sentencing process. With a concerted effort by all concerned, we hope to advance the rights of victims and their families as well as to reduce the occurrences of violent criminal activity.

VICTIM IMPACT STATEMENT

STATE VS.____________________

CASE #____________________

SENTENCING DATE____________________

TO ASSIST THE COURT IN ITS EFFORT TO WEIGH ALL FACTORS PRIOR TO IMPOSING SENTENCE, WE REQUEST YOUR *VOLUNTARY* COOPERATION IN COMPLETING THIS FORM. THIS STATEMENT IS INTENDED TO BE SUBMITTED TO THE JUDGE IMPOSING SENTENCE HEREIN.

NAME OF VICTIM:____________________

ADDRESS: ____________________

STREET CITY STATE ZIP CODE

DATE OF BIRTH:____________________

1. Please describe the nature of the incident in which you were involved.

2. As a result of this incident, were you physically injured?__________
If yes, please describe the extent of your injuries.

3. Did you require medical treatment for the injuries sustained?__________
If yes, please describe the treatment received and the length of time treatment was or is required.

4. Amount of expenses incurred to date as a result of medical treatment received:

$__________

Anticipated expenses:

$__________

5. Were you psychologically injured as a result of this incident?____________________
If yes, please describe the psychological impact which the incident has had on you.

6. Have you received any counselling or therapy as a result of this incident?__________
If yes, please describe the length of time you have been or will be undergoing counselling or therapy, and the type of treatment you have received.

7. Amount of expenses incurred to date as a result of counselling or therapy received:

$ ______________________

8. Has this incident affected your ability to earn a living?____________________
If yes, please describe your employment, and specify how and to what extent your ability to earn a living has been affected, days lost from work, etc.

9. Have you incurred any other expenses or losses as a result of this incident?__________
If yes, please describe.

10. Did insurance cover any of the expenses you have incurred as a result of this incident?
If yes, please specify the amount and nature of any reimbursement.

11. Has this incident in any way affected your lifestyle or your family's lifestyle?_______
If yes, please explain.

12. Are there any other residual effects of this incident which are now being experienced by you or members of your family?

13. Please describe what being the victim of crime has meant to you and to your family.

14. What are your feelings about the criminal justice system? Have your feelings changed as a result of this incident? Please explain.

15. Do you have any thoughts or suggestions on the sentence which the Court should impose herein? Please explain, indicating whether you favor imprisonment.

THIS FORM IS SUBSCRIBED AND AFFIRMED BY THE VICTIM AS TRUE UNDER THE PENALTIES OF PERJURY. THE INFORMATION AND THOUGHTS YOU HAVE PROVIDED ARE VERY MUCH APPRECIATED.

DATE: ______________________

____
SIGNATURE

STATE LAWS AND THEIR APPLICATION TO THE USE OF A VICTIM IMPACT STATEMENT

No state explicitly denies the right of the victim to be considered during the pre-sentence investigation and mentioned in the pre-sentence report. Only four states--Indiana, Connecticut, Illinois and Kansas--have statutes that explicitly require a statement from or concerning the victim in the pre-sentencing report. The text of these statutes is contained later in this publication.

Indiana provides an exemplary procedure for consideration of the victim in the sentencing process. The State of Indiana provides that a pre-sentence report must include any written statements submitted to the prosecuting attorney by the victim, and any written statements submitted to the probation officer by a victim. This concern for the victim, whom the law defines as "a person who has suffered harm as a result of an offense", was enacted by the Indiana Legislature in 1978. The statute also provides that if no written statements are submitted to the probation officer, the probation officer must certify to the Court that an attempt was made to contact the victim, and that if the victim was contacted, the probation officer offered to accept the victim's written statement or to reduce the victim's oral statements to writing concerning the sentence, including the acceptance of any recommendation, i.e., the victim has a say in the plea bargaining process.

The Connecticut and Kansas statutes call for an inquiry into the attitude of the complainant or victim, or in the case of the victim's death, the victim's immediate family.

The Illinois statute requires the pre-sentence report to set forth the effect of the crime upon the victim, as well as any sentencing scheme that would allow the victim to be compensated by his offender. Illinois is noteworthy in that it is the only state in the union which statutorily calls upon the probation officer to devise a restitutive scheme for the benefit of the victim.

The Oregon rules of criminal procedure allow for a post-conviction hearing to determine if an aggravation or mitigation of punishment is warranted. A victim may appear at this hearing and state his views for aggravating or mitigating the punishment, but the focus of the Oregon pre-sentencing report is primarily on the defendant.

The Minnesota statute alludes to the victim when it requires an account of "... the circumstances of the offense and harm caused thereby to others and to the community", but does not specifically mention or require anything of the nature of a victim impact statement, although it is clear that such a statement would not be unwelcomed.

Although most of the remaining state statutes are defendant-specific, there is room for a victim impact statement in nearly all of them. There are roughly three categories in which the remaining statutes are divided (with some overlap). The first category includes those statutes that require the gathering of information with respect to the circumstances attending the commission of the offense. On the surface, this would simply require the reporting officer to describe the nature of the offense. It seems, however, that the consequent or resultant circumstances of the offense can be included here; that is, a victim impact statement describing the effects of the crime on the victim and the victim's attitude toward sentencing, would seem to fall within the purview of the statutes having this requirement. Sixteen state statutes contain this requirement or one with language similar to it.

The second category includes those statutes that allow the reporting officer to include in his report any matter which he deems relevant to the question of sentence or those that allow the report to contain any information the court orders to be included. Thirteen states have statutes that contain this or similar language. Under these rules the reporting officer and the court are allowed a good deal of latitude in determining the contents of the report. If they deem it proper, they may include a victim impact statement.

The remaining sixteen statutes are predominantly defendant oriented, **with no mention of the victim.** Thirteen of those statutes simply require a pre-sentence investigation prior to the announcement of sentence with no specific guidelines, or are worded loosely enough to allow a victim impact statement. Four states--Alaska, Delaware, Missouri

and Utah--have specific guidelines that clearly exclude the victim. Additional or revised language would be required to allow such a statement in those states.

INDIANA

35-50-1A-10 SCOPE OF PRESENTENCE INVESTIGATION AND REPORT--SOLICITATION OF VICTIM'S STATEMENTS,--(a) The presentence investigation consists of the gathering of information with respect to the circumstances attending the commission of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education and personal habits. Such investigation may also include any other matter which the probation officer conducting the investigation deems relevant to the question of sentence, and must include:

(1) Any matters the court directs to be included;

(2) Any written statements submitted to the prosecuting attorney by a victim under IC 35-5-6 (35-5-6-1 --35-5-6-5); and

(3) Any written statements submitted to the probation officer by a victim.

(b) If there are no written statements submitted to the probation officier, he shall certify to the court:

(1) That he has attempted to contact the victim; and

(2) That, if he has contacted the victim, he has offered to accept the written statements of the victim, or to reduce his oral statements to writing, concerning the sentence, including the acceptance of any recommendation.

(c) As used in this section, the terms "recommendation" and "victim" have the meanings set out in IC 35-5-6-1. [IC 35-4.1-4-10, as added by Acts 1973, P.L. 325, §4, p. 1750; 1978, P.L. 146, §5, p. 1331.]

35-5-6-1. DEFINITIONS.--AS USED IN THIS CHAPTER:

(a) "Prosecutor" means prosecuting attorney or deputy prosecuting attorney.

(b) "Recommendation" means a proposal by the prosecutor to a court that:

(1) A charge be dismissed; or

(2) A defendant, if he pleads guilty to a charge, receive less than the maximum penalty permitted by law.

(c) "Victim" means a person who has suffered harm as a result of an offense. [IC 35-5-6-1, as added by Acts 1975, P.L. 332, §1, p. 1768; 1978, P.L. 146, §1, p. 1331.]

35-5-6-1.5. NOTICE TO VICTIM OF PROSECUTOR'S RECOMMENDATION,--(a) In making a recommendation on a felony charge, a prosecutor must:

(1) Inform the victim that he has entered into discussions with defense counsel or the court concerning a recommendation;

(2) Inform the victim of the contents of the recommendation before it is filed; and

(3) Notify the victim so that he might be present when the court considers the recommendation.

(b) A court may consider a recommendation on a felony charge only if the prosecutor has complied with this section. [IC 35-5-6-1.5, as added by Acts 1978, P.L. 146, §2, p. 1331.]

CONNECTICUT

§ 54-109. WHEN INVESTIGATION OF DEFENDANT REQUIRED

No defendant convicted of a crime, other than a capital felony, the punishment for which may include imprisonment for more than one year, shall be sentenced, or his case otherwise disposed of, until a written report of investigation by a probation officer has been presented to and considered by the court, if (1) the defendant is so convicted for the first time in this state or (2) his record, as shown by the prosecuting official, discloses a conviction obtained prior to three years from the finding of guilty in the present prosecution; but any court may, in its discretion, order a presentence investigation for a defendant convicted of any crime or offense other than a capital felony. Whenever an investigation is required, the probation officer shall promptly inquire into the circumstances of the offense, the attitude of the complainant or victim, or of the immediate family where possible in

cases of homicide, and the criminal record, social history and present condition of the defendant. All local and state police agencies shall furnish to the probation officer and restitution specialist such criminal records as the probation officer and restitution specialist may request. When in the opinion of the court or the investigating authority it is desirable, such investigation shall include a physical and mental examination of the defendant. If the defendant is committed to any institution, the investigating agency shall send the reports of such investigation to the institution at the time of commitment. (1976, P.A. 76-336, §6; 1978, P.A. 78-188, §5, eff. July 1, 1978.)

KANSAS

62-2238. PRESENTENCE INVESTIGATIONS UPON REQUEST OF DISTRICT COURT; PROCEDURE. Whenever a defendant is convicted of a crime or offense, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the probation officer such criminal records as the probation officer may request. Where in the opinion of the court it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment. [L 1957, ch. 331, §13; July 1.]

ILLINOIS

§ 1005-3-2. PRESENTENCE REPORT

(a) The presentence report shall set forth:

(1) the defendant's history of delinquency or criminality, physical and mental history and condition, family situation and background, economic status, education, occupation and personal habits;

(2) information about special resources within the community which might be available to assist the defendant's rehabilitation, including treatment centers, residential facilities, vocational training services, correctional manpower programs, employment opportunities, special educational programs, alcohol and drug abuse programming, psychiatric and marriage counseling, and other programs and facilities which could aid the defendant's successful reintegration into society;

(3) the effect the offense committed has had upon the victim or victims thereof, and any compensatory benefit that various sentencing alternatives would confer on such victim or victims;

(4) information concerning the defendant's status since arrest, including his record if released on his own recognizance, or the defendant's achievement record if released on a conditional pre-trial supervision program;

(5) when appropriate, a plan, based upon the personal, economic and social adjustment needs of the defendant, utilizing public and private community resources as an alternative to institutional sentencing; and

(6) any other matters that the investigatory officer deems relevant or the court directs to be included.

(b) The investigation shall include a physical and mental examination of the defendant when so ordered by the court. If the court determines that such an examination should be made, it shall issue an order that the defendant submit to examination at such time and place as designated by the court and that such examination be conducted by a physician, psychologist or psychiatrist designated by the court. Such an examination may be conducted in a court clinic if so ordered by the court. The cost of such examination shall be paid by the county in which the trial is held.

(c) Nothing in this Section shall cause the defendant to be held without bail or to have his bail revoked for the purpose of preparing the presentence report or making an examination. Amended by P.A. 80-1099, §3, eff. Feb. 1, 1978.

CATEGORIES OF STATE LAWS RELATING TO VICTIM INPUT ON SENTENCING

Category I : Statutes which specifically mention or allude to the victim.

Category II : Statutes requiring the gathering of information with respect to the circumstances of the crime.

Category III : Statutes allowing the reporting officer to include, or the Court to order, any matter considered relevant to the issue of sentencing.

Category IV : Statutes which merely call for a pre-sentence investigation.

Category V : Statutes which are defendant-specific and would require revised language in order to implement a Victim Impact Statement.

STATE	STATUTE	CATEGORY
Alabama	Ala. Stat. Ann. Tit. 42 §21	II
Alaska	Alaska Stat., Crim. §12.55.085	V
Arizona	Ariz. Revised Stat. Ann., Rules of Crim. Pro. 26.4	IV
Arkansas	Ark. Stat. Ann. 43-2335	III
California	Cal. Govt. Code. Ann., Penal §1203	II
Colorado	Col. Rev. Stat., §16-11-102	IV
Connecticut	Conn. Gen. Stat. Ann. §54-109	I & II
Delaware	Del. Code Ann. §11.4331	V
Florida	Fla. Stat. Ann. §921.231	II
Georgia	Ga. Code Ann. §27-2710	IV
Hawaii	Hawaii Rev. Stat. §806.73	IV
Idaho	Idaho Code Ann. §20-220	II
Illinois	Ill. Ann. Stat. §38:105-3-2	I
Indiana	Ind. Stat. Ann. §35-50-1A-10 §35-5-6-1.5	I, II, III
Iowa	Iowa Code, Title 295 §16	IV
Kansas	Kan. Stat. Ann. Tit. 62 §21-4604	I
Kentucky	Ken. Rev. Stat. Ann. §532.050	II & III
Louisiana	La. Stat. Ann. Crim. Pro. Article 875	III
Maine	Maine Rev. Stat. Ann. Tit. 34 §1552	IV
Maryland	Md. Ann. Code Art. 41 §124	IV
Massachusetts	Mass. Am. Laws Crim. Pro. Rules 28(d)	III
Michigan	Mich. Stat. Ann. §28.1144	II
Minnesota	Minn. Stat. §609.115	I & II
Mississippi	Miss. Code Ann. §47-7-33	IV
Missouri	Missouri Rev. Stat. §549.245	V
Montana	Mon. Rev. Code Ann. Tit. §2203-05	IV
Nebraska	Neb. Rev. Stat. §29-2261	III
Nevada	Nev. Rev. Stat. Ann. §176-135	IV
New Hampshire	N.H. Rev. Stat. Ann. §651.4	IV
New Jersey	N.J. Stat. Ann. Tit. 2C:44-6	III
New Mexico	N.M. Stat. Ann. §31-21-9	IV
New York	N.Y. Ann. Stat. §390-30 (McKinney's)	II & III
North Carolina	N.C. Gen. Stat. §15A-1332	II
North Dakota	N.D. Century Code Ann. Rules of Crim. Pro. 32(c) [2]	III
Ohio	Ohio Rev. Code. Ann. §2951.03	II
Oklahoma	Oklahoma Stat. Ann. Tit. 22§982	II
Oregon	Oregon Rev. Stat. §137.090 §137.530	I & II
Pennsylvania	Penn. Con. Stat. Ann. §1332	II & III
Rhode Island	R.I. Gen. Laws Rules of Crim. Proc. 32(c)	II & III
South Carolina	S.C. Code of Laws §24-21-420	II
South Dakota	S.D. Codified Laws §23A-27-6	III
Tennessee	Tenn. Code Ann. §40-2904	II
Texas	Tex. Stat. Ann. Art. 42.12-4	II
Utah	Utah Code Ann. §76-3-404	V
Vermont	Vt. Stat. Ann. Crim. Pro. Rules 32(c) [2]	IV
Virginia	Va. Code Ann. §19.2-299	III
Washington	Wash. Rev. Code Ann. §9.95.031	II
West Virginia	W. Va. Code §6-2-12.7	III
Wisconsin	Wisc. Stats. §972.15	IV
Wyoming	Wyoming Stat. Ann. §7-13-302	II & IV

cases of homicide, and the criminal record, social history and present condition of the defendant. All local and state police agencies shall furnish to the probation officer and restitution specialist such criminal records as the probation officer and restitution specialist may request. When in the opinion of the court or the investigating authority it is desirable, such investigation shall include a physical and mental examination of the defendant. If the defendant is committed to any institution, the investigating agency shall send the reports of such investigation to the insitution at the time of commitment. (1976, P.A. 76-336, §6; 1978, P.A. 78-188, §5, eff. July 1, 1978.)

KANSAS

62-2238. PRESENTENCE INVESTIGATIONS UPON REQUEST OF DISTRICT COURT; PROCEDURE. Whenever a defendant is convicted of a crime or offense, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the probation officer such criminal records as the probation officer may request. Where in the opinion of the court it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment. [L. 1957, ch. 331, §13; July 1.]

ILLINOIS

§ 1005-3-2. PRESENTENCE REPORT

(a) The presentence report shall set forth:

(1) the defendant's history of delinquency or criminality, physical and mental history and condition, family situation and background, economic status, education, occupation and personal habits;

(2) information about special resources within the community which might be available to assist the defendant's rehabilitation, including treatment centers, residential facilities, vocational training services, correctional manpower programs, employment opportunities, special educational programs, alcohol and drug abuse programming, psychiatric and marriage counseling, and other programs and facilities which could aid the defendant's successful reintegration into society;

(3) the effect the offense committed has had upon the victim or victims thereof, and any compensatory benefit that various sentencing alternatives would confer on such victim or victims;

(4) information concerning the defendant's status since arrest, including his record if released on his own recognizance, or the defendant's achievement record if released on a conditional pre-trial supervision program;

(5) when appropriate, a plan, based upon the personal, economic and social adjustment needs of the defendant, utilizing public and private community resources as an alternative to institutional sentencing; and

(6) any other matters that the investigatory officer deems relevant or the court directs to be included.

(b) The investigation shall include a physical and mental examination of the defendant when so ordered by the court. If the court determines that such an examination should be made, it shall issue an order that the defendant submit to examination at such time and place as designated by the court and that such examination be conducted by a physician, psychologist or psychiatrist designated by the court. Such an examination may be conducted in a court clinic if so ordered by the court. The cost of such examination shall be paid by the county in which the trial is held.

(c) Nothing in this Section shall cause the defendant to be held without bail or to have his bail revoked for the purpose of preparing the presentence report or making an examination. Amended by P.A. 80-1099, §3, eff. Feb. 1, 1978.

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VICTIMS RIGHTS WEEK, 1981

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need or the attention they deserve. Yet the protection of our citizens — to guard them from becoming victims — is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.

Statistics reported by the Federal Bureau of Investigation and other law enforcement agencies indicate that crime continues to be a very serious national problem. But statistics cannot express the human tragedy of crime felt by those who are its victims. Only victims truly know the trauma crime can produce. They have lived it and will not soon forget it. At times, whole families are entirely disrupted — physically, financially and emotionally. Lengthy and complex judicial processes add to the victim's burden. Such experiences foster disillusionment and, ultimately, the belief that our system cannot protect us. As a Nation, we can ill afford this loss of faith on the part of innocent citizens who have been victimized by crimes.

We need a renewed emphasis on, and an enhanced sensitivity to, the rights of victims. These rights should be a central concern of those who participate in the criminal justice system, and it is time all of us paid greater heed to the plight of victims.

Ronald Reagan
April 8, 1981

THE WASHINGTON LEGAL FOUNDATION
1612 K Street, N.W.
Washington, D.C. 20006

crowding is an epidemic-scale problem, but the only response now being considered is billions of dollars of new prison construction. If all the prisons proposed today are actually built, they would cost at least 5.6 billion dollars.[15] Finding better ways to deal with criminal offenders is not only timely; it is a matter of life and death. And fortunately, these better ways are readily available.

Alternative Punishments

There are several alternatives to incarceration which may well prove to be better measures of punishment, both for society and for the offender, than imprisonment. They could improve public safety, save taxpayers huge amounts, and offer far better hope for rehabilitation of offenders. These alternatives constitute "just punishment," often far more just than imprisonment. Let's briefly consider several of these alternatives.

A. Restitution

"Restitution" requires the offender to repay the crime victim for property loss or property or personal damages. Though an alternative to prison, a restitution sentence is not an "easy out." The offender's schedule is rigidly controlled, often through his/her return at the end of the work day to a half-way house. The offender's pay is diverted into channels beyond his/her control: repayment of the victim, compensation of the state, supporting the offender's family, and establishing a capital reserve which will help keep an offender from being impelled back toward crime by poverty after release.

Because of growing public concern for crime victims, the restitution concept holds great promise of gaining broad support. Many surveys, for example, indicate that a high percentage of Americans would prefer to have a nonviolent offender repay his victim rather than serve time in prison at public expense. Likewise, offender repayment is preferred over governmental compensation of crime victims through tax dollars.[19]

Several states have instituted restitution programs in which corrections staff may negotiate the amount of repayment, monitor the payment schedule and, in some instances, offer employment assistance to unemployed offenders to guarantee that the victim will be repaid.

Restitution has gone past the theory stage in dozens of communities across the country. Though problems inevitably arise, as with all new programs, the results have been encouraging. Programs in Florida, Saginaw, MI and Elkhart, IN, among others, show both the practicality and effectiveness of the restitution alternative.[20]

B. Community Service Orders

A criminal act is an offense against particular victims, of course, but it is also an offense against society. Both suffer loss: an individual is violated, and public safety is diminished; the offender is thereby said to incur a "debt to society." But as long as punishment and imprisonment are considered synonymous, neither the victim nor society is compensated; to the contrary, both then incur the additional heavy costs of imprisonment. We have discussed restitution by offenders to their individual victims. Is there a comparable approach to compensating society?

Too often offenders now pay their "debt to society" in prison. The resulting waste of valuable human resources is easy to document. For instance, the prisoner operating the washing machine next to Charles Colson at Maxwell Federal Prison had been a prominent doctor, convicted of stock fraud. There was no resident doctor in this particular prison, so the many inmates with medical needs had to rely on a paramedic while a qualified doctor spent his days putting dirty underwear into the washing machine each morning and taking it out each afternoon. Later he volunteered to help meet a shortage of doctors

A Perspective on American Prisons, 1981

Provided by: Rep. Mae Fischer

in the surrounding community by working nights, but his offer was refused. Such shortsightedness serves neither the victim, the offender nor society.

Instead of being sent to prison, offenders could be required to work for a period of years, either at a very modest pay or none at all, in ghettoes, hospitals, or other areas of public need. Such alternatives need not be limited to white-collar offenders. Present community service programs provide work opportunities for skilled and unskilled workers alike. California is operating some 50 Community Service Alternatives for offenders.[21] Similar Community Service Orders have been employed in England with dramatic success.[22]

C. House Arrest

This alternative is primarily for convicted felons whose probation reports indicate they are unlikely to be involved in further criminal behavior. Many of those sentenced to house arrest are first-time offenders with no record of prior criminal activity. In California, for example, a nurse in Berkeley was sentenced to house arrest for one year for the fatal shooting of her husband. (Mitigating circumstances were present.) The alternative was approved by a committee of Alameda County officials in response to prison overcrowding and the high cost of incarceration. The convicted woman was required to report each morning and evening, seven days a week, to the County's Probation Department. This sentence permitted her to maintain her nursing job and care for her child.[23]

D. Probation and Contract Probation

Probation is one of the most widely used alternatives. Offenders on probation are sentenced to obey specific behavior guidelines under the supervision of a Probation Officer. Violation of the guidelines can result in incarceration, so the offender

has every incentive to avoid that prospect.

Contract probation is usually offered as an alternative to incarceration by one of the lawyers involved (interestingly enough, often the prosecutor's office advocates the program). The judge is presented with a program of punishment, often including Community Service or restitution. Under the guidelines set down, the offender reports to an authority designated by the court throughout the term of the parole.

E. Deferred Sentencing

Offenders assigned this alternative to incarceration plead guilty to their charge, and undergo a pre-sentence investigation. The presiding judge then defers sentencing for several months, during which the offender is referred to service agencies—alcohol and drug treatment, for example. If the offender's response is positive, the judge may impose a sentence of probation with the stipulation of continued participation in rehabilitative programs.

F. Suspended Sentencing

This alternative involves establishment of a fixed sentence by the presiding judge, who then suspends the sentence for a specified period of time, subject to the offender's compliance with behavioral guidelines. If the guidelines are violated, the original sentence takes effect.

G. Fines

Assessment of fines is already a typical penalty for many crimes, but such sentences could be more widely used in place of imprisonment for nonviolent offenses. However, the amount of a fine should be based on both the seriousness of the offense and the offender's ability to pay. Only thus can the United States reduce the blatant discrimination which leads to incarceration of a disproportionate number of the poor—those unable either to pay fines or secure sophisticated legal representation.

Nov. 15, 1982
Newsweek

Paying My Debt to Society

MY TURN/MARCUS W. KOECHIG

The money looked good. There were tall stacks of it, mostly tens and twenties, just for the taking. There was no casing of the joint and no gunplay. The job was done in less than 60 seconds, and the total take came to $1,444. Not bad wages for one minute's work. Of course, it also cost me another two years in prison, as well as additional time for my parole violation. The fact that this is my third prison stint shouldn't pose any problem. But it gets harder, especially now that my wife has told me to make arrangements to have my things moved out of the house. She cannot take it any longer, and I do not blame her.

The cost of going to prison keeps going up, and not just for me. There is, of course, the victim's initial loss. In addition, his tax dollars paid for my defense and go toward my upkeep here in prison, to the tune of $10,000 to $15,000 per year. He will pay again if my family is forced to go on welfare and yet again if, when I am released, I am unable to find work. I will simply go on welfare, and he will foot the bill.

Victim: In the time I have spent in prisons, it has been repeatedly stressed to me that I must pay my debt to society. So society proceeds to feed, clothe and house me for however long I must remain behind bars and perhaps even beyond; this is not so much a repayment of debt as an abdication of responsibility. In fact, I owe nothing to society and society owes nothing to me. I owe my victim $1,444, and society owes him the opportunity to get that money back. Justice can only be served by my paying back what I have taken.

The average thief in here is "rehabilitated" by performing janitorial duties for a total of perhaps 30 minutes a day. Say an inmate has a two-year sentence: to rehabilitate himself, to pay his debt, he must spend 365 hours pushing a broom. Then he has paid for his crime. The institution perpetuates itself in this way. More inmates means that more cleaning needs to be done. One might spend one's time more fruitfully by sweeping out orphanages or hospitals. The way the system now works is enough to make even the most dour convicts laugh up

People who have more to say with their photographs

For some people, photography is more than taking pictures. It's creating.

They have the eye. They have the feel. And they have the desire to say something with the pictures they take.

It is for these people that Olympus designs cameras.

Our technology is state-of-the-art. But not for the sake of technology.

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In fact, every technical feature on every Olympus camera has a specific creative function.

If you're a photographer, or if you have one on your holiday gift list, take a good look at these Olympus cameras and OM System accessories at your dealer. (Or write Olympus, Woodbury, NY 11797. In Canada: W. Carsen Co. Ltd., Toronto.)

They're all designed for people who have more to say than just smile.

The new Olympus OM-G
the fastest, strongest, lightest, brightest SLR in

...sleeves. For a man who has nothing, crime pays quite well.

It is difficult to find and implement solutions to this kind of problem—particularly in the bureaucratic morass that constitutes any department of corrections. (The name presumes that some correcting is going on.) Confining perpetrators of nonviolent property crimes and victimless crimes is of absolutely no use and may even be quite harmful. Rehabilitation is the act of pointing out the errors of an individual and then reinforcing that behavior which will lead to a successful reintegration into society. As it now stands, however, rehabilitation begins and ends with the convict adjusting to the prison routine, an eerie, Pavlovian system of bells, whistles and gross depersonalization of the individual.

Sitting: Rehabilitation does not and can not occur in existing penal facilities. There is nothing that frustrates a person more than sitting in a cell or dormitory 24 hours every day knowing that all he must do to pay for his crime is push a broom 30 minutes each day. What becomes of his sense of worth?

Why should anyone care about some convict's sense of worth? Because convicts get out of prison and go back to communities just like yours. People who have been convicted of crimes love, hate, hurt and feel good just as regular people do. They sometimes hurt so bad, though, that they are not able to handle it. In order to deal with their hurt, they will, most often unintentionally, do something to get themselves put back in the one place where they can be assured of some certainty in otherwise uncertain and frightening lives. It comes to the point where they decide that what the prison has been telling them all along must be true: that

Our prisons make even a dour convict laugh up his sleeve. For a man with nothing, crime pays quite well.

they are of no value to anyone, not even themselves. They then strike out and come back "home."

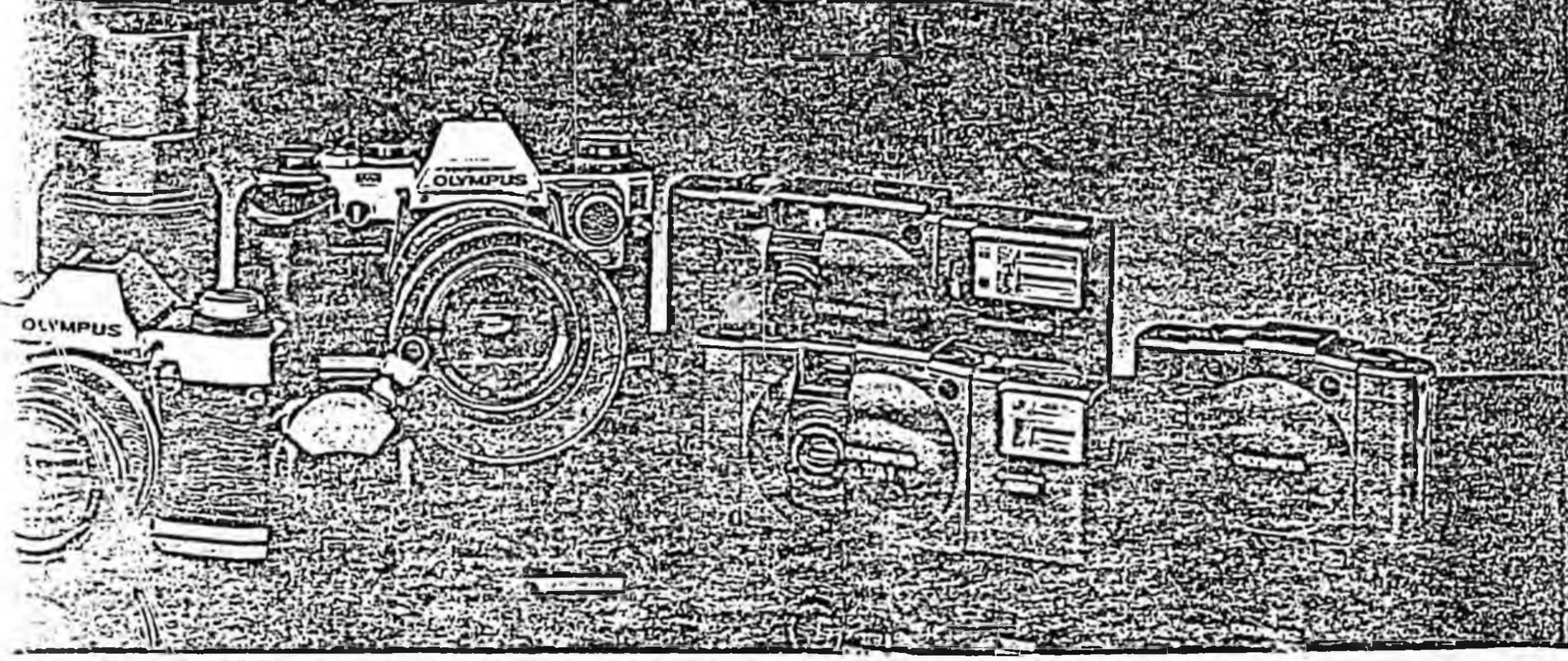
You have a very large stake in seeing to it that convicts are rehabilitated in fact and not just on paper—if for no other reason than that it is your money that goes toward getting the job done. If the state legislature tells you that the prison system serves as anything other than a warehouse, then you are being told a blatant lie. You have every right to know that correctional officials, acting as agents of the courts and state legislatures, are freeing people who are no more equipped to function in the community than a rabid dog.

Respect: One solution may be mandatory restitution administered in a penal setting. Forcing the criminal to restore to his victim what he took in the first place has the potential of instilling in him not only respect for the property of others but also some shred of self-respect. He would learn that there is no such thing as a free lunch when it comes to paying his debt.

Programs of this type could pay for themselves. The convict could receive the minimum wage for necessary public-service work in the county in which he was convicted, with a percentage of his wages going directly to the victim and a percentage to the state for his upkeep. This approach is so simple that it just might work.

For my part, my victim will be paid back as soon as I am able. I have satisfied the requirements of the law. It is time to satisfy the requirements of conscience.

Koechig is an inmate at the Westville Correctional Center in Westville, Ind.



COMMENTS

COMPENSATION FOR VICTIMS OF CRIME—THE TEXAS APPROACH

by Paul M. Koning

During the 1979 session, the Texas Legislature enacted Senate Bill 21,[1] the Crime Victims Compensation Act (the Act),[2] placing Texas in the forefront of the rapidly growing trend to provide state administered programs for the financial compensation of individuals injured by violent crimes. Increased crime rates and welfare costs have focused concern on victims' rights.[3] In response, the Act establishes a compensation program that has the potential to equal or exceed the effectiveness of programs existing in other states.

Victim compensation is not a novel concept; the theory of state compensation to victims of crimes occurring within the state can be traced back at least 4,300 years to the Code of Hammurabi.[4] In modern times, however, the crime victim has been afforded relatively little aid. Apart from recovery under one of the recently formed state victim compensation programs, the victim is limited to three basic alternatives to the absorption of the loss.[5] The first alternative is a civil action brought against the offender. Since civil recovery requires both the apprehension of the criminal and his financial solvency, this device has been accurately described as impotent.[6] A victim may also recover his crime-related losses from his insurer, pro-

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1. 1979 Tex. Sess. Law Serv., ch. 189, §§ 1-19, at 402-10 (Vernon).
2. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 1-18 (Vernon Supp. 1980).
3. A study of the diffusion pattern of state victim compensation programs has shown that the states most likely to enact victim compensation programs are those that experience the greatest increases in per capita welfare expenditures, violent crime rates, and median family income. Doerner, *The Diffusion of Victim Compensation Laws in the United States*, 4 VICTIMOLOGY 119 (1979).
4. Sections 22-24 of the Code of Hammurabi state:

> [§ 22] If a man has committed robbery and is caught, that man shall be put to death.
> [§ 23] If the robber is not caught, the man who has been robbed shall formally declare whatever he has lost before a god, and the city and the mayor in whose territory or district the robbery has been committed shall compensate him for whatever he has lost.
> [§ 24] If (it is) the life (of the owner that is lost), the city or the mayor shall pay one mana of silver to his kinsfolk.

2 THE BABYLONIAN LAWS 21 (G. Driver & J. Miles eds. 1955). For a comprehensive treatment of victim compensation and victim's rights throughout history, see S. SCHAFER, VICTIMOLOGY: THE VICTIM AND HIS CRIMINAL 5-32 (1977).

5. *See* Lamborn, *Remedies for the Victims of Crime*, 43 S. CAL. L. REV. 22 (1970); McAdam, *Emerging Issue: An Analysis of Victim Compensation in America*, 8 URB. LAW. 346 (1976).
6. McAdam, *supra* note 5, at 348.

vided that he has adequate coverage.[7] The most frequent victims of crime, however, are those who can least afford insurance, both because they are poor and because they live within the highest premium areas.[8] For this reason, insurance is hardly a choice for the average victim. The third alternative is restitution. Restitution programs allow criminal justice agencies to establish direct obligatory relationships between the offender and his victim, often as a condition of sentence modification.[9] Typically, a state restitution program encourages courts to condition probation on the repayment of the victim's losses by the performance of services or by cash payments.[10] Restitution forces the criminal to confront the problems caused by his actions; theoretically, this confrontation is rehabilitative.[11] Pragmatically, however, restitution is no more an alternative to the victim than a civil suit, because the majority of criminals are never convicted.[12] Victim compensation programs, on the other hand, offer hope to the victim because they are not linked to the apprehension of the criminal. Instead, these programs are generally based on one or more theories of state obligation[13] and are funded either from the general revenues or, as in Texas, from a pool of small fines collected from criminals upon conviction.[14]

New Zealand established the first modern victim compensation program in 1963,[15] immediately followed by Great Britain.[16] California initiated

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7. For an analysis of the crime exclusions in certain policies, see Starrs, *A Modest Proposal to Insure Justice for Victims of Crime*, 50 MINN. L. REV. 285, 301-05 (1965)

8. Haas, *An Argument for the Enactment of Criminal Victim Compensation Legislation in Oregon*, 10 WILLAMETTE L.J. 185, 196 (1974); McAdam, *supra* note 5, at 348

9. *See generally* Laster, *Criminal Restitution: A Survey of its Past History and an Analysis of its Present Usefulness*, 5 U. RICH. L. REV. 80 (1970); Schafer, *Restitution to Victims of Crime—An Old Correctional Aim Modernized*, 50 MINN. L. REV. 243 (1965).

10. *See* Cohen, *The Integration of Restitution in the Probation Services*, in CONSIDERING THE VICTIM 332-33 (J. Hudson & B. Galaway eds. 1975). TEX. CODE CRIM. PROC. ANN. art. 42.12, § 6(m) (Vernon Supp. 1980) authorizes a court to order that, as a condition of probation, the offender "pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense."

11. Schafer, *The Proper Role of a Victim-Compensation System*, 21 CRIME & DELINQUENCY 45 (1975).

12. The United States Department of Justice has reported that for every 100 offenses known to police, only 5.5 persons are apprehended and found guilty as charged. U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS — 1977, at 512 (1978) [hereinafter cited as SOURCEBOOK]. "The President's Commission on the Causes and Prevention of Violence reported that only 1.8 percent of victims of crime ever collect damages from the perpetrator." 2 BROWN & DANA, STATE LEGISLATURES 7 (1976), *cited in* Gross, *Crime Victim Compensation in North Dakota: A Year of Trial and Error*, 53 N.D.L. REV. 7, [illegible] (1976).

13. For a discussion of the theoretical justifications underlying state victim compensation legislation, see notes 63-80 *infra* and accompanying text.

14. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 14 (Vernon Supp. 1980) establishes a fund for the payment of compensation under the Act, which is to be made up of $10 and $[illegible] court costs exacted from convicted felons and certain misdemeanants. *See* note 59 *infra*.

15. Criminal Injuries Compensation Act, STAT. N.Z. No. 134 (1963), *reprinted in* 43 S. CAL. L. REV. 240 (1970); *see* Weeks, *The New Zealand Criminal Injuries Compensation Scheme*, 43 S. CAL. L. REV. 107 (1970).

16. COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE, CMND. No. 2323 ([illegible]), *reprinted in* Samuels, *Compensation for Criminal Injuries in Britain*, 17 U. TORONTO L.J. 20, 46-49 (1967).

the first program in the United States in 1965.[17] By the mid-seventies a definite trend had been established toward state victim compensation programs, a trend partially attributable to a series of federal bills aimed at subsidizing state programs.[18] At the present time, twenty-nine states have some form of victim compensation program.[19]

This Comment explores the significant provisions of the Texas Act and analyzes in greater depth two controversial restrictions: the financial stress requirement and the household exclusion. Finally, this Comment stresses the need for effective implementation of the Act's publicity provisions and discusses the intriguing "Son of Sam" sections in light of the constitutional problems that they present.

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17. CAL. GOV'T CODE §§ 13959-13974 (West Supp. 1980).

18. Since the mid-sixties, a number of bills aimed at providing federal compensation to victims of violent crimes have been introduced before Congress, but as yet none has passed both Houses. The earlier bills were intended to establish a federally financed national crime victim compensation program. S. 2155, 89th Cong., 1st Sess. (1965); H.R. 11818, 89th Cong., 1st Sess. (1965). Since 1972, however, the most significant federal crime victim compensation bills have taken a two-pronged approach; these bills would provide for 100% compensation to victims of crimes subject to exclusive federal jurisdiction and a partial subsidization of state programs that qualify. *E.g.*, S. 2994, 92d Cong., 1st Sess. (1971). For a detailed history of the federal legislative attempts, see H. EDELHERTZ & G. GEIS, PUBLIC COMPENSATION TO VICTIMS OF CRIME 191-209 (1974).

One of the bills currently before the Judiciary Committee, H.R. 957, 96th Cong., 1st Sess. (1979), shows promise because it is a result of a conference committee compromise of the 1977 bill, H.R. 7010, 95th Cong., 1st Sess. (1977). If passed, H.R. 957 would authorize federal subsidization of 25% of the current cost of state programs that qualify. The Texas Act, TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 1-18 (Vernon Supp. 1980), meets all the criteria of H.R. 957, which include a right to judicial or administrative review, a requirement for cooperation with local law enforcement agencies, and state rights of subrogation. Several similar bills are before the Judiciary Committee. *See* S. 190, 96th Cong., 1st Sess. (1979); H.R. 4257, 96th Cong., 1st Sess. (1979); H.R. 1961, 96th Cong., 1st Sess. (1979); H.R. 1899, 96th Cong., 1st Sess. (1979); H.R. 99, 96th Cong., 1st Sess. (1979). It is probable that the pendency of federal legislation not only encourages states to adopt victim compensation programs, but influences the nature of state programs by establishing minimum criteria for subsidization.

19. ALASKA STAT. §§ 18.67.010-.180 (1974 & Supp. 1979); CAL. GOV'T CODE §§ 13959-13974 (West Supp. 1980); CONN. GEN. STAT. §§ 54-201 to -215 (1979); DEL. CODE ANN. tit. 11, §§ 9001-9017 (1979); FLA. STAT. ANN. §§ 960.01-.25 (West Supp. 1979); GA. CODE ANN. §§ 47-518 to -526 (1979); HAWAII REV. STAT. §§ 351-1 to -70 (1976 & Supp. 1979); ILL. ANN. STAT. ch. 70, §§ 71-84 (Smith-Hurd Supp. 1979); IND. CODE ANN. §§ 16-7-3.6-1 to -17 (Burns Supp. 1979); KAN. STAT. ANN. §§ 74-7301 to -7318 (Supp. 1979); KY. REV. STAT. §§ 346.010-.180 (1977 & Supp. 1978); MD. ANN. CODE art. 26A, §§ 1-17 (1973 & Supp. 1979); MASS. ANN. LAWS ch. 258A, §§ 1-8 (Michie/Law. Co-op 1968 & Supp. 1980); MICH. COMP. LAWS ANN. §§ 18.351-.368 (West Supp. 1967-1979); MINN. STAT. ANN. §§ 299B.01-.17 (West Supp. 1980); MONT. REV. CODES ANN. §§ 53-9-101 to -133 (1979); NEV. REV. STAT. §§ 217.010-.270 (1977); N.J. STAT. ANN. §§ 52:4B-1 to -21 (West Supp. 1979-1980); N.Y. EXEC. LAW §§ 620-635 (McKinney 1972 & Supp. 1972-1979); N.D. CENT. CODE §§ 65-13-01 to -20 (Supp. 1979); OHIO REV. CODE ANN. §§ 2743.51-.72 (Page Supp. 1979); OR. REV. STAT. §§ 147.005-.365 (1977); PA. STAT. ANN. tit. 71, §§ 180-7 to -7.16 (Purdon Supp. 1979-1980); R.I. GEN. LAWS §§ 12-25-1 to -14 (Supp. 1979); TENN. CODE ANN. §§ 23-35-101 to -117 (Supp. 1979); TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 1-18 (Vernon Supp. 1980); VA. CODE §§ 19.2-368.1 to .18 (Supp. 1979); WASH. REV. CODE ANN. §§ 7.68.010-.910 (Supp. 1978); WIS. STAT. ANN. §§ 949.01-.18 (West Supp. 1979-1980). The Rhode Island statute does not become active until the enactment of federal crime victim legislation. The Nevada and Georgia statutes are limited to "good Samaritan" victims, those who are injured in an attempt to stop an ongoing crime or while aiding police officers.

I. THE TEXAS CRIME VICTIMS COMPENSATION ACT

The Act is a hybrid of provisions culled from various existing statutes as well as from the Uniform Crime Victims Reparations Act.[20] The purpose of the program,[21] like that of almost every compensation program in existence, is to compensate victims of violent crimes for the pecuniary losses[22] incurred as a result of their physical injuries. Neither property loss[23] nor pain and suffering[24] are compensable under the Act. Furthermore, a

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20. This Act has been adopted in North Dakota and Ohio and represents an effort of the commissioners on Uniform State Laws to come to grips with the difficult issues involved in victim compensation legislation.

21. The formal purpose of the Act is declared in § 2:

> The legislature recognizes that many innocent persons suffer personal injury or death as a result of criminal acts. Crime victims and persons who intervene in crimes on behalf of peace officers may suffer disabilities, incur financial burdens, or become dependent on public assistance. The legislature finds and determines that there is a need for indemnification of victims of crime and citizens who suffer personal injury or death in the prevention of crime or the apprehension of criminals.

TEX. REV. CIV. STAT. ANN. art. 8309—1, § 2 (Vernon Supp. 1980).

22. The Act includes a typical definition of pecuniary loss, which defines the limits of financial compensation for each individual:

> (7) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred:
> (A) regarding personal injury for:
> (i) medical, hospital, nursing, or psychiatric care or counseling, and physical therapy;
> (ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed $150 per week; and
> (iii) care of minor children enabling a victim or his or her spouse, but not both of them, to continue gainful employment at a rate not to exceed $30 per child per week up to a maximum of $75 per week for any number of children; and
> (B) as a consequence of death for:
> (i) funeral and burial expenses;
> (ii) loss of support to a dependent or dependents not otherwise compensated for as a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate of not more than a total of $150 per week for all dependents; and
> (iii) care of minor children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury, at a rate not to exceed $30 per week per child, up to a maximum of $75 per week for any number of children.
> (C) Pecuniary loss does not include loss attributable to pain and suffering.

Id. § 3(7).

23. No compensation program in existence today allows recovery for the loss of property, although some, such as Tennessee, expressly exclude hearing aids and eyeglasses from the definition of property. TENN. CODE ANN. § 23-35-106(5)(b) (Supp. 1979). The exclusion of property loss may be justified on three grounds: first, the economic infeasibility of such a program; secondly, the opportunity for fraud that such a program would present; and thirdly, "property damage does not destroy a person's only indispensable asset, that is, the ability to earn a living." Childres, *Compensation for Criminally Inflicted Personal Injury*, 39 N.Y.U. L. REV. 444, 460 (1964); *see* Fry, *Justice for Victims*, 8 J. PUB. L. 191, 193 (1959).

24. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(7)(C) (Vernon Supp. 1980). Only one state, Hawaii, allows compensation for pain and suffering. HAWAII REV. STAT. § 351-33(4) (1976). The lack of criteria upon which to base awards is a difficulty faced by the Hawaii program, and other states have chosen to avoid this problem. Tennessee makes one exception, and allows recovery for pain and suffering in cases involving rape or sexual deviancy. TENN. CODE ANN. § 23-35-106(5)(C) (Supp. 1979).

number of restrictions and qualifications limit the class of eligible claimants and the recovery available to each. The Act directs the Industrial Accident Board (the Board), the agency normally in charge of workers' compensation, to administer the program.[25]

A. *Eligibility*

Before an individual can recover under the Act, the Board must be satisfied by a preponderance of the evidence[26] that the requirements of the Act have been met. The threshold requirement is that the individual is a "victim" within the meaning of the Act. Victims include Texas residents[27] who suffer personal injury[28] or death as a result of criminally injurious conduct,[29] intervenors,[30] dependents of deceased victims,[31] and those who, in

25. TEX. REV. CIV. STAT. ANN. art. 3309—1, § 10 (Vernon Supp. 1980). States have varied widely in their choice of administrative agencies. Many, such as New York and Connecticut, have established a compensation board unaffiliated with any existing agency. The Massachusetts and Tennessee programs are administered by state courts. Other states have allowed compensation programs to be subsumed by existing agencies in charge of workers' compensation (Texas, Washington), or public safety (Alaska). California had originally delegated control of its compensation program to the Department of Social Welfare, but transferred authority to the State Board of Control upon the realization that the compensation program had taken on the undesirable aura of welfare. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 82-85.

26. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(a) (Vernon Supp. 1980).

27. *Id.* § 3(9)(A). Not only must the victim be a Texas resident, but the criminally injurious conduct must have occurred in Texas as well. *Id.* § 3(4)(A). Other states that limit recovery to residents include California, Delaware, and Washington. States that do not limit recovery to residents include Illinois, Maryland, and Minnesota.

28. *Id.* § 3(9)(A). While the definition of "victim" requires *personal* injury, the Act requires that the victim suffer *physical* injury in order to recover. *Id.* § 6(b). The § 6(b) requirement of physical injury is the result of a house committee substitute amendment. Under S.B. 21, 1979 Tex. Sess. Law Serv., ch. 189, §§ 1-19, at 402-10 (Vernon), as originally proposed, pecuniary loss incurred as the result of personal injury was compensable, including psychological counseling of rape victims who suffer mental, but not physical, injury. It is estimated that 25% of all rape victims seek no medical attention. SOURCEBOOK, *supra* note 12, at 346.

29. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(9)(A) (Vernon Supp. 1980). *Id.* § 3(4) defines criminally injurious conduct:

> (4) "Criminally injurious conduct" means conduct that:
> (A) occurs or is attempted in this state;
> (B) poses a substantial threat of personal injury or death;
> (C) is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; and
> (D) is not conduct arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle except when intended to cause personal injury or death in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701l—1 or 6701l—2, Revised Civil Statutes of Texas, 1925, as amended.

The words "criminally injurious conduct" are used to avoid giving an artificial meaning to the word "crime." Not all crimes will give rise to compensation under the Act. *See* UNIFORM CRIME VICTIMS REPARATIONS ACT § 1, Comment. Some states, such as Hawaii, instead of using the broad brush approach chosen by Texas, use a list of crimes to describe the conduct that can lead to compensation. HAWAII REV. STAT. § 351-32 (1976). The Hawaiian practice risks penalizing innocent victims of crimes omitted by oversight.

30. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(9)(B) (Vernon Supp. 1980) incorporates a "good Samaritan" statute within the Act. *Id.* § 3(8) provides:

the case of a deceased victim, legally or voluntarily assume the medical or burial expenses of the victim.[32] Once the Board determines that a claimant[33] is a victim, it must be satisfied that as a result of criminally injurious conduct, the victim suffered physical injury[34] or death, which in turn resulted in pecuniary loss.[35] The Board must be convinced that the victim is unable to recoup this pecuniary loss without suffering financial stress.[36] In addition, the victim's recovery may be denied or reduced to the extent that the victim's pecuniary loss is compensated from collateral sources.[37]

Three restrictions further narrow the eligible class. First, victims failing to file applications with the Board within 180 days after the crime,[38] or victims failing to report the crime to the appropriate local law enforcement agency within seventy-two hours,[39] must be denied recovery. Secondly,

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> (8) "Intervenor" means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in such conduct, or to aid a police officer. Intervenor does not include a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of his or her employment.

31. *Id.* § 3(9)(C). Section 3(5) defines dependent by reference to I.R.C. § 152, with the addition of surviving spouses and posthumous children of deceased victims.

32. *Id.* § 3(9)(D).

33. *Id.* § 3(2) defines claimant as "a victim or an authorized person acting on behalf of any victim."

34. *Id.* § 6(b); *see* note 28 *supra*.

35. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(b) (Vernon Supp. 1980); *see* note 22 *supra*.

36. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(b) (Vernon Supp. 1980). For a discussion of the financial stress requirement, one of the major issues in victim compensation legislation, see notes 83-109 *infra* and accompanying text. For the statutory definition of financial stress, see note 88 *infra*.

37. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 6(b), 6(d)(4) (Vernon Supp. 1980) both preclude recovery to the extent of compensation from a collateral source, which is defined in *id.* § 3(3):

> (3) "Collateral source" means a source of benefits or advantages for pecuniary loss awardable other than under this Act which the victim has received, or which is readily available to him or her from:
> (A) the offender under an order of restitution to the claimant imposed by a court as a condition of probation;
> (B) the United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this Act;
> (C) Social Security, Medicare and Medicaid;
> (D) state-required temporary nonoccupational disability insurance;
> (E) workers' compensation;
> (F) wage continuation programs of any employer;
> (G) proceeds of a contract of insurance payable to the victim for loss which he or she sustained because of the criminally injurious conduct; or
> (H) a contract providing prepaid hospital and other health care services, or benefits for disability.

38. *Id.* § 6(c)(1). The 180-day period may be extended by the Board "for good cause shown." *Id.* § 4(c). States vary as to the time limit for filing a claim. MICH. COMP. LAWS ANN. § 18.355(2) (West Supp. 1967-1979), allows the shortest period, 30 days, while ALASKA STAT. § 18.67.130(a) (1974 & Supp. 1979); CONN. GEN. STAT. § 54-211(a) (1979); ILL. ANN. STAT. ch. 70, § 73(q) (Smith-Hurd Supp. 1979); and WIS. STAT. ANN. § 949.08(1) (West Supp. 1979-1980) allow two years in which to file a claim.

39. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(1) (Vernon Supp. 1980). The re-

recovery will be denied if the victim knowingly and willingly participated in the criminally injurious conduct.[40] Thirdly, if the criminal offender or his accomplice resided in the same household as the victim, no compensation may be awarded to the victim.[41] If, after consideration of the foregoing restrictions and requirements, the Board considers the victim eligible for compensation, recovery may still be denied or reduced if the victim has not "substantially cooperated" with law enforcement authorities,[42] or if the victim's behavior at the time of the incident giving rise to the claim was such that he or she bears responsibility for the criminal act or omission.[43]

Once the Board approves the victim's application, it may compensate the victim for his pecuniary loss by means of a lump-sum cash payment or by a series of payments,[44] which awards may not exceed $50,000 in the aggregate.[45] Alternatively, the Board may refer the claimant to state voca-

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quirement for reporting the crime to police is intended to encourage aid and cooperation in law enforcement efforts. Section 4(b) allows the 72-hour period to be extended if the extension "is justified by extraordinary circumstances as determined by the board." Most states have either a 72- or 48-hour requirement, although New Jersey allows three months. N.J. STAT. ANN. § 52:4B-18 (West Supp. 1979-1980). Hawaii and Delaware have no police reporting requirement.

40. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(2) (Vernon Supp. 1980). All state compensation statutes contain a similar provision; it seems natural to prevent the criminal or his accomplice from benefiting from his crime. The statute denies recovery if the person whose injury or death gave rise to the application participated in the crime, thus disallowing recovery to the child or spouse of a slain criminal. *Id.*

41. *Id.* § 6(c)(4). For a discussion of the household exclusion, see notes 110-46 *infra* and accompanying text.

42. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(1) (Vernon Supp. 1980). Section 5(e)(1) authorizes the Board to request information from prosecuting attorneys and law enforcement agencies for the purpose of determining claimant cooperation. One of the anticipated benefits of the program is an increase in police cooperation engendered by § 6(d)(1). *See* Edelhertz, Geis, Chappell & Sutton, *Part II—Public Compensation of Victims of Crime: A Survey of the New York Experience*, 9 CRIM. L. BULL. 101, 103-05 (1973).

43. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(3) (Vernon Supp. 1980). The question of victim precipitation or responsibility plays a large role not only in victim compensation legislation, but in the nascent field of victimology. *See, e.g.*, Silverman, *Victim Precipitation: An Examination of the Concept*, in VICTIMOLOGY: A NEW FOCUS (I. Drapkin & E. Viano eds. 1974). Most state programs include such a provision, which is understandably difficult to administer. One of the most common applications of this provision occurs when the victim is criminally injured a short time after soliciting a prostitute. *See* COMMITTEE ON THE OFFICE OF ATTORNEY GENERAL, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, LEGAL ISSUES IN COMPENSATING VICTIMS OF VIOLENT CRIME 24-25 (1976) [hereinafter cited as ISSUES]. Other situations in which compensation may possibly be denied include illegal hitchhiking or wearing furs or jewelry in areas well-known for high crime rates.

44. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 7(c) (Vernon Supp. 1980). Pecuniary loss accrued to the date of the award shall be paid in a lump sum, and future expenses are to be paid in installments unless the Board finds a lump sum payment will promote the interest of the claimant, or the present value of all future pecuniary loss does not exceed $1,000. *Id.* §§ 7(c)-(d).

45. *Id.* § 7(b). The $50,000 maximum is a limit on the aggregate compensation awarded to all claimants whose claim arises out of the injury or death of the same victim. *Id.* The Act establishes the highest maximum award of all the state programs, except for Ohio, which also allows $50,000. OHIO REV. CODE ANN. § 2743.60(E) (Page Supp. 1979) The lowest of the state limits is $10,000, shared by California, Connecticut, Delaware, Florida, Hawaii, Illinois, Massachusetts, New Jersey, Tennessee, Virginia, and Wisconsin. The

tional facilities or provide counseling services.[46] Upon the awarding of compensation, the state becomes subrogated to all the claimant's rights to receive or recover benefits from collateral sources to the extent that the state has awarded compensation.[47] The Act also provides that the Board shall award reasonable attorneys' fees to attorneys representing successful claimants.[48]

B. *Procedure*

After a victim submits an application to the Board, a clerk appointed by the Board reviews the application for completeness.[49] A complete application is then reviewed by one Board member who determines whether a hearing is necessary.[50] A hearing on the application must be held if the Board member deems it necessary or if either the attorney general or the claimant requests a hearing.[51] The Act gives the Board the special power to order the victim to submit to a mental or physical examination or to order an autopsy of a deceased victim "if the mental, physical, or emotional condition of a victim is material to a claim"[52] and if the order is "for

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Texas maximum is commendable, for in many instances criminal injuries are permanently debilitating, and $10,000 is quickly exhausted.

Many states also have a minimum claim amount. These states include Connecticut and Delaware ($25), Illinois ($200), Kansas, Kentucky, Maryland, Michigan, Minnesota, New Jersey, New York, North Dakota, Tennessee, and Virginia (all $100). Commentators tend to view a minimum claim requirement with disfavor. *See, e.g.*, H. EDELHERTZ & G. GEIS, *supra* note 18, at 47.

46. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 7(a)(2)-(3) (Vernon Supp. 1980). In addition to providing public counseling services the Board may contract with private entities to provide these services. *Id.*

47. *Id.* § 11(a). Section 11(a) is an unfortunately drafted section that is susceptible to the extreme interpretation that once a claimant has received any award from the Board, the state becomes subrogated to the *total* amount of collateral recovery available to the claimant, even if that amount is much greater than the compensation awarded by the Board. Section 11(a) provides: "If compensation is awarded, the state is subrogated to all the claimant's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a source which is or if readily available to the claimant would be a collateral source." *Id.*

Naturally, the state's right of subrogation should be limited to the amount awarded by the state to the claimant. The ambiguity of § 11(a) could be simply remedied by an amendment that moves the phrase "to the extent compensation is awarded" to a position immediately preceding "the state is subrogated."

48. *Id.* § 12 provides:

> As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of compensation. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed. Attorney's fees may not be paid to an attorney of a claimant unless an award is made to the claimant.

49. *Id.* § 5(a).

50. *Id.* § 5(c).

51. *Id.* The attorney general shall be sent a copy of every application received by the Board, and may appear at hearings and present evidence either supporting or opposing approval of the application. *Id.* § 5(b).

52. *Id.* § 5(e)(3). Upon request the Board must give the person examined, or the claim-

good cause shown."[53]

At any time after the denial or award of compensation, the Board may, on its own motion or at the request of the claimant, reconsider its decision.[54] In addition, a claimant has the right to judicial review of a final ruling.[55] To preserve this right, the claimant must file a "notice of dissatisfaction" with the Board within twenty days of the ruling and bring suit in district court within twenty days of the filing of notice.[56] The district court will then determine the issues de novo.[57]

The costs of awards and administration are to be paid exclusively from the Compensation to Victims of Crime Fund, established in the state treasury.[58] This fund is solely comprised of additional court costs imposed on convicted criminals:[59] $15 in the case of a felony and $10 in the case of a

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ant in the case of a deceased victim, a copy of the physician's or psychologist's report. *Id.* § 5(f).

53. *Id.*

54. *Id.* § 9(a).

55. *Id.* § 9(c). The right to judicial review has been a perennial qualification for federal subsidization in the series of federal victim compensation bills. *See, e.g.*, H.R. 957, 96th Cong., 1st Sess. § 4(a)(2) (1979).

56. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 9(c) (Vernon Supp. 1980).

57. *Id.*

58. *Id.* § 14(a).

59. The funding of compensation programs through fining or imposing court costs on convicted criminals is a relatively recent development. California, Connecticut, Delaware, Florida, Maryland, and Washington also use this method of funding, although program appropriations are not limited to this source. One commentator has suggested that "[i]t is . . . an illusion to look to criminal fines, or subrogation, as a substantial source for financing reparations to crime victims." H. EDELHERTZ & G. GEIS, *supra* note 18, at 290. The Texas program will test the accuracy of this prediction.

The method of funding may give rise to a constitutional challenge. One problem arises from the fact that all convicted criminals, except those convicted of misdemeanors with fines less than $200, must pay the court costs irrespective of whether their offense was violent or nonviolent. Arguably, since the court costs are to be used solely for the purpose of compensating victims of violent crime, the statutory classification of those individuals who will pay the court costs is not reasonably related to the purpose of the legislation and contravenes the equal protection clause of the fourteenth amendment. *See, e.g.*, McLaughlin v. Florida, 379 U.S. 184, 190-91 (1964).

This equal protection argument was made before the Supreme Court of Florida in State v. Champe, No. 53,811 (Fla. Dec. 14, 1978). In *Champe*, the supreme court overruled the lower court's finding that the funding provisions of the statute were unconstitutional. Chief Justice England stated:

> Laws which classify violent and non-violent offenders together for purposes related solely to the prevention of violent crimes have consistently been upheld against equal protection attacks. *See* United States v. Brown, 484 F.2d 418, 423 (5th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974). . . . It is not irrational for the legislature similarly to combine all lawbreakers for the purpose of remedying the consequences of violent crime.

Id., slip op. at 7. *Brown*, however, dealt with the constitutionality of a law proscribing the interstate transportation of firearms by convicted felons, regardless of the violent nature of the felony. The broad brush classification in *Brown* bears a far more rational relation to the purpose of the statute than does the *Champe* classification. The *Brown* classification can be viewed as based not only on the criminal offense, but on post-crime experience in prison, and can be justified by the high rate of crimes committed by ex-convicts. In *Champe* a shoplifter was fined to help pay for injuries suffered at the hands of rapists, murderers, and armed robbers. Unlike *Brown*, the statutory classification in *Champe* was not based on a reasonable attempt to protect the public, nor was it based on any harm directly caused by

misdemeanor punishable by imprisonment or by a fine greater than $200.[60] The legislature deleted a proposed provision that would have allowed courts to impose fines up to $10,000 on individuals convicted of violent crimes.[61] Legislative estimates project that under the current Act, the collection of additional court costs should yield approximately two million dollars annually.[62]

II. THE THEORETICAL JUSTIFICATION FOR VICTIM COMPENSATION

Commentators traditionally have advanced two theories to justify the state's assumption of the duty to compensate crime victims.[63] An examination of these theoretical justifications is essential to an analysis of the restrictions and qualifications embodied in the Act. The first theory is that of "state obligation."[64] The state obligation theory postulates that the state is under a duty to protect the citizenry and that when a person is criminally injured the state has failed in this duty; consequently, the state is obligated to compensate the victim.[65] The state's obligation further arises from the fact that the laws of the state prevent the victim from seeking personal retribution against the criminal and impede the victims' civil recovery by incarcerating the criminal.[66] The second theory, the social welfare theory,[67] is predicated upon moral considerations. This theory postulates that "an innocent victim ought to be entitled to aid, to maintain that degree of dignity, security, and comfort which he seeks to earn for himself and his family,"[68] and that the state should provide this aid.

At least one author has recognized that the provision for the general welfare is merely a motive behind victim compensation legislation, not a justification for it.[69] The social welfare theory begs the question; the state's power to provide for the general welfare offers no explanation for the state's exercise of the power in this particular instance. Yet for some, the state's moral obligation is sufficient reason for victim compensation pro-

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the offender. Since the funding provisions of the Texas Act are similar to those of Florida, Texas should expect a challenge similar to that in *Champe*.

60. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 14b (Vernon Supp. 1980).

61. Proposed S.B. 21 was amended Apr. 26, 1979, to delete § 15. House Floor Amendments to S.B. 21, TEX. H.R.J. 1903 (1979). A remnant of old § 15 may be seen in § 3(10), which defines crimes of violence although there is no longer any reference to crimes of violence in the Act. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(10) (Vernon Supp. 1980).

62. Fiscal Note accompanying S.B. 21, Apr. 10, 1979.

63. *See* Galaway & Rutman, *Victim Compensation: An Analysis of Substantive Issues*, in CONSIDERING THE VICTIM, *supra* note 10, at 421-22; Schafer, *Victim Compensation and Responsibility*, 43 S. CAL. L. REV. 55, 58-59 (1970).

64. Schafer, *supra* note 63, at 58.

65. *See* McAdam, *supra* note 5, at 351.

66. The argument that the state impedes the victim's civil recovery by incarcerating the criminal is somewhat incongruous with the argument that the state is at fault for not apprehending the criminal; nevertheless, both are often advanced together. *See, e.g.*, Galaway & Rutman, *supra* note 63, at 421-22.

67. *See* Schafer, *supra* note 11, at 48.

68. Note, *The New Jersey Criminal Injuries Compensation Act*, 27 RUTGERS L. REV. 727, 728-29 (1974) (quoting N.J. VIOLENT CRIMES COMPENSATION BOARD, FIRST ANNUAL REPORT 5 (1973)).

69. McAdam, *supra* note 5, at 351.

grams. The distinguished English jurist Rupert Cross stated, "If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such a remedy was made out, provided the practical difficulties are not too great."[70]

The state obligation theory appears to provide a sounder basis for victim compensation programs than does the social welfare theory, but its premises are rather questionable. The state obligation theory is predicated upon the failure of the state to protect the victim; however, ascribing fault to the state is erroneous.[71] The criminal is at fault, and to place blame on the state is to engage in a fiction and to ignore the individual will of the criminal.[72] A state cannot protect all people at all times, and it is debatable whether a state should attempt to do so.

Other theories advanced in justification of compensation programs are often merely additional benefits of such legislation, not underlying justifications. Among these prospective benefits are the increased cooperation with law enforcement agencies engendered by eligibility requirements,[73] anti-alienation of the victim,[74] and even the political benefit accruing to sponsors of victim compensation who act because "this . . . is what the people want."[75]

If a primary justification for the state's assumption of the duty to compensate victims must be identified, perhaps it is that the state is in the best position to spread the severe losses incurred by a relatively small group of victims. The loss-spreading function of victim compensation programs has long been recognized,[76] but rarely suggested as a justification for state compensation.[77] A state's unique ability to spread these losses efficiently, combined with a state's general duty to provide for the public welfare, implicates a state duty to establish these programs. In a sense, victim compensation may be viewed as the statutory analogue of the common law doctrine of vicarious liability. In both cases, liability is not based on fault but is imposed with the belief that it is better to subject all of society to

70. Cross, *Compensating Victims of Violence*, THE LISTENER 815, 816 (May 16, 1963), *quoted in* Childres, *supra* note 23, at 448.

71. Childres, *supra* note 23, at 455.

72. *Id.*

73. *See* McAdam, *supra* note 5, at 353.

74. For a discussion of the theory of victim anti-alienation, see text accompanying note 100 *infra*.

75. *See* MCADAM, *supra* note 5, at 353.

76. Margery Fry, the English penal reformer who is frequently given credit for the rebirth of victim compensation, spoke of the loss-spreading aspects of victim compensation in her seminal article. Fry, *Justice for Victims*, 8 J. PUB. L. 191, 192-93 (1959).

77 Robert Childres, an influential commentator during the nascent stages of state victim compensation stated:

> [A] sufficient, independent basis for compensation rests on common sense rather than the metaphysics of causation and responsibility. Endemic losses ought to be spread. That violence and damage criminally inflicted are endemic to American society cannot be disputed. This premise alone is a sufficient basis for the conclusion that the damage ought to be spread among all potential victims.

Childres, *supra* note 23, at 457.

small increments of loss rather than to allow individuals to suffer radical shifts in their economic status.[78] Under the doctrine of vicarious liability, society must eventually shoulder the loss incurred by an individual injured by a negligent employee; the loss is reflected in the goods purchased from the employer, and thereby society pays the true cost of the goods.[79] Likewise, victim compensation programs allow the loss suffered by a crime victim to be reflected as a true cost of living in society, either directly, through the imposition of taxes, or indirectly, by the assessment of criminal fines.[80]

III. Controversial Restrictions in the Texas Act

The assumption that loss-spreading is the primary justification of the state's duty to compensate victims of crime raises questions concerning the validity of some of the major restrictions on recovery included in the Texas Act. Certain provisions bear no relation to either the loss-spreading or the state obligation theories. These provisions include the exclusion of victims who live in the same household with the criminal,[81] and the requirement that the victim, regardless of the size of his loss, show that he will suffer financial stress as a result of his injury.[82] These two requirements are particularly important because of the breadth of their application. This Comment, therefore, examines these restrictions in light of the reasons offered for their support and the detrimental effects they may cause.

A. *Financial Stress*

Perhaps the most contentious issue concerning victim compensation legislation today is whether recovery should be contingent upon a showing of financial need or stress. Those in favor of such a requirement claim that fiscal limitations demand a restriction on program outlays because a needs requirement will cut back on the total amount awarded and thereby ensure compensation for the neediest individuals.[83] The proponents of need requirements are invariably the legislators, perhaps because legislators are naturally most sensitive to the potential budgetary ramifications of proposed legislation.[84] Objective commentators and experienced victim compensation program administrators,[85] however, have rarely favored

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78. *See* F. Harper & F. James, The Law of Torts 759-64 (1956).

79. *See* Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 Yale L.J. 499 (1961).

80. The method of funding adopted by Texas, the imposition of additional fines upon criminal offenders, Tex. Rev. Civ. Stat. Ann. art. 8309—1, § 14(c) (Vernon Supp. 1980), may be seen as a partial recapture by society of the loss suffered as a result of the crimes. In a sense, under the Texas method, society pays the cost of victim compensation in advance.

81. *Id.* § 6(c)(4).

82. *Id.* § 6(c)(3).

83. *See* Note, *Virginia Adopts Statute to Compensate the Victims of Crime*, 11 U. Rich. L. Rev. 679, 682 (1977).

84. *See* H. Edelhertz & G. Geis, *supra* note 18, at 31-35.

85. In an opinion survey taken of 20 victim compensation program administrators, only three felt that the victim's need should be a prerequisite in making an award. Brooks, *Crime Compensation Programs: An Opinion Survey of Program Administrators*, 11 Criminology 258, 269-70 (1973).

requirements of financial need or stress; in fact, many ardently oppose such provisions.[86] Nevertheless, approximately half of the states with victim compensation plans use some sort of financial means test.[87] The Texas Act includes a typical provision: "The board shall deny the application if: . . . the claimant will not suffer financial stress as a result of the pecuniary loss arising out of the criminally injurious conduct."[88] The generally accepted reason for the inclusion of such a provision is the anticipated reduction in expenditures.[89] Whether it is reasonable to anticipate a substantial reduction in expenditures is a question that this Comment addresses later in this section, after the general undesirability of financial stress tests is examined.

General Undesirability of a Financial Stress Test. A financial stress test is undesirable for a number of philosophical and practical reasons. The requirement that a claimant show financial need essentially changes the focus of the program from the compensation of crime victims to the provision of welfare.[90] As mentioned earlier, one of the primary goals of a victim compensation program should be to spread effectively the losses resulting from crime related injuries,[91] and this goal can only be achieved by adopting a restitutionary approach that ignores the economic status of the victim. Instead of functioning as a loss-spreading device, an act including a financial stress test serves to reallocate wealth by limiting eligibility for recovery to those who meet a certain standard of need. While compensation programs are admittedly enacted to benefit the general welfare, they should not be transformed into welfare programs because victims of crime are not limited to any one income group.[92] The drafters of the Uniform

86. *See, e.g.*, Childres, *supra* note 23, at 462; H. EDELHERTZ & G. GEIS, *supra* note 18, at 83-85.

87. CAL. GOV'T CODE § 13964(2) (West Supp. 1980); FLA. STAT. ANN. § 960.13(7) (West Supp. 1979); KAN. STAT. ANN. § 74-7305(d) (Supp. 1979); KY. REV. STAT. § 346.140(3) (1977); MD. ANN. CODE art. 26A, § 12(f)(1) (1973 & Supp. 1979); MICH. COMP. LAWS ANN. § 18.361(5) (West Supp. 1967-1979); N.Y. EXEC. LAW § 631.6 (McKinney 1972); TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(3) (Vernon Supp. 1980); VA. CODE § 19.2-368.13 (Supp. 1979); WIS. STAT. ANN. § 949.06(b) (West Supp. 1979-1980) use financial means tests. ALASKA STAT. § 18.67.080(3)(c) (1974 & Supp. 1979), allows consideration of financial need, but does not require a showing of need.

88. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(3) (Vernon Supp. 1980). Financial stress is defined in *id.* § 3(6):

> (6) "Financial stress" means financial hardship experienced by a claimant as a result of pecuniary loss from criminally injurious conduct giving rise to a claim under this Act. A claimant suffers financial stress only if he or she cannot maintain his or her customary level of health, safety, and education for himself or herself and his or her dependents without undue financial hardship. In making its finding, the board shall consider all relevant factors, including:
> (A) the number of the claimant's dependents;
> (B) the usual living expenses of the claimant and his or her family;
> (C) the special needs of the claimant and his or her dependents;
> (D) the claimant's income and potential earning capacity; and
> (E) the claimant's resources.

89. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 32.

90. *Id.* at 91-92.

91. *See* notes 76-80 *supra* and accompanying text.

92. *See* SOURCEBOOK, *supra* note 12, at 318.

Crime Victims Reparations Act recognized the danger of this transformation: "If the test is included, however, a real threat to the integrity of the program is posed because a strict 'needs' requirement will limit benefits of the program to persons already on welfare and thus be merely an exercise in bookkeeping."[93]

In addition to these problems, the financial stress test creates substantial practical difficulties. Instead of focusing on the claimant's injury, the Board will spend a great deal of time investigating the claimant's wealth. The amount of administrative effort directed at the determination of financial need should not be underestimated. The New York Crime Victims Compensation Board consistently reported that the most difficult problem faced was the determination of serious financial hardship.[94] Thus, the financial stress test certainly will substantially increase the time required to process each claim, as well as distract the administrators from other investigatory tasks. Perhaps more importantly, the procedure for determining financial stress is necessarily demeaning.[95] Each applicant will be forced to divulge whatever private financial information the Board considers necessary for its decision.[96] The victim cannot help feeling that he is on trial when he is put in the uncomfortable position of proving he is poor enough to deserve recovery.[97] A California Board official charged with coordinating the determination of need stated:

> [I]t's making the program exceedingly unpopular because the people come in again and again and say because I was frugal, because I saved a dollar, I'm being deprived of my compensation, whereas the man who threw the money away, or the woman who threw it away, is going to get money from you. This story you hear over and over again, and the Board is getting sick of it.[98]

The public sentiment expressed against the programs using a need requirement bears on another issue. One of the recognized benefits of victim compensation programs is the anti-alienating effect on individual victims.[99] Theoretically, state-provided compensation for victims should help dissipate the disillusionment of individuals who, having suffered criminal injuries, suffer additionally through losses of time and income incurred as a result of their attempts to cooperate in prosecution efforts.[100] If victims who innocently suffered are denied compensation because their income level is not low enough, this achievement is likely to go unrealized. In fact, the experience of other states suggests that, if anything, the programs that use a financial stress test increase alienation.[101]

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93. UNIFORM CRIME VICTIMS REPARATIONS ACT § 5(g), Comment.

94. H. EDELHERTZ & G. GEIS, *supra* note 18, at 58-59.

95. *Id.* at 272.

96. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 4(d)(5) (Vernon Supp. 1980) allows the Board to require that an application contain whatever information it considers necessary

97. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 62-63 (applicant stated upon leaving hearing: "I feel like a criminal").

98. *Id.* at 92.

99. Schafer, *supra* note 11, at 48.

100. *Id.*

101. The chairman of the New York Board has been quoted as remarking at a confer-

The Fiscal Benefit. Although the detrimental effects of the financial stress requirement are widely recognized, Texas and a large number of other states have included such provisions in their victim compensation statutes. As previously mentioned, the popularity of the stress requirements can be attributed to the legislative perception that such restrictions will result in substantial fiscal savings. On the whole, however, the savings to be achieved from these provisions have been greatly overestimated. First, the administrative costs associated with the financial stress test are perhaps the highest of any one phase of the investigatory procedure.[102] In addition to the time spent analyzing financial data submitted by the claimant, officials will necessarily spend a great deal of time cross-checking this information with employers, banks, and other sources.[103] The Board will have to make an individual judgment in each case, weighing the factors specified in the Act as well as any additional standards it may choose to adopt.[104] Secondly, those individuals who would be excluded by a financial stress test are very likely to be compensated by some collateral source, such as insurance, medicare, or workers' compensation.[105] Thus, to the extent of the collateral compensation, these victims would be precluded from recovery irrespective of the financial stress test.[106] Furthermore, wealthier victims are less likely to be willing to go through the compensation process to recover a relatively small loss.[107]

The combination of the substantial increase in administrative cost and the fact that a large number of those who would be excluded by the financial stress test would also be excluded by other restrictions indicates that the fiscal benefits of the test are not likely to be very large. The New York Board has estimated that the elimination of the stress test from the New York program would result in only an additional $150,000 in overall expenditures, an increase of ten percent.[108]

The decision to adopt or retain a financial stress test involves a comparison of the fiscal benefits of the provision with the potential detrimental effects. Considering the probability that a relatively small increase in costs would result from an abandonment of the test, the victim alienation and the inequitable denials of recovery that will accompany the test should compel the abandonment of the financial stress requirement. The majority

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ence of compensation board administrators, "I don't know about you, but the letters we get no newspaper would publish, believe you me, when we turn down someone on serious financial hardship." H. EDELHERTZ & G. GEIS, *supra* note 18, at 59.

102. *Id.* at 272.

103. *See* Comment, *New York Crime Victims Compensation Act: Four Years Later*, 7 COLUM. J.L. & SOC. PROB. 25, 31 (1971).

104. In determining financial stress, the Board is to "consider all relevant factors," including those listed in §§ 3(6)(A)-(E). TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(6) (Vernon Supp. 1980).

105. *See* Geis, *California's New Crime Victim Compensation Statute*, 11 SAN DIEGO L. REV. 880, 904 (1974).

106. *See* note 37 *supra*.

107. *See* Geis, *supra* note 105, at 904.

108. H. EDELHERTZ & G. GEIS, *supra* note 18, at 59. This figure is based on the expected increase in awards minus the expected administrative savings.

of administrators of existing programs, as well as most commentators, oppose basing victim compensation programs on need and recognize that it is preferable that administrators spend their limited time processing claims instead of prying into innocent victims' private affairs.[109] This Comment, therefore, proposes that the financial stress provision of the Texas Act be deleted.

B. *The Relational Exclusion*

Almost every compensation program in existence contains some type of relational[110] exclusion provision.[111] These provisions establish a class of victims who, regardless of the severity of their need, are denied compensation solely because a statutorily prescribed relationship exists between them and the criminal responsible for their injury. In some states this relationship is defined by degrees of consanguinity.[112] A number of states deny recovery to victims involved in sexual relationships with the criminal,[113] while others limit the exclusion to those victims residing in the same household as the criminal.[114] These three provisions are sometimes combined within a single statute.[115] The Texas Act uses the household exclusion: "The board shall deny the application if . . . the victim resided in the same household as the offender or his or her accomplice."[116] Unfortunately, the Act does not define "household,"[117] nor does it specify whether

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109. Texas narrowly missed disqualification for federal subsidization under the 1979 Victims of Crime Act bill, H.R. 957, 96th Cong., 1st Sess. (1979). H.R. 957 is the result of conference committee compromises of the 1977 bill, H.R. 7010, 95th Cong., 1st Sess. (1977). The Senate had proposed an amendment to H.R. 7010 that would exclude from federal subsidization states using means tests.

> The conferees note that Senator Kennedy, one of the managers on the part of the Senate, believes quite strongly that States receiving funds under this Act should not impose financial means tests when determining eligibility. He believes that no innocent victim of a crime should be required to bear the economic burden of a crime, that a uniform standard of eligibility should be used nationwide, that means tests are not only arbitrary but also demeaning, that such tests may have the effect of discouraging claimants from applying for compensation, and that there has been no conclusive showing that such tests are cost effective.

H.R. REP. No. 1762, 95th Cong., 2d Sess. 11 (1978). The conference committee decided not to adopt the Senate amendment, however, reasoning that in light of the relatively small (25%) federal contribution to the state programs, the states should be free to make their own determinations concerning the desirability of a means test. *Id.*

110. The term "relational" is used in this Comment to describe exclusions based on some relationship between the victim and the criminal. These exclusions are sometimes referred to as familial, but this term fails to describe the variety of relationships that may give rise to exclusion.

111. Only California and Delaware do not have relational exclusions.

112. *E.g.*, MD. ANN. CODE art. 26A, § 2(d) (1973).

113. *E.g.*, ALASKA STAT. § 18.67.130(b)(2) (Supp. 1979).

114. *E.g.*, MICH. COMP. LAWS ANN. § 18.354(4)(2)(e) (West Supp. 1967-1979).

115. *E.g.*, CONN. GEN. STAT. § 54-211(b) (1979); FLA. STAT. ANN. § 960.04(2) (West Supp. 1979); KY. REV. STAT. § 346.050(2) (1977).

116. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(4) (Vernon Supp. 1980).

117. The statutory appearance of the word "household" has previously caused disagreement. *Cf.* Gaston v. Gardner, 247 F. Supp. 441 (D.S.C. 1965) (interpretation of "household" determinative of child's right to social security benefits). The Michigan Act expressly

the exclusion applies only to those residing together at the time of the incident or to those who have resided together at any time in the past.[118] For example, whether the exclusion would apply to a wife assaulted by her husband when the couple had separated one week before the incident is unclear.

The household exclusion may yield a harsh result. The most obvious example occurs in the case of interspousal murder. When a husband murders his wife, the children suddenly find themselves alone, their mother dead and their father in jail. No victims are more innocent nor more deserving of society's aid than such children. Yet because these victims of crime resided with their parents, they are denied funds that the state distributes to others in far less need.[119]

The household exclusion does not contribute to the program's goal of loss-spreading because there is no reason to assume that pecuniary loss suffered as a result of a crime committed by a co-resident should be less severe than a loss accompanying an injury suffered at the hands of a stranger. Commentators, however, generally advance four justifications to support the policy of relational exclusion: (1) prevention of fraud and collusion;[120] (2) prevention of the criminal from benefiting from his crime;[121] (3) limitation of expenditures;[122] and (4) avoidance of grants to victims who are partially responsible for the crime.[123] While these arguments all involve valid considerations, they either are based on assumptions that have proven invalid in light of experience, or focus on problems that can adequately be solved through more equitable alternative methods.

Fraud, Collusion, and Indirect Benefit. The first two arguments in favor of relational exclusions are conceptually linked. Those who favor a relational exclusion fear that the relative or co-resident responsible for the injury will ultimately benefit from his or her act through the compensation allowed the victim. Similarly, when the victim and the offender are acquainted, the proponents of relational exclusions perceive a greater opportunity for fraud and collusion. Little if any merit attaches to either of these arguments, however, especially since the problems of fraud and indirect benefit are adequately prevented by other provisions of the Act.

In the first place, the victim must suffer physical injury in order to be eligible,[124] and then he can recover only for documented pecuniary loss

excludes domestic employees from the household exclusion. MICH. COMP. LAWS ANN. § 18.354(2)(c) (West Supp. 1979).

118. The statutes of other states are generally quite clear as to the time of cohabitation that will cause an exclusion. *See, e.g.*, ALASKA STAT. § 18.67.130(b)(2) (1974 & Supp. 1979) (cohabitation at time of incident).

119. *See* Note, *Illinois' Crime Victims Compensation Act*, 7 LOY. CHI. L.J. 351, 359-61 (1976).

120. *See* McAdam, *supra* note 5, at 361-63.

121. *See* Brooks, *How Well Are Criminal Injury Compensation Programs Performing?*, 21 CRIME & DELINQUENCY 50, 54 (1975).

122. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 269.

123. *Id.*

124. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(b) (Vernon Supp. 1980).

such as medical expenses.[125] The number of people willing to injure themselves seriously enough to require medical attention in order to defraud the program is likely to be negligible. If an individual wanted to defraud the program by seeking recovery for an accidental injury, he could blame an imaginary stranger instead of a relative.[126]

The Act's requirement for cooperation with the local law enforcement agency,[127] however, most strongly rebuts both the indirect benefit and fraud arguments. In order to be eligible for compensation, a claimant must report the crime within seventy-two hours[128] and fully cooperate with the police.[129] Presumably, this cooperation involves filing a complaint and aiding in all prosecutorial efforts. In order to benefit from his crime, therefore, the criminal would first sacrifice his freedom. Furthermore, the victim's willingness to prosecute should operate to create a rebuttable presumption of a lack of collusion.[130]

Finally, those who cling to the indirect benefit theory can be satisfied by an alternative to relational exclusions that does not result in the exclusion of a large class of innocent and needy victims. The drafters of the Uniform Crime Victims Reparations Act have abandoned the relational exclusion in favor of a more equitable test: "Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or accomplice."[131] In addition to the unjust benefit clause, the Uniform Crime Victims Reparations Act includes an optional addendum that creates a presumption of unjust benefit in certain relational situations. This section is to be used or omitted "according to the legislative appraisal of the options involved."[132] Although this addendum could cause a hardship in certain circumstances,[133] it is preferable to the absolute exclusions in common usage, for it gives the Board an option:

> [Unless the Board determines that the interests of justice otherwise require in a particular case, reparations may not be awarded to the spouse of, or a person living in the same household with, the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.][134]

North Dakota[135] and Ohio[136] have both adopted the Uniform Crime

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125. *Id.* § 7(a)(1).

126. Program reports from various states have revealed that the fraud that was expected to accompany the programs has simply not materialized. See H. EDELHERTZ & G. GEIS, *supra* note 18, at 279-81.

127. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(1) (Vernon Supp. 1980).

128. *Id.* § 6(c)(1).

129. *Id.* § 6(d)(1).

130. *See* Note, *supra* note 119, at 359.

131. UNIFORM CRIME VICTIMS REPARATIONS ACT § 5(c).

132. *Id.* § 5(c), Comment.

133. One author has suggested that a rebuttable presumption of unjust benefit might cause a hardship on children seeking recovery. McAdam, *supra* note 5, at 362.

134. UNIFORM CRIME VICTIMS REPARATIONS ACT § 5(c) (brackets in original).

135. N.D. CENT. CODE § 65-13-06(3) (Supp. 1979).

136. OHIO REV. CODE ANN. § 2743.60(B) (Page Supp. 1979).

Victims Reparations Act exclusions, and the head of the North Dakota program has evaluated the provision as valuable and equitable.[137]

Fiscal Considerations and the Participatory Theory. Members of society generally perceive that a high proportion of violent crimes occur in domestic settings.[138] Garnering additional support from the indirect benefit theory, legislators have included relational exclusions with the view that the elimination of this large class of claimants will ease the constraints of a limited budget. Yet the experience of the New York program, which employs a familial exclusion,[139] suggests that such financial benefits have been overestimated. In the first four years of the program, of 3,238 claims filed, 1,380 were denied.[140] Only seventeen of these 1,380 denials were based on the relationship between the offender and the victim.[141]

Nevertheless, the emendation of the household exclusion undeniably would result in an increase in administrative costs, even though the actual increase in claims may be negligible. An increase in administrative costs is likely because it is probable that more administrative time will be spent in examining the possibility of victim participation in an interfamilial crime than in a crime committed by a stranger.[142] In fact, the idea that the victim of an interfamilial crime is usually partially responsible for the crime is a multifarious concept underlying the exclusions.[143] When a wife has been severely beaten by her husband, the police, the courts, and the community too often believe that " 'she must have done something terrible to provoke such a response.' "[144] The public perception of victim participation in interfamilial crimes, however, cannot justify the relational exclusion because the Act already includes a provision for reducing recovery to the extent that the victim precipitated the crime, and every claim will be examined in this light.[145] Although the Board possibly might choose to devote more time to the determination of victim precipitation in interfamilial crimes, precluding a sizeable class of victims from recovery on the mere suspicion

137. Gross, *supra* note 12, at 35. Indiana has responded directly to the inequitable potential of the relational exclusion by limiting exceptions to the exclusion of legal non-spousal dependents of the criminal:

> A person who commits a violent crime upon which an application is based, or an accomplice of that person or a member of the family of that person, is not eligible for assistance under this chapter. However, if the victim is a legal non-spousal dependent of the person who commits a violent crime, compensation may be awarded where justice requires.

IND. CODE ANN. § 16-7-3.6-5(b) (Burns Supp. 1979).

138. *See* H. EDELHERTZ & G. GEIS, *supra* note 18, at 269. This perception is somewhat distorted because the Department of Justice estimates that less than 10% of all aggravated assaults are inflicted upon relatives. SOURCEBOOK, *supra* note 12, at 334-35. The public perception finds justification in the statistics of murder, however, for approximately 30% of all murders are either interfamilial (22%) or romantically related (7%). *Id.* at 457.

139. N.Y. EXEC. LAW § 624(2) (McKinney Supp. 1972-1979).

140. H. EDELHERTZ & G. GEIS, *supra* note 18, at 43.

141. *Id.* at 53.

142. *Id.* at 269.

143. *Id.*

144. T. DAVIDSON, CONJUGAL CRIME 74 (1978).

145. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(2) (Vernon Supp. 1980).

that the investigation of their claims will prove more costly than another group of claimants is unjust.

In summary, no valid reason exists for the exclusion of the broad classes of victims affected by the relational exclusion provisions. The fears of fraud and collusion are rendered nugatory by the requirement for cooperation in the apprehension and prosecution of the victim. The possibility of indirect benefit to the criminal is also lessened by the cooperation requirement and may be eliminated completely by the adoption of the Uniform Crime Victims Reparations Act proposal.[146] The fiscal benefits accruing to a program from relational exclusions are minimal, and neither the slight decrease in claims nor the reduction of administrative costs associated with an undocumented perception of victim precipitation justifies the exclusion of a large class of innocent victims.

IV. The Need for Adequate Publicity and Effective Claim Forms

While the need for adequate publicity cannot be termed a legal issue, the extent of public education and information largely determines the effectiveness of any compensation statute. How the public is informed, the ease of access to the application forms, and the nature of the forms themselves can have a substantial impact on the number of claims filed and the amount of administrative effort spent in processing claims.

The experience of the New York program demonstrates the relation between public awareness and the number of victims aided. The New York program was underpublicized; after four years some prosecutors were unaware of its existence.[147] Even today, there is no statutory provision for publicity and, although initially several short-lived media "blitzes" were attempted,[148] the chairman of the compensation board has admitted that the largest number of claims arise from knowledge of the program obtained by word of mouth.[149] In 1969, the third year of the program's operation, only 929 claims were filed.[150] In that same year, New York law enforcement agencies received 40,049 reports of murder, manslaughter, rape, and aggravated assault.[151] Despite the benevolent intent underlying compensation programs, if the victims themselves are not informed of the availability of state compensation, the programs will be "nothing more than public placebos, tranquilizing showpieces aimed at placating the public and protecting the politician, all for a negligible price."[152]

Fortunately, Texas has taken steps to avoid this problem. Sections 10(e) and (f) of the Texas Act provide:

146. *See* note 131 *supra* and accompanying text.
147. King, *If You Are Maimed by a Criminal You Can Be Compensated (Maybe)*, N.Y. Times, Mar. 26, 1972, § 6 (Magazine), at 31.
148. H. Edelhertz & G. Geis, *supra* note 18, at 46.
149. *Id.*
150. Comment, *supra* note 103, at 35.
151. *Id.* at 34.
152. H. Edelhertz & G. Geis, *supra* note 18, at 238.

> (e) Every hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this Act. The board shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this Act to each hospital and physician licensed to practice in the State of Texas.
>
> (f) Every local law enforcement agency shall inform victims of criminally injurious conduct of the provisions of this Act and provide application forms to victims who desire to seek assistance. The board shall provide application forms and all other documents that local law enforcement agencies may require to comply with this section. The attorney general shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with him or her a description of the procedures adopted by each agency to comply.

These provisions closely resemble those adopted by California after that state experienced difficulties similar to those of New York.[153]

While the Texas Act is admirable for its inclusion of such a provision, it is crucial that the provisions be vigorously applied. Furthermore, law enforcement agencies must develop an efficient procedure for the dissemination of information. Finally, in addition to the statutorily prescribed publicity, the Board should use mass media to publicize the Act and develop adequate screening procedures to cope with the number of claims generated from such publicity.

Apart from the lesson learned from the New York experience, two other factors demonstrate that publicity requires particular attention. First, although the statute speaks in unequivocal language, directing that "[e]very hospital . . . *shall* display . . . [and] [e]very local law enforcement agency *shall* inform . . . ,"[154] it provides no sanction for noncompliance with these duties. The absence of a statutory sanction requires the close monitoring of the compliance of hospitals and law enforcement agencies. If cooperation is not received, perhaps a penalty for noncompliance should be added to the statute. Secondly, the Act divides the control of publicity between the Board and the attorney general. Although the Board is in charge of providing application forms to the law enforcement agencies,[155] the attorney general is responsible for setting the standards for the distribution of these forms.[156] Since the manner of distribution and procedural organization has a substantial impact on the choice of the claim form,[157] the attorney general and the Board must work closely together to assure a smooth operation. At one time the California program involved the same division of authority.[158] Apparently, the split proved unwieldy in practice,

153. CAL. GOV'T CODE §§ 13968(b)-(c) (West Supp. 1980); *see* Geis, *supra* note 105, at 885.

154. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 10(e)-(f) (Vernon Supp. 1980) (emphasis added).

155. *Id.* § 10(f).

156. *Id.*

157. *See* Gross, *supra* note 12, at 20.

158. CAL. GOV'T CODE § 13968(c) (1974) (amended by 1977 Cal. Stats. ch. 636, § 4).

for California amended its act in 1977 by placing all authority for law enforcement publicity procedures in the hands of the administrative agency in charge of the compensation program.[159]

For the present, the Texas attorney general controls the procedure by which Texas law enforcement agencies distribute information.[160] Since the Act places a duty upon every local law enforcement agency to provide information and application forms to every victim of criminally injurious conduct, the police are essentially the public representatives of the Board, and their efforts are likely to account for the majority of claims filed. The procedures adopted for the distribution of this information will influence the effectiveness of the program, but the limited manpower and budget of law enforcement agencies conflict with the need for widespread distribution of information and applications. Faced with this conflict, California has developed a system for the dissemination of information that promises to be effective as well as efficient, and Texas should consider the adoption of a similar plan. In a memo sent to all local law enforcement agencies, California Attorney General Younger outlined the standard procedure:

> (1) Law enforcement officers are required to provide to victims of [*sic*] their families a sheet describing the victim program and where to obtain application forms. This sheet shall also identify a Victims of Violent Crime Liaison Officer and his telephone number. Every reporting officer shall indicate in his police report the date when potential claimants were provided with the sheet. Alternatively, a law enforcement agency may devise a system whereby potential claimants are notified by mail of the availability of the program and are advised of the name of the Liaison Officer from whom further information may be obtained;
>
> (2) All law enforcement agencies shall appoint a Victims of Violent Crime Liaison Officer. This officer will coordinate closely with the State Board of Control and shall obtain from the Board application forms which are to be disseminated to the interested public;
>
> (3) The program shall be discussed in general agency meetings and new and trainee officers shall be made aware of the program's existence.[161]

The establishment of a liaison officer serves several purposes. The local agency will benefit from this centralization of responsibility because less time will have to be spent on the education of the entire force. The public will benefit because such an officer will become well-versed in the provisions of the Act and, as a result, will be able to respond to specific inquiries with greater accuracy. The Board will benefit because a liaison officer can serve as a watchdog by checking that the information is being distributed in accordance with the statutory mandate.

Although the statutory delegation of publicity duties to law enforcement

159. *Id.* (West Supp. 1980). The chief administrator of the North Dakota Crime Victims Compensation Board requested that all sections concerning the attorney general's participation be eliminated. *See* Gross, *supra* note 12, at 29.

160. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 10(f) (Vernon Supp. 1980).

161. ISSUES, *supra* note 43, at 15.

agencies establishes an efficient device for information distribution, the police can only inform those who report a crime. Over fifty percent of all personal victimizations go unreported.[162] The Act attempts to lower this percentage in Texas by conditioning eligibility on a report of the crime to the appropriate agency within seventy-two hours.[163] If this ancillary goal of increased crime reporting is to be reached, information about the Act, and the seventy-two hour provision in particular, should be conveyed by sources other than the police. In all likelihood, the best way to reach those who would otherwise choose to avoid involvement with law enforcement agencies is through extensive media coverage. The wide reach of the media, however, creates additional problems. The New York Board discovered that media "blitzes" resulted in a deluge of claims filed by individuals clearly ineligible for recove[illegible] persons seeking a government handout, or persons looking for lost property.[164] These claims resulted in serious administrative backlogs, and the media efforts were quickly discontinued.[165]

The problems experienced by the New York Board may perhaps be avoided, however, by the adoption of a simple claim procedure. Besides eliminating the increase in applications of ineligible individuals, this procedure generally will reduce the amount of screening that would otherwise be performed by the limited staff of the Board. This procedure, already used in North Dakota and Minnesota,[166] consists of a two-stage claim process. Before a potential claimant is allowed to fill out a claim form, he or she must fill out a "declaration of eligibility."[167] This declaration would

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162. SOURCEBOOK, *supra* note 12, at 302.

163. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 4(b) (Vernon Supp. 1980).

164. H. EDELHERTZ & G. GEIS, *supra* note 18, at 46.

165. *Id.* at 46-47.

166. *See* Gross, *supra* note 12, at 20, 26.

167. The following is a proposed declaration of eligibility form for Texas, adapted from the North Dakota form appearing in Gross, *supra* note 12, at 36.

DECLARATION OF ELIGIBILITY

NAME________________________________ PHONE____

ADDRESS______________________________ ZIP____

By completing this form you determine whether you are eligible to apply for compensation under the Texas Crime Victims Compensation Act. Check the statements that apply in your case. If you cannot truthfully check all statements, you are not eligible for compensation through the Act and you will not receive a claim form.

__ 1. The incident for which I am declaring my eligibility for compensation occurred on or after January 1, 1980

__ 2. The claimant (and/or victim) suffered bodily injury (or death) as a result of the criminal actions of another.

__ 3. This injury (or death) was not the result of an automobile accident.

__ 4. The incident occurred in Texas.

__ 5. The incident was reported to law enforcement officials within 72 hours or would have been reported except for a valid excuse.

__ 6. The claimant (and/or victim) cooperated with law enforcement officials during their investigation of the incident.

__ 7. The person whose death or injury gives rise to this claim did not knowingly and willingly participate in the criminal incident.

__ 8. The claimant (and/or victim) did not reside in the same household as the criminal offender or his or her accomplice.

consist of a series of statements concerning threshold eligibility, such as "The incident occurred in Texas." The applicant could only receive a claim form after responding affirmatively to each of the statements on the declaration of eligibility form. Each form should also include a warning to the applicant that it is a class A misdemeanor knowingly to respond falsely to the questions posed in the form.[168] The use of the declaration of eligibility form would screen out the obviously ineligible applicants, and thereby facilitate the use of the media by preventing a deluge of frivolous claims from reaching the administrative stage. In addition, this procedure should lower administrative costs and thus increase the availability of funds to victims.

Efforts directed toward publicity are likely to have a direct effect on the success of the Texas program, and the Texas Act reflects recognition of that fact. The publicity provisions of the Act must be administered with a strong hand, however, and the attorney general should consider adopting a procedure for police publicity and application distribution similar to that of California. Moreover, the Board should take advantage of the mass media to assure full exposure and to help increase police cooperation. The adoption of a declaration of eligibility claim form would ease the extra administrative burden that media exposure can cause.

V. THE SON OF SAM PROVISION

Immediately prior to the final passage of Senate Bill 21,[169] sections 16 through 18 were added to the Act by a house floor amendment.[170] The

—— 9. This claim is being filed within 180 days of the incident.
——10. The person whose death or injury gives rise to this claim was a Texas resident at the time of the crime.

I hereby swear that all of the above statements to which I have attested are true, and understand that I will be guilty of a class A misdemeanor for any false statement I have made in connection with this declaration of eligibility

____
Signature

168. Although the Act does not expressly provide a penal sanction for falsification of application forms, such a falsification would qualify as a violation of TEX. PENAL CODE ANN. § 37.10 (Vernon 1974).

169. 1979 Tex. Sess. Law Serv., ch. 189, §§ 1-19, at 402-10 (Vernon).

170. House Floor Amendments, Apr. 26, 1979, amendment No. 3, added the following sections to the Act:

Escrow account

Sec. 16. Every firm, person, corporation, association, or other legal entity contracting with a person or the representative or assignee of any person, accused or convicted of crime in this state, with respect to the reenactment of the crime in a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment, or from the expression of the accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime shall submit a copy of the contract to the board and pay to the board any money that would otherwise by terms of the contract be owing to the accused or convicted person or his representatives. The board shall deposit the money in an escrow account.

Funds available to victim

Sec. 17. Money placed in an escrow account is available to satisfy a judgment against the accused or convicted person in favor of a victim of the crime

enactment of these sections establishes in Texas a modified version of New York's controversial "Son of Sam" law.[171] These sections are inappropriate in a victim compensation statute because they create no new substantive rights or remedies for victims.[172] Instead, the Son of Sam sections prevent the criminal from disposing of assets received from his crime-related literary efforts so that the victim will be able to pursue an ordinary civil remedy with the assurance that the defendant will not be judgment proof. Underlying this practical consideration is the sentiment that criminals should not profit from their misdeeds. Despite the admirable motives behind these sections, the Son of Sam provision presents potential constitutional problems.[173]

Sections 16 through 18 provide that any person contracting with an accused[174] or convicted criminal with respect to the reenactment of the crime in a book, movie, or other medium, or merely with respect to the criminal's thoughts or feelings about the crime, must pay the Board the money that would otherwise be paid to the criminal under the contract.[175] The Board is then to establish an escrow account with that money, which will be available for the satisfaction of any civil judgment awarded to a victim for damages caused by the crime.[176] Unless the money is used to satisfy a judgment for the victim, it will be returned to the criminal after five years.[177]

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if the court in which the judgment is taken finds that the judgment is for damages incurred by the victim caused by the commission of the crime.

Maintenance of escrow account

Sec. 18. The board shall pay money in an escrow account to the accused person if he is acquitted of the crime. The board shall pay the money in the account to the accused or convicted person if five years elapse from the date when the account was established and the money has not been ordered paid to a victim in satisfaction of a judgment.

171. N.Y. EXEC. LAW § 632-a (McKinney Supp. 1972-1979). Section 632-a is commonly referred to as the Son of Sam law because the proposal of the bill was directly motivated by the series of random murders committed by a person calling himself Son of Sam and the willingness of publishers to pay large amounts of money for the murderer's story. *See* Comment, *Compensating the Victim From the Proceeds of the Criminal's Story—The Constitutionality of the New York Approach*, 14 COLUM. J.L. & SOC. PROB. 93, 94 n.6 (1978) (statement of justification by sponsor of § 632-a).

172. Victim compensation programs distribute funds directly to the victims, thus creating an alternate source of recovery. The Son of Sam sections merely impose upon the criminal's rights by preventing him from disposing of the profits from his crime related literary efforts, thereby ostensibly augmenting the victim's chances for traditional civil recovery.

173. *See* notes 185-90 *infra* and accompanying text.

174. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 16 (Vernon Supp. 1980). There is no definition of the term "accused" in § 16. The problems of free speech and due process mentioned later in this Comment are aggravated by the inclusion of accused persons in § 16. *See* Comment, *supra* note 171, at 114.

175. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 16 (Vernon Supp. 1980).

176. *Id.* § 17.

177. *Id.* § 18. The five-year time limit specified in § 18 may be interpreted as establishing not only an escrow period, but a new cause of action, because in most cases the statute of limitations will have expired long before the five-year deadline. The Appellate Division of the New York Supreme Court took this position in Barrett v. Wojtowicz, 66 A.D.2d 604, 414 N.Y.S.2d 350 (1979). In *Barrett* a bank robber, whose profits from the movie "Dog Day Afternoon" had been put into escrow by the New York Crime Victims Compensation Board, was sued for assault and false imprisonment by one of his hostages. Although the

The New York statute, upon which the Texas provision is based, has been the focus of much controversy.[178] The constitutionality of the statute has been questioned by the Library of Congress' legal research service, a House Judiciary subcommittee staffer, and the New York Civil Liberties Union,[179] but at this date, the New York statute still stands. The adoption of the Texas provision may be attributed to the several victim compensation bills introduced into Congress during the last few years.[180] At one time a strong possibility existed that one of the prerequisites for federal subsidization of state victim compensation programs would be a Son of Sam act in the state.[181] The 1979 bills,[182] however, are based generally on a conference committee compromise of the 1977 bill,[183] in which the conference committee recognized that since the constitutionality of the Son of Sam act was uncertain, a bill conditioning state subsidization on the adoption of such a statute was undesirable.[184]

At least two aspects of the provision present constitutional difficulties. First, sections 16 through 18 contain no provisions for a hearing of any kind. No procedure is provided to determine whether a criminal's efforts come within the scope of the section, and the individual obligated to pay the criminal must decide at his own risk whether to pay the Board instead.[185] Because the Act may effectively deprive the criminal of his property without a hearing, it is in potential contravention of the due process requirements of the fourteenth amendment.[186] The second area of possi-

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suit was brought long after the statute of limitations had run, the court refused to dismiss the suit, holding that N.Y. EXEC. LAW § 632-a (McKinney Supp. 1972-1979) established a new in rem cause of action with a five-year limitation. 414 N.Y.S.2d at 357. The New York statute, however, states that money from the account will be paid provided that the "victim, within five years of the date of the crime, brings a civil action" and recovers a judgment. N.Y. EXEC. LAW § 632-a(1) (McKinney Supp. 1972-1979). The Texas statute does not link the five-year limit with the victim's civil recovery, but treats each in a separate section. TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 17-18 (Vernon Supp. 1980). This distinction may prove crucial in the interpretation of the effect of the Texas Act on the statute of limitations.

178. *See, e.g.*, Comment, *supra* note 171; Comment, *Criminals-Turned-Authors: Victims' Rights v. Freedom of Speech*, 54 IND. L.J. 443 (1979).

179. Smith, *Briefs*, in JURIS DOCTOR, Nov. 1977, at 6.

180. *See generally* note 18 *supra*.

181. *See, e.g.*, H.R. 7010, 95th Cong., 1st Sess. § 4(7) (1977).

182. *See, e.g.*, H.R. 957, 96th Cong., 1st Sess. (1979). For treatment of past and present federal victim compensation legislation, see note 18 *supra*.

183. H.R. 7010, 95th Cong., 1st Sess. (1977).

184. H.R. REP. No. 1762, 95th Cong., 2d Sess. 10 (1978).

185. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 16 (Vernon Supp. 1980), places the burden on the individual contracting with the criminal to decide if the contract falls within the provisions of the statute.

186. The due process ramifications of prejudgment seizures are still unsettled; the Supreme Court has alternatively expanded and contracted the process that is due a debtor under state prejudgment garnishment or replevin statutes. *See* North Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975); Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974); Fuentes v. Shevin, 407 U.S. 67 (1972). Although the Supreme Court has shifted its view of the precise requirements of due process in such situations, most notably with regard to the timing of a hearing, the Court has uniformly held that a hearing is essential to due process when property is seized before judgment. *E.g.*, North Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 606 (1975). TEX. REV. CIV. STAT. ANN. art. 8309—1, §§ 16-18 (Vernon Supp. 1980) operates so that the escrow account can be established and dispersed without an op-

ble difficulty involves the first amendment. Although Senator Gold, the sponsor of the New York bill, was technically correct in stating that "[w]e don't stop a prisoner from writing,"[187] a statute authorizing the publisher of a criminal's literary efforts to pay money owed the criminal into a five-year escrow account is a clear disincentive for the criminal.[188] To the extent that the criminal will refrain from seeking publication of his work, or insofar as he attempts to confine his efforts to topics not prescribed by the statute, the public will be deprived of the right to be informed.[189] For example, a criminal's expressions of his thoughts at the time of the commission of a capital crime could be valuable to the study of the deterrent effect of capital punishment.[190] Thus, the statute appears to have a chilling effect both on the criminal's right to free speech and on the public's right to know.

The Texas version of New York's Son of Sam act is likely to cause more problems than it will solve.[191] The provision is certain to encounter strong constitutional challenges, and the litigation of the first and fourteenth amendment issues may devour more state funds than the statute will make available to victims.[192] Because there is no longer a serious threat that federal subsidization will be contingent upon the existence of such a provision, sections 16 through 18 should be repealed.

VI. Conclusion

The Texas Crime Victims Compensation Act creates a practical means of recovery for the victims of violent crimes, supplementing the relatively ineffectual alternatives of civil recovery, insurance, and restitution. The legislature has taken strong action in attempting to alleviate the plight of the victim, and this progressive legislation has the potential to bring about substantial public benefits. By taking a hybrid approach, the drafters of the Act had the opportunity to select the provisions that have proven most desirable in the light of experience. For the most part, they were successful in this selection process; of particular merit are the provisions for distribu-

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portunity for a hearing of *any* kind. For a comprehensive treatment of this issue, see Comment, *supra* note 171, at 99-105.

187. Smith, *supra* note 179, at 6.

188. *See* Comment, *supra* note 171, at 110-11.

189. The Supreme Court has indicated that it is "the heart of the natural right of members of an organized society . . . to . . . acquire information about their common interests." Grosjean v. American Press Co., 297 U.S. 233, 243 (1936); *see* Comment, *supra* note 171, at 105-09.

190. Comment, *supra* note 171, at 109.

191. From a practical standpoint, the statute may even prove to be somewhat self-defeating. To the extent that criminals are discouraged from writing because of their inability to collect profits, there will be *less* money available to satisfy the judgments held by victims. Thus, the opportunities for victim recovery actually may be reduced by the statute, a result that the legislature probably did not consider when it hurriedly enacted §§ 16-18. *See* Comment, *supra* note 171, at 109.

192. The number of victims whose injuries result from a crime that attracts enough public attention to merit a contract with the criminal is extremely small. Senator Gold, the sponsor of the New York act, estimated that his act might affect one person every two years. Smith, *supra* note 179, at 6.

tion of applications and information, the lack of a minimum claim requirement, and a high maximum award. Several provisions were included, however, despite widespread acknowledgment of their detrimental capacity.

Perhaps the main weakness of the Act is the financial stress requirement. The financial stress test imposes a substantial administrative burden on the Board and involves an unwarranted invasion of the victim's financial privacy. The investigation of financial stress is neither fiscally justified nor related to the primary goal of loss-spreading.

Another flaw in the Act is the household exclusion, because the exclusion of victims living in the same household as the criminal responsible for their injuries results in substantial injustices when applied to innocent children. The arguments advanced to justify the household exclusion are eviscerated by the presence of provisions that prevent fraud and the compensation of victims partially to blame for the crime. The unjust benefit exclusion of the Uniform Crime Victims Reparations Act is an adequate alternative to the household exclusion.

The Son of Sam provision raises constitutional problems that may consume more funds through litigation expenses than the provision will make available to crime victims. Although the provision serves the noble purpose of preserving the criminal's crime-related profits for the victim's civil recovery, the means adopted to serve this purpose may violate the first and fourteenth amendments to the Constitution. While the lack of due process may perhaps be remedied by the provision for a hearing, the Son of Sam provision's chilling effect on speech cannot easily be alleviated.

Notwithstanding these imperfections, the Texas Crime Victims Compensation Act is a laudable effort that ranks among the best of the state victim compensation acts. If the program is sufficiently publicized and adequately staffed, the Act promises to benefit substantially the criminally injured. States that have not yet enacted victim compensation legislation would be well advised to follow the progress of the Texas program and to adopt the most successful provisions for their own acts.*

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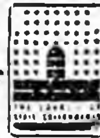
* Author's Note: At the time this Comment went to print, the Board was able to report the following statistics, covering the period between January 1 and April 10, 1980:

Claims filed	306
Claims finalized	38
Awards made	13
Total amount awarded	$32,094
Amount collected in Fund	$151,000
Claims rejected	25
Grounds for Rejection:	
Failure to cooperate with authorities	9
No financial stress	7
Behavior of victim	6
Participation in event	2
Residing in same household	1

The only publicity efforts made by the Board at present are the statutorily required distribution of posters and forms to hospitals and physicians, and responses to media inquiries. Telephone conversation with Bud Donnelly, examiner for Crime Victims Compensation Division of the Board, April 22, 1980.

Provided by Rep. Fischer


The Council of State Governments

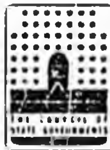
Georgia's Residential Restitution Centers

GEORGIA'S RESIDENTIAL RESTITUTION CENTERS

By
J. Robert Weber

This report was prepared under a grant from the National Science Foundation (Grant No. ISR 75 21176). The contents do not necessarily reflect the views of the National Science Foundation.

May 1978
RM 636
$3.50



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EXECUTIVE SUMMARY

Restitution, both monetary and public service, is an age-old procedure widely used in a variety of ways by both juvenile court and criminal court judges. Restitution does not have to be combined with a residential program to be valid. Some offenders, however, can gain more benefits from a residential restitution program than from incarceration in a prison. From a cost point of view, restitution centers are in the state's interest because incarceration costs are usually less than for prisons.

The Georgia restitution centers are offender-focused rather than victim-focused. Thus, they differ from state victim compensation programs. Victim compensation refers to money or services provided to a victim by the state, whereas restitution refers to money or services provided to the victim by the offender.

In Georgia, 10 restitution centers serve designated judicial districts. The district court judge makes the decision to place an offender in a restitution center rather than a prison. The centers serve as an alternative to prison incarceration, not as an alternative to probation supervision. Georgia's restitution centers have relieved prison overcrowding.

The preferred method of intake, after an offender has been sentenced to a term of imprisonment, is for center staff members to interview offenders in the county jail while they await transportation to the state prison. If the offenders and center staff members believe a restitution center program would be appropriate, a recommendation is made to the sentencing judge who may then modify the original sentence to placement in a residential restitution center as a condition of probation.

The centers' programs operate 24 hours a day, seven days a week. Offenders are employed and relinquish their paychecks to center staff members for division according to a contract. Restitution includes monetary payment for damages and public service activities.

A typical participant in the program is a 19-year-old offender who was convicted of a property offense, and who has been on probation for an earlier offense. Average length of stay in the center is about four months.

A major cost benefit of Georgia's restitution centers program is the short-term leasing of center facilities. Uneconomical tourist courts located on state highways now bypassed by interstate highways are favorite lease locations.

The key to successful operation of a correctional residential restitution center is community acceptance. The restitution center needs to be viewed by community leaders as *their* program.

I. A SEARCH FOR ALTERNATIVES

The steadily rising crime rate during the past decade has prompted a variety of responses from all levels of government across the nation. Funding for criminal justice agencies has increased, and the federal Omnibus Crime Control and Safe Streets Act provided millions of grant-in-aid dollars to state and local agencies. Some state legislatures have enacted new laws that mandate determinate and sometimes longer prison terms for a variety of crimes. Many judges, responding to increased public agitation about crime, are issuing stiffer prison sentences.

Nationwide, the prison population has grown dramatically. In 1977 over 275,000 prisoners were incarcerated—an increase of 25,000 over 1976 (see Table 1). Various theories have been advanced to explain this increase in prison populations. The depressed state of the economy, longer prison sentences, better law enforcement and prosecution, and the "baby boom" are factors often cited for the increased prison population. Whatever the cause, rapid growth has placed enormous pressure on existing state correctional facilities. Lack of beds, proper sanitary facilities, and recreation areas are only a few of the conditions often found in overcrowded prisons. Conditions in some state prisons have become so bad that federal judges have issued orders preventing the state from accepting new inmates until conditions are improved.

Traditionally, state legislators have been reluctant to allocate funds for prison construction. But, the continued growth in prison population and the resultant overcrowding of old, outdated facilities have forced a number of states to initiate the planning and building of new facilities. The construction and maintenance of a new prison, however, is an expensive undertaking. The National Clearinghouse for Criminal Justice Planning and Architecture in 1977 calculated that the construction of a typical prison costs about $30,000 per cell. Add the initial capital expense to the Clearinghouse's estimated annual cost for operating a prison, usually between $1 million and $2 million for a 400-bed facility, and it readily becomes apparent that prisons are not cheap.

Most state officials recognize the need for prisons in order to protect society from habitually dangerous individuals, but many also realize that committing every individual convicted of a crime to prison is not economically feasible or socially desirable. Certain offenders, due to the nature and circumstance of their crime, could benefit from some form of punishment other than incarceration. While probation is an alternative for many offenders, its effectiveness sometimes is limited. Probation staffs are usually overloaded with cases, and the supervision they offer each individual is minimal. In cases where something more than probation is advisable as a criminal sanction, in many states the only alternative is incarceration.

An Alternative

Community-Based Correction

Growing skepticism among correctional administrators and elective officials about the likelihood of rehabilitating offenders in large, oppressive prisons, and the increasing costs of constructing and maintaining these institutions, have prompted state officials to search for alter-

Table 1

1977 *Corrections Magazine* Survey of Inmates in State and Federal Prisons

State	Number of Inmates 1/1/76	1/1/77	% Change
ALABAMA	4,420	3,096(2,300)**	+22***
ALASKA	349	543	+56
ARIZONA	2,712*	3,072	+13
ARKANSAS	2,336	2,445	+ 5
CALIFORNIA	20,007	20,914	+ 4
COLORADO	2,039*	2,324	+14
CONNECTICUT	3,060	3,18[illegible]	+ 4
DELAWARE	701	953	+36
D.C.	2,330*	2,617	+12
FLORIDA	15,709	18,229(373)**	+18***
GEORGIA	11,067	11,423(533)**	+ 8***
HAWAII	366	413	+13
IDAHO	593	725	+22
ILLINOIS	8,110	10,002	+23
INDIANA	4,392	4,430	+ 1
IOWA	1,857	1,956	+ 1
KANSAS	1,696	2,12[illegible]	+25
KENTUCKY	3,257	3,659	+12
LOUISIANA	4,774	4,695(1,714)**	+34***
MAINE	643	622	− 3
MARYLAND	6,606	6,860(1,070)**	+20***
MASSACHUSETTS	2,278	2,701	+19
MICHIGAN	10,882	12,462	+25
MINNESOTA	1,630*	1,684	+ 3
MISSISSIPPI	2,429	2,135(125)**	− 7***
MISSOURI	4,1[illegible]0	4,74[illegible]	+14
MONTANA	377	500	+33
NEBRASKA	1,259	1,339	+ 6
NEVADA	893	953	+ 7
NEW HAMPSHIRE	302	297	− 1
NEW JERSEY	5,277	5,987(200)**	+17***
NEW MEXICO	1,118	1,359	+22
NEW YORK	16,056	17,791	+11
NORTH CAROLINA	12,486	13,261	+ 6
NORTH DAKOTA	205	242	+18
OHIO	11,451	12,626	+10
OKLAHOMA	3,435	4,106	+19
OREGON	2,442	2,848	+17
PENNSYLVANIA	7,054	7,584	+ 7
RHODE ISLAND	400*	544	+36
SOUTH CAROLINA	6,100	6,985	+14
SOUTH DAKOTA	372	521	+40
TENNESSEE	4,569	5,350	+17
TEXAS	18,934	20,708	+ 9
UTAH	696	827	+19
VERMONT	343*	386	+12
VIRGINIA	6,092	7,001(1,375)**	+11***
WASHINGTON	3,063	3,767	+23
WEST VIRGINIA	1,213	1,216	—
WISCONSIN	2,992*	3,340	+12
WYOMING	384	355	− 7
TOTAL STATES AND D.C.	225,908	247,913(7,[illegible]90)**	+12***
U.S. BUREAU OF PRISONS	24,134	27,665	+15
TOTAL U.S.	250,042*	275,578(7,690)**	+13***

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natives to institutionalization. One avenue being examined by various states is community-based correction. (For example, see Dick Howard and Mike Kannensohn: "A State-Supported Community Corrections System: The Minnesota Experience," The Council of State Governments. February 1977.) Community-based correction advocates stress that keeping offenders within the community increases the chances of reorienting them to society's values. Continued residence in the community strengthens the offender's family ties, enhances vocational and educational opportunities and provides treatment for any psychological and emotional problems in a community setting.

Restitution

Corresponding with the interest in establishing community-based corrections programs has been an increased awareness of the plight of crime victims. This concern has led to legislation in a number of states which compensates or provides restitution to victims. While compensation and restitution often are used interchangeably, they do have different basic definitions. Victim compensation refers to money or services granted a victim by the state, whereas restitution refers to money or services provided to a victim by the offender.

Restitution is a sanction becoming increasingly a part of community corrections programs. Restitution most frequently is used by judges as a condition of probation, in connection with the use of a suspended sentence, or as a part of the program of community corrections centers. Restitution performed before sentencing is considered a mitigating circumstance in the final imposition of sentence by most courts. In some instances, restitution is used in pretrial diversion programs. Restitution is seldom used with offenders sentenced to security institutions. The limited opportunities for earning income because of low or nonexistent inmate wages in most security institutions generally preclude the use of monetary restitution in most jurisdictions.

Recently, several states have enacted statutes establishing standards and guidelines for restitution. In 1973, Iowa made restitution a condition of a deferred sentence or probation (Senate File 26, 65th General Assembly, 1973, State of Iowa). In 1976, Colorado permitted courts to order restitution in conjunction with fines, probation, imprisonment or parole. (Colorado Crime Victim Restitution Act, Second Regular Session, 50th General Assembly, 1976).

In Minnesota and Georgia, the idea of merging the concept of restitution with a community-based residential program has been implemented. The Minnesota Restitution Center Program was initiated in 1972. In .1975, Georgia instituted a community-based restitution program in four cities as an alternative to prison incarceration.[1] * Table 2 presents descriptive data on a number of restitution programs.

The Need for Change in Georgia

The condition of Georgia's correctional system was described by one state official as "bleak and disheartening." In 1975, the Georgia Department of Corrections and Offender Rehabilitation (DCOR) identified major problems as "over-crowded conditions, a high recidivism rate, a lack of adequately trained staff, a need for expanded, centralized coordination, and a lack of objective data for program planning and evaluation."[2] By 1977, Georgia's prison population was over 11,000 and was projected to reach 16,000 by 1980. The percentage of individ-

*See footnotes at end of report.

Table 2

A SURVEY OF SELECTED RESTITUTION PROGRAMS

Name of program	*Level of system*	*Clients*	*Type of program*
Albany Restitution Center Albany, Georgia	Probation and parole	Adults only	Residential
Arbitration as an Alternative to the Criminal Warrant New York, New York	Pretrial diversion	Usually adults only	Nonresidential
Atlanta Restitution Center Atlanta, Georgia	Probation and parole	Young adults (ages 17-25)	Residential
Community Accountability Program of the City of Seattle Seattle, Washington	Pretrial diversion and probation	Juveniles	Nonresidential
Community Arbitration Program Annapolis, Maryland	Pretrial diversion	Juveniles	Nonresidential
Macon Restitution Center Macon, Georgia	Probation and parole	Adults only	Residential
Minnesota Resitution Center Minneapolis, Minnesota	Parole	Adults only	Residential
Night Prosecutor's Program Columbus, Ohio	Pretrial diversion	Adults	Nonresidential
Pilot Alberta Restitution Center Calgary, Alberta	Pretrial and probation	Adults only	Nonresidential
Pima County Attorney's Adult Diversion Project Tucson, Arizona	Pretrial diversion	Adults	Nonresidential
Restitution and Effective Diversion from the Criminal Justice System Milwaukee, Wisconsin	Probation and parole	Adults	Nonresidential
Restitution in Probation Experiment Des Moines, Iowa	Probation	Adults	Residential and nonresidential components
Restitution Work Program Salt Lake City, Utah	Pretrial diversion and probation	Juveniles	Nonresidential
Rideau-Carlton Restitution Project Ottawa, Ontario	Provincial jails	Adults	Residential
Rome Restitution Center Rome, Georgia	Probation and parole	Adults	Residential
Seventh Circuit Court Victims' Assistance Program Rapid City, South Dakota	Pretrial diversion and probation	Adults and Juveniles	Nonresidential
Victims' Assistance Program Las Vegas, Nevada	Pretrial diversion and probation	Juveniles	Nonresidential
Victim-Offender Reconciliation Project Kitchener, Ontario	Pretrial diversion and probation	Juveniles and Adults	Nonresidential
Washington County Restitution Center Hillsboro, Oregon	Probation and parole	Adults	Residential

Source: Hudson, Galaway, and Chesney, "When Criminals Repay Their Victims: A Survey of Restitution Programs," *Judicature*, Vol. 60, No. 7, February 1977, p. 319.

uals 18-44 years of age in prison represents the highest per capita incarceration rate of all 50 states.[3]

The problems of a large prison population in overcrowded and inadequate facilities were compounded by the condition of the probation and parole programs. In 1976, the total probation/parole caseload was over 33,000 and the average caseload was 132 per counselor. (In 1977, parole supervision was removed from the DCOR and established in a separate and autonomous agency—the Parole Board. This, however, did not solve the problem of large caseloads; it just transferred the responsibility.) In the past five years, the probation/parole caseload has increased 83 percent. Due to the size of caseloads handled by counselors, judges became increasingly reluctant to place some offenders on probation. If an offender was not placed on probation, the only alternative a judge had was incarceration, but incarceration only exacerbated the overcrowding in state correctional facilities.

After identifying and examining the problems confronting the Georgia correctional system, the DCOR developed a long-range plan called Operation Performance which was designed to correct deficiencies in the system and to make offenders directly responsible for the consequences of their own behavior. One part of the plan was development of a network of community-based residential restitution centers.

II. ESTABLISHING COMMUNITY RESTITUTION CENTERS IN GEORGIA

The initiation of community restitution centers in Georgia followed the general reorganization of state government in 1972. An Executive Reorganization Plan created the Department of Corrections and Offender Rehabilitation (DCOR) and authorized it to "administer the supervision of parolees, probationers, and other offenders who are being treated outside correctional institutions." In addition, the Georgia Probation Act (1968) states: "The courts shall determine the terms and conditions of probation and may provide that the probationer shall remain within a specific location and shall make reparation or restitution to any aggrieved person for the damage or loss caused by his offense in an amount determined by the court. . ." (Ga. Laws 1968, p. 324).

On the basis of the above statutory language, in October 1975 the DCOR established the community resitution center program by making residence at a center and participation in the program a special condition of the probation order. Initially, four community restitution centers were established with financial support from the Law Enforcement Assistance Administration. In addition to the restitution centers, the state also was developing five community-based adjustment centers. These residential adjustment centers were used to house probationers, and the program design had a rehabilitation focus with a strong emphasis on counseling. The restitution centers influenced the adjustment centers. The adjustment centers began using restitution as the core of their program. As federal support of the restitution centers diminished, the two programs were merged and the state legislature voted to begin funding the restitution centers in the 1977 fiscal year in addition to the adjustment centers which were reprogrammed as restitution centers. Currently, there are 10 restitution centers in the state, the tenth having opened in early 1978 at Thomasville.

Organization of the Georgia Corrections System

The Georgia Department of Corrections and Offender Rehabilitation is composed of two administrative and three field divisions. The DCOR Community Facilities Division administers the residential restitution program and several other community-based programs (e.g., pre-release centers, transitional centers, work release centers).

Although the Community Facilities Division is responsible for the operation of the centers, the success of the program depends on the assistance of a number of individuals inside and outside the DCOR. The cooperation of judges, probation officers, local officials and community residents is necessary to establish and maintain a restitution center. Judges are responsible for selecting offenders who will reside at the center and for determining the amount of financial restitution. Many judges also monitor the performance of offenders they place in a center. Probation officers, who are DCOR employees, oversee the activities of an offender discharged from a center. Local officials advise the department in selecting a center location. Local officials and community residents sit on restitution center advisory boards and help locate and provide resources needed by the residents. The size of the boards varies

from one center to another. They perform a valuable function in advising the center director about problems and in conveying information to citizens in the community about the center. The boards provide both a public relations function and an advisory function to the center director. Some centers have a formalized community advisory board while others rely on ad-hoc arrangements according to need. Although forms, contracts, case folders, and other items are similar in content for all centers, they vary in format according to the style of the director.

Location of Restitution Centers

The 10 community restitution centers in Georgia are located in Albany, Athens, Atlanta (2), Augusta, Cobb County, Gainesville, Macon, Rome and Thomasville.

Eventually, the DCOR hopes to establish one community restitution center in each of the state's 42 judicial districts. Selecting the location and establishing management procedures for the first four centers, however, raised certain procedural and intergovernmental questions. The DCOR had no previous experience with a residential restitution program and there was a lack of information concerning methods and standards. In addition, the department had not determined the formal agency and governmental linkages required to maintain and operate a center. Consequently, the first year was a period of development and experimentation. Each center developed in its own way resulting in differences in operation. On the positive side, these differences reflected the uniqueness of the communities. From this experience, the DCOR was able to develop and standardize specific policies and procedures where increased uniformity was considered desirable.

In locating the first four facilities (Albany, Atlanta, Macon and Rome), the department selected judicial districts in which judges had expressed a strong interest in the restitution concept. Once a center was established in a judicial district, the center staff concentrated on serving the offenders from that district. Judicial and community support of the original centers prompted citizens and judges in other districts to seek the establishment of a restitution center in their communities. Presently, the demand for new centers is greater than the funds available to the DCOR for meeting the requests.

Center Size and Staff

All 10 restitution centers operate 24 hours a day, seven days a week. Maximum residential capacity ranges from 20 to 40 offenders, with an average capacity of about 36 (see Table 3). Because an offender usually resides at a center for only four or five months, each center can serve between 112 and 130 offenders per year. For fiscal year 1978, the legislature allocated $1,140,460 to operate eight centers. The other two centers are financed with federal funds. For fiscal year 1979, the DCOR is requesting $2 million for 10 facilities, an average of $200,000 per center.

All the facilities used to house the residents are leased by the department. Motels, vacant dormitories, and large houses are among the types of buildings that have been converted into restitution centers. The department has discovered that old, unprofitable motels on secondary highways offer excellent accommodations. Usually, only minimal alteration is required. In many cases a center is located in an area that is a mixture of residential and commercial or light industrial uses. While DCOR officials prefer a center that has central kitchen facilities, a few

centers are located in buildings that are not equipped to prepare meals. Alternate arrangements are made for food service.

State DCOR staff members vary from 8 to 1[illegible] per center. A typical staffing pattern would include one superintendent, one business manager, one clerk typist, one probation supervisor, one counselor and four counselor aides or correctional officers. Centers with kitchen facilities also employ a cook. The cook works on a split shift and prepares breakfast and a bag lunch for those who work during the day, and then returns to prepare dinner. Administrative staff work the 8 a.m. to 5 p.m. shift while most residents are at work. Counselors are available to provide education and counseling services in the afternoon and evenings. Security is supplied by a night duty correctional officer. Supervisory staff are present and share cooking responsibilities with the residents on the weekends.

In order to supplement the basic counseling staff, a number of centers use Comprehensive Employment and Training Act (CETA) employees, VISTA workers, student interns and citizen volunteers to provide supervision and program assistance. These individuals enable a center to provide additional educational and counseling services it is not financially able to provide. Community residents who volunteer to assist the center staff also form a valuable contact between the community and the center.

Table 3
OPERATING BUDGET AND CAPACITY OF RESTITUTION CENTERS

CENTER	OPERATING BUDGET FISCAL YEAR 1978	MAXIMUM CAPACITY
Albany Restitution Center	$135,775	28
Athens Adjustment/Restitution Center*	230,271	40
Atlanta Restitution Center	131,897	30
Augusta Restitution Center	222,722	40
Cobb Adjustment/Restitution Center*	241,963	40
Gainesville Adjustment Restitution Center	184,603	40
Gateway Adjustment Restitution Center (Also in Atlanta)	222,985	40
Macon Restitution Center	118,604	35
Rome Restitution Center	123,874	32
Total State and Federal	$1,612,694	325
Total State	$1,140,460	24[illegible]

*These centers are financed with federal funds. In fiscal year 1979 the state will assume responsibility for funding the centers. The Thomasville Center opened in early 1978, thus figures are not included.

III. OPERATING A RESTITUTION CENTER

The procedure for selecting individuals to participate in the residential restitution program and the service provided to an offender vary to some degree from center to center. The DCOR has established operational standards and policies, but department officials recognize the need for each center to have a certain amount of flexibility. Staff capabilities, the needs of a constantly changing offender population, and the physical environment of a center all will have an impact on the type of program operated by a restitution center.

Selecting Participants

The requirements for admission to the residential restitution program vary slightly among the 10 centers. Most of these variations reflect the different conditions in the judicial districts where centers are located. One policy area in which they do not differ is that none of the centers accept offenders who have been convicted of committing a violent crime. In addition, due to the lack of facilities and drug treatment programs, a center will not admit an individual who has a history of drug addiction or alcohol abuse. A typical participant in the program is 19 years old, has been convicted of a property offense, and has been previously placed on probation for an earlier offense. The following are criteria used by the staff at many of the centers to identify offenders eligible to enter the program:

—Offender would have otherwise been incarcerated, had the program been unavailable,

—Offender has committed a property crime not involving the use of a weapon or any act of violence and has not been arrested for a violent crime for the preceding five years,

—Offender's crime involves the victim in a fashion whereby restitution can be made using a payment schedule compatible with the amount of restitution to be paid and the time he is to serve at the facility,

—Offender is 17 years of age or older,

—Offender is not regarded as a professional criminal (to be determined by his previous record of offenses),

—Offender's level of intelligence is not below a point (usually I.Q. 60) precluding employment and participation in the center's program, and

—Offender is willing to enter into a contract with the center establishing objectives which must be achieved before release.

In addition to the above criteria, center staff members employ several subjective indicators for screening out offenders who would not benefit from the restitution program or who would pose a threat to the community. At most district courts the screening process takes place between conviction and sentencing and is part of the pre-sentence investigation process conducted by probation personnel. Some offenders are eliminated from further consideration after this investigation because they do not meet the previously stated objective requirements of the center. Other cases may be excluded as inappropriate for the restitution program after discussion with the local district attorney and the

offender. The remaining cases are then presented to the court with a restitution recommendation and with a proposed restitution plan. The judge can accept, modify, or reject the restitution recommendation and levy another type of sentence. An offender who is sent to a restitution center is placed as a condition of probation and is under the jurisdiction of the court. If the offender fails to make satisfactory progress or repeatedly violates the center's rules, the offender can be returned to the court for probation revocation. In nearly every revocation case the offender is sent to a state prison.

In one judicial district, Cobb County, the selection process is slightly different, reflecting the preferences of the presiding judge. Program staff reviews the cases of all offenders after they have been sentenced to prison from the Cobb Judicial Circuit Court and while they are awaiting jail transportation to the prison. Based on an examination of the offender's record and interviews with the district attorney, defense attorney, probation personnel, family, employer, and the offender, the center staff members select for program participation the nondangerous offenders who can be safely supervised in a community facility environment. The judge is then asked to amend the sentence to probation conditional upon the offender successfully completing the Cobb Center program. This program has the added merit of insuring that restitution is used as a substitute for incarceration since participation is at the instigation of the DCOR, though the judge makes the final decision.

The Program Contract

Once accepted in a restitution center, the offender enters a two-week orientation period. During this time a contract is negotiated between the staff and the resident. The amount of restitution occasionally is determined between the prosecuting attorney and defense attorney and approved by the judge at the time of sentencing.

Rarely does a resident have a job prior to admittance to the restitution center. During orientation, obtaining a job is the primary task. Each center has access to daily job listings issued by the Georgia Department of Labor. In addition, each center has developed its own "job bank" from staff contacts with employers. The resident is referred to job openings. When accepted for employment, the amount of pay is determined. The contract that is developed between the staff and the resident addresses the division of the resident's paycheck. DCOR policy calls for the resident to pay $4 a day for room and board. This amount was set administratively in 1975 before the DCOR had any experience with the program. It has not been changed. It does not cover the cost of room and board. The contract determines the amount to be deducted from each paycheck for restitution. The contract includes an amount to be deducted for savings and an allowance for the resident's weekly expenses. The contract also designates the program activities the resident will participate in during his stay in the center.

All paychecks are turned over to center staff. The dollars are divided according to the contract. In general, restitution dollars will accumulate until the offender completes the program. The amount of restitution collected is then submitted to the court for transfer to the victim. On occasion, there is face-to-face encounter between the offender and victim and payment is made direct. This is an exceptional practice, however, and is done only when deemed a therapeutic experience for both victim and offender.

Another aspect of the contract is public service restitution. The resident agrees to serve a specified number of hours in public service in

addition to the monetary restitution. During fiscal year 1977, more than 8,000 hours were spent in public service restitution activities.

Some examples of community service activities in which offenders participate include: helping in mental hospitals and health centers, repairing the houses of elderly pensioners to prevent condemnation, maintaining the grounds for youth recreation groups, assisting civic and charity organizations in money-making projects, constructing playground equipment for church and neighborhood child care centers, collecting and repairing toys for needy children at Christmas, and conducting community clean-up projects.

Daily Life in the Center

The basic program in essentially the same for each center but there is variation. Some centers allow residents access to automobiles while others do not. The type of classes taught at the restitution centers generally depends on a center's access to volunteers.

A typical day for a resident begins with room cleaning. Breakfast is then served and the resident picks up a sack lunch. The resident will provide some service in the upkeep and maintenance of the center during the day. This might occur in the morning or after he returns from work. The resident them goes to work. In some centers residents drive their own automobiles to work; in others, the resident relies on public transportation. Upon return from the job, the resident may have some recreation time or may be assigned to a work detail. After the evening meal, the resident participates in an evening program of group discussion, counseling, classes, or tutorial sessions.

Evening classes may involve GED preparation, tutoring, or orientation to the world of work. The schedule for a particular resident is part of the negotiated contract.

A point system for reward and discipline also is employed in the centers. Points are received for room inspections, punctuality and attendance at assigned programs, and satisfactory completion of work details. Points are also earned by residents for meeting the obligations of their contracts. Points are deducted for disciplinary reasons, for not complying with contracts, or for an altercation with another resident. The points earned result in specified numbers of hours for weekend passes. Weekend passes range from 12 hours to an entire weekend. All residents on passes return to the center Sunday evenings. On an average, a resident will spend four months in the center before resuming regular probation supervision. Release to regular probation supervision is decided by the judge on the recommendation of center staff.

IV. ASSESSMENT

Importantly, citizens in the communities view the state-operated restitution centers as their own community programs. Judges see the centers as extensions of court services—a sentencing alternative to incarceration. Police have been cooperative and amicable. Even colleges see the center as a resource for intern learning experiences. Although the centers maintain low profiles, clearly center directors devote a good deal of time to cultivating and maintaining good relationships with key persons in the community. Many restitution centers view the judge as the key. "He can make us or break us," one center director said. Some centers serve more than one circuit court and in these instances, the director must maintain relationships with several judges. As noted earlier, the demand for new centers is greater than the funds available to the DCOR for this purpose.

Some centers maintain a structured community advisory group with quarterly meetings. This device provides information to the community and permits the center program to tap community resources.

State probation staff support the restitution centers, but some negative feelings by probation staff were reported. These persons criticized the centers for not keeping offenders long enough. When offenders return to regular probation supervision before restitution is fully paid, an additional assignment for the probation officer is to supervise the collection of restitution. Probation officers believe they have enough to do without these additional responsibilities.

How do you measure success? In general, the DCOR staff decided to reject the idea of recidivism, however defined, as a criteria of success.

The original goals for a residential restitution center were to:

(1) Reduce the projected increase in prison population by diverting eligible offenders to the restitution program,

(2) Involve citizen volunteers in the rehabilitation of offenders from their local community,

(3) Demonstrate various effective methods of offender restitution, and

(4) Determine the cost/benefit factors associated with a residential restitution program.

To a considerable extent, the objectives were met. In 1976, Georgia had the highest percentage of prison inmates in the 18-44 age bracket of all 50 states.[4] Over two-thirds of the admissions to the restitution centers successfully avoided prison incarceration. Although the prison population was not reduced, it would have increased even more without the centers. During the first year of operation, Cobb County, for example, reduced the number of prisoners sentenced to prison by 51 percent.

Volunteers were recruited, trained, and involved in center activities, but citizen involvement varied from one center to another.

During the 12-month period ending June 30, 1977, $128,437 in restitution was paid to victims. The other method of offender restitution used to date, community service, has resulted in 8,372 hours of work. It is difficult to put a value on this time, but at the minimum wage of $2.65, it totals $22,185.

The cost/benefits are more difficult to assess. The per-diem cost of

prison incarceration and center residency is essentially the same, excluding capital construction costs for prisons and rental fees for the centers. If these figures were added to the per-diem cost, the centers would be considerably cheaper. Another cost factor is the turnover of population in a center compared to the turnover in a prison. In a center, the average stay is about four months. For similar offenses, prison stays are at least 12 months, and average closer to 15 months before parole. Thus, total costs of care per individual are much cheaper for the center than for the prison.

There are other cost/benefits. The offender is employed, paying taxes, and supporting his family. There is a savings in welfare costs. A total of $164,472 was paid in state and federal taxes for the 12-month period ending June 30, 1977. Income to the state in the amount of $206,880 was paid during this period for room and board. Further, during this same period of time, an estimated $208,922 was spent in the community by residents for clothing, transportation, recreation, and personal items (see Table 4).

The DCOR estimates that 35 percent of new admissions to the Georgia prison system meet the objective criteria for entrance into a restitution center and the state does plan to expand the number of restitution centers.

Transferability

The Georgia restitution center concept should have wide appeal to other states which have overcrowded prisons and are looking for alternatives to prison incarceration. Even with county-operated probation departments, a state could subsidize county-operated restitution centers as a strategy to reduce population. It is important, however, to remember that the residential restitution program is offender-focused rather than victim-focused.

In the fall of 1977, the second National Restitution Symposium was held in St. Paul, Minnesota. Several speakers at this conference warned of the undesirable effect of "widening the nets" with restitution programs. Kenneth Schoen, Director of the Minnesota Department of Corrections, cautioned that "restitution may have the unintended effect of 'widening the net' of control by the system over the offender." In Georgia, if a resitution center is used as an alternative to a suspended sentence or probation, this would be an example of "widening the net" of control. Thus, of major importance in any state's consideration of restitution centers are built-in safeguards against inappropriate intake into a residential setting when alternative sanctions are less expensive and more appropriate to the offense.

The Georgia experience has illustrated that the best safeguard against inappropriate intake into restitution centers is an intake decision which is made after the judge has already sentenced the offender to a period of time of imprisonment. The Cobb County Restitution Center is illustrative of this practice. Sentenced prisoners in the county jail waiting to be picked up and transferred to the prison comprise a pool of potential residents for the restitution center. The center staff members interview prisoners, study case files with particular attention to the pre-sentence investigation report compiled by the probation staff, and, when deemed appropriate for entry into the restitution center, make recommendations to the judge who sentenced the prisoners. The judge rarely disagrees with such recommendations and new court orders are issued changing sentences to placement in the restitution center as a condition of probation. Again, Georgia's Cobb County pro-

TABLE 4
RESTITUTION CENTER OFFENDER CUMULATIVE EARNINGS AND DISBURSEMENTS*
July 1976 - June 1977

Center	Gross Earnings	Taxes and Other Deductions	Net Earnings	Room and Board Assessments	Food, Clothing, Medical, Personal Items, Transportation	Mandatory Savings	Financial Assistance to Families	Court Ordered Restitution Fines: Monetary Restitution and Fines	Court Ordered Restitution Fines: Compulsory Public Service (Hours)
Albany Restitution Center	$110,737	$15,789	$94,948	$12,526	$41,572	$4,597	$5,175	$33,882	410
Athens Adjustment /Restitution Center	108,667	18,902	89,764	26,891	15,671	9,149	3,417	8,178	2,178
Atlanta Restitution Center	60,165	10,154	50,011	20,783	10,675	2,730	3,728	3,809	1,650
Augusta Adjustment/ Restitution Center	116,429	24,405	92,024	27,459	27,959	22,399	5,663	8,844	12
Cobb Adjustment/ Restitution Center	128,350	19,798	108,552	34,735	15,796	5,775	25,707	16,433	1,240
Gainesville Adjustment Restitution Center	110,039	21,153	88,885	18,625	17,512	6,646	4,223	9,899	263
Gateway Adjustment/ Restitution Center	75,595	13,774	61,822	28,916	11,916	2,240	1,700	1,302	4
Macon Restitution Center	99,439	20,817	78,623	21,988	33,689	4,107	8,652	13,424	848
Rome Restitution Center	116,112	19,680	96,432	14,957	34,132	4,750	890	32,666	1,767
TOTAL	$925,533	$164,472	$761,061	$206,880	$208,922	$62,393	$59,155	$128,437	8,372

*Rounded to nearest dollar. No figures presently available for Thomasville.
Source: Georgia Department of Corrections and Offender Rehabilitation.

gram insures that judges do not use the restitution program as an alternative to probation. There is some indication that in some of the other districts offenders who would otherwise be placed on probation sometimes are placed in restitution centers. There are other economic reasons for insuring that restitution is not used as a substitute for probation. In a paper prepared two years ago, Bill Read of the General Services Division of the DCOR explained:

> The importance of diversion certainty for a residential diversion-from-incarceration program can easily be seen by considering a few basic cost figures. The annual cost of operating a 30-resident restitution center has proven to be approximately $116,000.* The annual cost of supervising 30 offenders on probation. . .($205/offender/year) is $6,150. The annual cost of incarcerating 30 offenders ($4,045/offender/year) is $121,350. It is, therefore, quite clear that a residential restitution center cannot be basically cost-effective if it serves offenders diverted from probation. For example, a restitution center serving 50 percent divertees from probation and 50 percent divertees from incarceration would have a basic comparative cost-effectiveness of $116,000 versus $63,750 ($3,075 for field supervision cost plus $60,675 for incarceration cost). In short, the restitution center would not be cost-effective. Therefore, a primary objective in diversion from incarceration programs is an offender selection method which guarantees 100 percent diversion certainty (i.e., post-sentence selection method using either a judicially amended sentence or a conditional parole).[5]

One of the major cost savings of Georgia's restitution centers is the short-term leasing of facilities in contrast to capital cost outlays in purchasing or constructing a community residential facility. Uneconomical tourist courts located on state highways now bypassed by interstate highways are to be found in most communities of any size. The Georgia experience has demonstrated high utility of these tourist courts as well as downtown hotels.

Although per diem costs in Georgia between prisons and restitution centers are about the same, the shorter turnaround time of an individual offender in a restitution center also represents a cost savings in contrast to the longer amount of time an incarcerated offender spends in prison. Mr. Read also mentioned this aspect of restitution centers in his previously cited paper:

> The importance of the offender turnover rate can also be easily seen by again considering the previous basic cost figures. If we make the fair assumption that most property criminals who are sentenced to prison will normally serve a minimum of 12 months, it is clear that a restitution center can dramatically increase its basic cost-effectiveness by increasing its turnover rate. For example, since the annual cost of operating a 30-resident center will remain essentially constant, a center with an average turnover rate of six months can serve 60 offenders in 12 months at a cost of $116,000. However, assuming 100 percent diversion from incarceration, the comparative cost of incarcerating these 60 offenders for 12 months is $242,700. Likewise, comparative figures for a center with an average three-month turnover rate are $116,000 versus $485,400 for incar-

*Present restitution center costs are projected at $200,000 annually.

ceration. Obviously then, an increased turnover rate represents a substantial increase in cost-effectiveness. Thus, another primary objective of a residential restitution program is an offender selection method which allows program staff to be somewhat selective of referral eligibles. In this way, program staff can use priority selection criteria which would operate to increase the total percentage of offenders who could be stabilized relatively quickly and could finish making their restitution on a non-residential basis.

The Georgia restitution centers have been successful in attracting resources from other state and federal programs for both core services and supplemental resources supported by state appropriations. VISTA volunteers, CETA employees, and library services are just a few examples of some of these resources. Volunteers are valuable in the program. Service clubs are attracted to sponsor certain aspects of the restitution program. These resources also exist in other states.

The key to the successful operation of a correctional residential facility is community acceptance. Key community leaders, particularly judges, must be involved in the beginning stages of planning for a restitution center. The restitution center needs to be viewed by community leaders as *their* program. And by making the program voluntary, the state corrections agency avoids trying to implement a restitution center in a community where it is not wanted. Additionally, the public service restitution aspect of the program has large appeal to community agencies, organizations, and political leaders. The concept of restitution itself has appeal to persons with both conservative and liberal political views. The former like restitution as a means to secure justice for the victim; the latter also appreciate its quality as an alternative to incarceration. Although for different reasons, it would seem that in selling the concept of a restitution center to a community, the concept itself goes a long way toward selling itself. In Georgia, in several communities with restitution centers, there is now a demand for a center for women.

Another lesson learned from the Georgia experience is that the state agency must allow each center flexibility in its operations and procedures as each community differs, political structures vary, judges have different views as to how offenders should be treated, and job markets are not the same. For the center to be adopted by the community as its own, the center program must reflect the uniqueness of that particular community. The availability of employment opportunities is a key factor in deciding on a site location of the center. Without the income derived from employment, offenders' restitution to victims is not possible. Thus, placement of restitution centers in remote areas may not be advisable. Of course, if public transportation is not available, alternative transportation modes must be considered. Georgia officials restrict travel to jobs to within the metropolitan area where the center is located. In Atlanta, this sometimes means a distance of 15 miles; in smaller towns, much less.

The need to find jobs for offenders; the need to locate other community resources such as volunteers, assistance from service clubs, library services, counseling; and the need to work closely with community leaders, especially judges, are important considerations in staffing residential restitution centers. Georgia's experience suggests that the center directors should have community organization skills, and such skills are probably more important than penology/criminal justice expertise. In this connection, Georgia-type restitution center advisory boards can also be quite useful.

Obviously, a state interested in establishing restitution centers must

determine if enabling legisiation is required or if existing statutes allow for establishment of restitution centers. In recent years, most states reviewing their criminal codes specifically have listed restitution as a legitimate sanction. Residential centers that emphasize restitution as a key component of their programs seldom are specified in the statute. Many of the statutes, however, are broadly conceived and can easily be construed to include a residential center.

Conclusions

Restitution is an increasingly popular concept both as a sole sanction and as a condition of probation. Residential centers are not necessary for a restitution program, but those states with prison overcrowding might consider this alternative. Residential centers are viewed as an alternative to incarceration and a cost-effective response in reducing prison population.

FOOTNOTES

1. Other states reporting restitution programs are: California, Colorado, Connecticut, Florida, Iowa, Minnesota, Mississippi, Ohio, Oklahoma, South Dakota, Tennessee, Utah, and Washington. For the most part, these restitution programs are not combined with residential programs. In the past [illegible], three more states passed statutes allowing restitution—North Carolina, Texas, and Virginia.

2. *Operation Performance: Six Year Action Plan for Corrections* (Executive Summary), Georgia Department of Corrections and Offender Rehabilitation, July 1975, p. 2.

3. *Prison Population and Policy Choices*, Vol. I, ABT Associates, National Institute of Law Enforcement and Criminal Justice, 1977, p. 27.

4. Ibid.

5. A paper on the Georgia Restitution Center Program, prepared for the Southern Conference on Corrections, February 25-27, 1976, Tallahassee, Florida.

When criminals repay their victims:

a survey of restitution programs

by Joe Hudson, Bert Galaway and Steve Chesney

...estitution to crime victims is an ...oncept that is receiving new atten... the criminal justice system today. ...a itself, of course, was part of a ...ety of pre-modern legal systems,[1] ...rically its proponents include such ...riters as Sir Thomas More, Jeremy ... Herbert Spencer, Raffaele Garofa... Margery Fry.[2]

...ecently, the idea has received en... from the National Advisory Com... Criminal Justice Standards and the American Bar Association,[4] The American Law Institute,[5] The Model Sentencing Act,[6] the 1972 Annual Chief Justice Earl Warren Conference on Advocacy in the United States,[7] and the Law Reform Commission of Canada.[8] And two states, Iowa and Colorado, have already enacted laws emphasizing the importance of restitutive sanctions. In 1974, Iowa made restitution a condition of a deferred sentence or probation,[9] and in 1976, Colorado said courts could order restitution in conjunction with fines, probation, imprisonment or parole.[10]

Most important, perhaps, the idea of restitution has become a reality through formal restitution programs in a number of places across the country. The prototype for many restitution programs, the Minnesota Restitu-

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... Nader and Elaine Combs-Schilling, *Restitution ... Cultural Perspective* in Joe Hudson, ...ITUTION IN CRIMINAL JUSTICE, (St. Paul, ... Minnesota Department of Corrections ...

...mas More, UTOPIA 23-24, (J. C. Collins ...

...ntham, THE WORKS OF JEREMY BENTHAM, ... COLLECTED; UNDER THE SUPERINTEN... HIS EXECUTOR, JOHN BOWLING, Part 2, ...inburgh, Scotland: William Tait Publish...

... Spencer, ESSAYS: SCIENTIFIC, POLITICAL ...TATIVE, Volume 3, 152-191 (New York: ... Company, 1892).

... Garofalo, CRIMINOLOGY (Boston: Little ... Company, 1914).

... ARMS OF THE LAW (London: Victor ...

...l Advisory Commission on Criminal Jus... and Goals, CORRECTIONS 150 (Washing... ...ernment Printing Office, 1973).

... Bar Association Project on Standards ... Justice, STANDARDS RELATING TO SEN... ALTERNATIVES AND PROCEDURES (New ... of Judicial Administration, September, ...NDARDS RELATING TO PROBATION (New ... of Judicial Administration, 1970.)

5. MODEL PENAL CODE, *Article on Suspended Sentences, Probation and Parole*, 1962, § 301.1 (2) (h).

6. Council of Judges of The National Council on Crime and Delinquency, *Model Sentencing Act, Second Edition*, 18 CRIME AND DELINQUENCY 356-359 (October, 1972).

7. Annual Chief Justice Earl Warren Conference on Advocacy in the United States, A PROGRAM FOR PRISON REFORM 11 (Cambridge, Massachusetts: Roscoe Pound-American Trial Lawyers Foundation, 1972).

8. Law Reform Commission of Canada, Working Paper No. 3: The Principles of Sentencing and Dispositions (Ottawa: Information Canada, 1974) at 7-10; Working Papers Nos. 5 and 6: Restitution and Compensation; Fines (Ottawa: Information Canada, 1974) at 5-15.

9. Senate File 26 of the 65th General Assembly, 1973, State of Iowa.

10. COLORADO CRIME VICTIMS RESTITUTION ACT, Second Regular Session, Fiftieth General Assembly, 1976.

tion Center, was established in 1972 by the Minnesota Department of Corrections.[11] The residents, who have all committed property crimes, become part of the program only when they have completed four months of their sentence in prison. They live in the center, work in the community and make the agreed-upon restitution. In 1975, Georgia opened four restitution shelters for probationers and parolees.[12]

We recently completed a survey of nineteen restitution programs in the United States and Canada, mainly through telephone interviews. We do not know the total number of restitution programs, but our telephone survey clearly did not reach all of them. Thus, the information we gathered reflects tendencies which may or may not apply to all such programs. (We will also present information from a recent study of restitution as a condition of probation.)

We think that unless critical attention and careful investigation is given to the most appropriate way to implement restitution, the classes of offenders from whom to require it, and its effects on victims and offenders, this practice could become another in a long line of criminal justice sanctions which promises more than it delivers.

At least four major questions should be asked about any contemporary restitution program: What should be the nature of the restitution? How should the amount of restitution be determined? What should be the relationship of restitution to other criminal justice sanctions? And should the victim be involved in the restitution decision? This article will address each of these questions in turn.

Nature of restitution

Two areas of confusion arise in defining a restitution sanction—first, confusion between restitution and victim compensation and, second, confusion about the various forms which restitution may take. Victim compensation usually involves a state-administered form of insurance desig... provide at least partial reimburseme... specified class of crime victims for ... losses. The arrest or conviction of an ... er is not a prerequisite for compen... payments, and such schemes usually o... outside the criminal justice system.[13] R... tution, as distinct from victim comp... tion, involves the offender paying the ... tim, either directly or through third par... as redress for damages.

Restitution may take diverse forms. ... victim compensation schemes, a resti... program provides benefits to crime vi... But restitution is generally not an eff... mechanism for providing compensati... crime victims because most crimes are ... solved by an arrest, and many do not ... in convictions. Even when convictions ... secured, restitution may not be an appr... ate sanction. In short, restitution is lik... provide compensation for only a very li... ed number of crime victims.[14]

Most of the operational restitution ... grams we surveyed appear to recogniz... fact. Ten of the nineteen programs ... that their primary purpose was offende... habilitation, and only four indicated ... providing reparations to crime victims ... their major aim.

While restitution most commonly ... the form of money, many programs a... service restitution, in which offenders ... either the crime victim or larger commu... Community service restitution is more ... mon than direct service restitution by ... offender to the crime victim. Nine of ... nineteen restitution programs estimated ... community service was required in at le... 80 per cent of all service restitution cas...

Community service restitution sche... commonly require the offender to pro... services to public or private social we... agencies. Typical services include rea... ing homes for the elderly, working ... youth in organized recreational pro...

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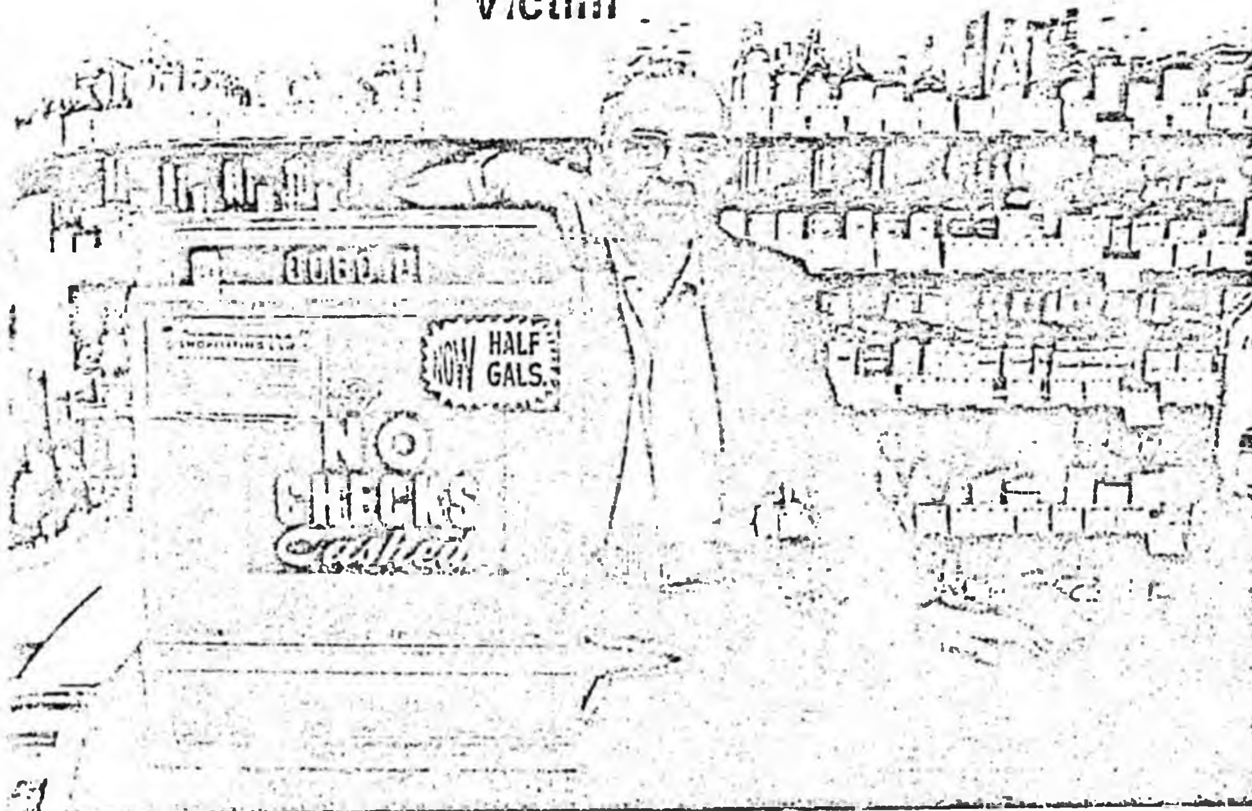
11. Joe Hudson and Burt Galaway, *Undoing the Wrong*, 19 SOCIAL WORK 313-318 (May 1974).

12. Bill Read, *The Georgia Restitution Program*, included in Hudson, *supra* note 1 at 216-227.

13. Joe Hudson and Burt Galaway, editors, C... ERING THE VICTIM: READINGS IN RESTITUTION ... VICTIM COMPENSATION (Springfield, Illinois: ... C. Thomas, 1975.)

14. John A. Stookey, *The Victim's Perspe... American Criminal Justice*, in Hudson, *supra* ... 4-12.

Victim



Offender

[illegible]

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and volunteer counselling work with drug abuse programs. Direct service restitution to victims could take several forms, such as a vandal repairing the damage he did.

Amount of restitution

Restitution programs usually require some procedure for determining the amount of restitution to be made. An obvious problem in using service restitution is equating the value of the services with the damages done. This is most often accomplished by using minimum wage rates or the hourly wages the offender might command in legitimate employment.

A second problem is assessing the accuracy of the damage claims reported by victims. Programs commonly report concern that victims may inflate their claims and almost unanimously note problems in determining and validating the amount of restitution to be made. This concern is shared by offenders and, in the case of juvenile offenders, their parents.[15]

While victims may inflate their losses, however, offenders may tend to underestimate the extent of loss, either out of ignorance or self-justification. A recent study of juvenile offenders found that the damage estimates of parents, victims probation officers and police officers were relatively consistent, but the juveniles themselves tended to report substantially lower loss estimates.[16]

Two procedures are commonly used to determine the required amount of restitution. One is to use a third party such as a probation officer, judge or other criminal justice official to weigh the different claims and arrive at a fair determination. The other is to bring the victim and offender together in a negotiation process with an agent of the criminal justice system acting as a mediator to arrive at a loss figure. The Minnesota Restitution Center has had considerable success in directly involving victims with offenders in face-to-face negotiations over

How one judge uses alterna[...]

In states that lack formal restitution [...] grams, some judges promote a similar [...] through "alternative sentencing" in [...] the offender must help others as a con[...] of probation. Here's one example.

In an appropriate case, alternative sen[...] ing can be imaginative and just.

In an embezzlement case, for examp[...] defendant in San Francisco had taken [...] where between $1000 and $4000 fr[...] government by falsifying overtime [...] He resigned a career civil service posit[...] a result of the conviction. The court or[...] that his sentence be suspended and th[...] be placed on probation for five years [...] these conditions:

1. He must pay a fine of $5000. (He [...] by selling much of his furniture and h[...] hold furnishings.)
2. In lieu of one year in the county ja[...] must work four hours a day, five days a w[...] for one year at St. Anthony Dining R[...] (He did.)

St. Anthony Dining Room is run [...] gentle and compassionate Franciscan p[...] the Reverend Alfred Boeddeker, and [...]

the extent of damages. Once the parties concur, they develop a written agreement and if the parole board approves it, the offender is released on parole to the program.[17]

In addition to the question of determining the amount of damages, there is the question of whether 100 per cent restitution should always be required. Are there circumstances in which the required restitution should be less than the total damages? Or are there circumstances in which it may be fair to require restitution exceeding the [...] amount of damages?

Most existing programs appear to [...] full restitution and try to equate the restitution with the actual extent of damages [...]

15. Burt Galaway and William Marsella, An Exploratory Study of the Perceived Fairness of Restitution as a Sanction for Juvenile Offenders (paper presented at the Second International Symposium on Victimology, Boston, Massachusetts, September, 1976.)

16. *Id.* at 18.

17. Hudson and Galaway, *supra* note 13.

...udge uses ...ernative sentencing

by Francis McCarty

...l restitution ...
...ote a similar ...
...encing" in ...
...ers as a condi...
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...leker, and it ...

...ed more than 12 million free meals to ...ople over the last 26 years. More than ...urkey dinners were served on Thanks... Day last year, and 4500 more on ...mas Day. It is called "The Miracle on ... Street" because it never runs out of

...endants assigned there have worked as ..., handymen, dishwashers, waiters ...oks. One did bookkeeping and ac...ing. "It is a good lesson," said the ...end Boeddeker. "It's better than let...them sit in jail."

...er institutions to which defendants ... been assigned for community service ...he Senior Citizen Center, the Youth ...ance Center, the Veterans' Hospital, ...Lighthouse for the Blind, the Recrea... Center for the Handicapped and the ...gency Hospital.

...s difficult to set down exact and precise ...lines for the use or nonuse of alterna... sentencing. The judge must make his ...ion in relation to the particular facts of ...se. Obviously, crimes of violence and ... involving the use of lethal weapons ...ot proper subjects of such sentencing.

The value of such sentencing is fourfold.

1. It is a benefit to the people served, such as the poor, the ill, the severely handicapped and the mentally retarded.
2. It makes the defendant realize that many are less fortunate than he. He serves his fellow man.
3. It saves taxpayers the cost of food, clothing, bedding, cleaning and medical services at the county jail, where the daily cost of maintaining a prisoner is about $27.
4. Because of these benefits, it makes for a closer attainment of pure justice—the ultimate objective of our judicial system.

Alternative sentencing does not make sentencing easier, but it could make punishment a more worthwhile experience for the offender and a less costly one for society. And through alternative sentencing, the offender can return to society knowing that in some sense his efforts entitle him to reassume his place there.

Properly used, imaginative sentencing is good for all of us. □

FRANCIS McCARTY is a judge of the San Francisco Superior Court.

...nce the parti... ...itten agreeme... ...pproves it, th... ...role to the p...

...of determin... ...e is the questi... ...titution shoul... ...e circumstan... ...ution should ... ...? Or are the... ...may be ... ...ing th... ...

...ppear to p... ...ate the resti... ...f damages. ...

...note 13.

...seventeen programs responding to an ... concerning full and partial restitution, ...teen stated that full restitution was re...ed for more than 80 per cent of the ...s admitted offenders. Only one pro... demanded partial restitution in the ...rity of cases, and three programs indi...d that roughly equal proportions of full ... partial restitution obligations were re...ed.

...uity theorists in social psychology gen... support the use of full restitution. ... reason that wrongdoers experience an ... "distress" at having benefited from an ...st act. People relieve this distress either ...ompensating their victim or by justify... their crime. Experiments show that peo...are more likely to make restitution when ... can give back an amount equal to what they have taken.[18] If they can give back only an excessive amount (or an insufficient amount), they tend to justify their original conduct.

A different perspective on this issue has been raised by Stephen Schafer[19] and Kathleen Smith[20] who have recommended that

18. Elaine Walster, Ellen Berscheid, G. William Walster, *New Directions in Equity Research*, 25 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 151 (1973).

19. Stephen Schafer, COMPENSATION AND RESTITUTION TO VICTIMS OF CRIME 117–129 (Montclair, New Jersey: Patterson Smith, 1970); *The Proper Role of a Victim-Compensation System*, 21 CRIME AND DELINQUENCY 45 (January, 1975).

20. Kathleen T. Smith, A CURE FOR CRIME: THE CASE FOR THE SELF-DETERMINANT PRISON SENTENCE, (London: Gerald Duckworth and Company, 1965); *Implementing Restitution Within a Penal Setting: The Case for the Self-Determinant Sentence*, in Hudson, *supra* note 1 at 228–245.

restitution should exceed the damages done. Schafer has advocated the explicitly punitive use of restitution on the grounds that restitution as the sole sanction might allow some serious offenders to purchase their freedom with a relatively mild sanction. Similarly, Kathleen Smith's concept of the self-determinant sentence involves a restitution requirement supplemented by a discre-

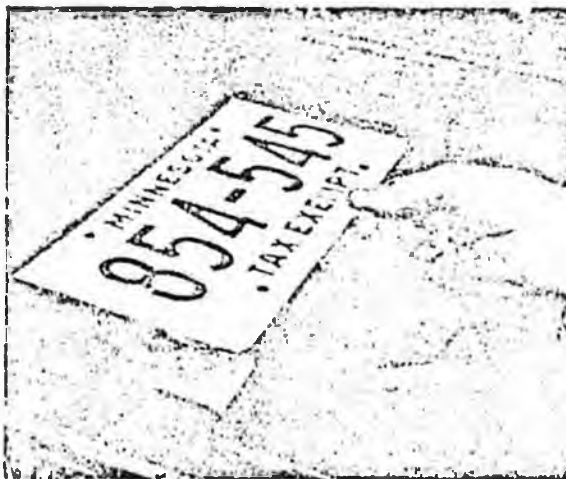

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PHOTO BY BILL POWERS

tionary fine imposed by the court. To the extent that they are used in conjunction with restitution, fines have the effect of requiring excessive restitution—the offender is required to repay both the victim and society.

It can be argued, however, that in some cases where exceedingly large dollar losses resulted from the offense, full restitution may impose such undue hardships as to be unjust. Several policy proposals and standards have recommended partial restitution on such grounds. Clearly, however, most of the available evidence concerning the amount of loss resulting from criminal victimizations suggests that full restitution would not impose an undue hardship for most offenders. For example, the 1974 Uniform Crime Reports indicates that the average dollar loss in a burglary was $391 while the average value of property stolen in a theft was $156.[21]

A related issue concerns the specific criminal offenses for which the individual is to be held officially responsible. Should restituton be limited to offenses for wh... offender was found guilty? If so, res... might not cover a wide range of ... settled by plea bargaining or ones ... not proceed through adjudication fo... ever reason. From the victim's perspe... least, the result would be partial resti...

Alternative sanctions

What is the appropriate relationship of ... tution to other criminal justice sanctio... what extent does restitution interfere ... the use of other sanctions and objecti... the criminal justice system? Availab... dence suggests that while probation ... and judges in Minnesota tend to thin... tution helps rehabilitate the offender, ... is concern that restitution may red... offender's ability to care for himself ... family.[22] In this instance, restitution ... work against the rehabilitative objecti... corrections programs. But since ... against property result in such limited ... ages, it seems legitimate to ask whe... most cases restitution is a sufficiently ... sanction.

Although restitution is occasionally ... posed as a sole sanction, most jurisd... appear reluctant to use it except in co... tion with other sanctions and treatm... The survey of Minnesota probation p... suggests that victims desire sanctio... addition to restitution.[23] Similarly, Gala... and Marsella found that when given ... choice of a single sanction, victims, ... tion officers and police overwhelmingly ... ferred supervised probation to restitu... When asked to combine sanctions, the ... respondents overwhelmingly chose su... vised probation with restitution.[24]

Similarly, most operational restit... programs tend to add restitution to ex... sanctions or treatments. For example, ... tution is most commonly employed in ... junction with supervised probation as a ... dition of pretrial diversion programs ... condition of participation in a resid...

21. Crime in the United States, 1974 (Washington, D.C.: U.S. Government Printing Office, November, 1975) at 29, 31.

22. Steven L. Chesney, *An Assessment of Res... in the Minnesota Probation Services*, included ... son, *supra* note 1 at 159-161.

23. *Id.* at 165.

24. Galaway and Marsella, *supra* note 15 at ...

Restitution programs surveyed

...gram	*Level of system*	*Clients*	*Type of program*
...stitution Center ...eorgia	Probation and parole	Adults only	Residential
...n as an Alternative ...inal Warrant ... New York	Pretrial diversion	Usually adults only	Nonresidential
...estitution Center ...eorgia	Probation and parole	Young adults (ages 17-25)	Residential
... Accountability ...f the City of Seattle ...ashington	Pretrial diversion and probation	Juveniles	Nonresidential
... Arbitration Program ... Maryland	Pretrial diversion	Juveniles	Nonresidential
...estitution Center ...eorgia	Probation and parole	Adults only	Residential
...a Restitution Center ...s. Minnesota	Parole	Adults only	Residential
...secutor's Program ... Ohio	Pretrial diversion	Adults	Nonresidential
...rta Restitution Center ...lberta	Pretrial and probation	Adults only	Nonresidential
...nty Attorney's ...ersion Project ...izona	Pretrial diversion	Adults	Nonresidential
...n and Effective ... from the Criminal ...System Milwaukee.	Probation and parole	Adults	Nonresidential
...on in Probation ...ent ...es, Iowa	Probation	Adults	Residential and nonresidential components
...on Work Program ... City, Utah	Pretrial diversion and probation	Juveniles	Nonresidential
...Carlton Restitution ...ttawa, Ontario	Provincial jails	Adults	Residential
...estitution Center ...orgia	Probation and parole	Adults	Residential
...ircuit Court ...ssistance Program ... South Dakota	Pretrial diversion and probation	Adults and Juveniles	Nonresidential
...ssistance Program ... Nevada	Pretrial diversion and probation	Juveniles	Nonresidential
...ffender Reconcilia... ... Kitchener, Ontario	Pretrial diversion and probation	Juveniles and Adults	Nonresidential
... County Restitution ...sboro, Oregon	Probation and parole	Adults	Residential

community-based corrections program. In each case, the usual pattern is to impose participation in some form of treatment activity such as group or individual counseling in addition to the restitution requirement.

The relative benefits of restitution as a sole sanction or in conjunction with other sanctions is an important question requiring serious examination. The increasing cost and questionable effectiveness of presently available criminal justice sanctions suggest the need to explore alternative sanctions for specified classes of offenders. Restitution may be one practical alternative.

The victim's role

Another set of questions concerns the appropriate role of the victim in a restitution scheme. Some approaches avoid making the victim part of the decision-making process for restitution; others encourage participation.

In the Minnesota probation services, victims generally do not become involved with offenders in restitution schemes, and in a substantial number of cases, victims were not even aware that they would receive restitution.[25] The probation officer apparently arranged for restitution without the victims' knowledge and, when ultimately collected, the restitution would be forwarded to the victims. Of the nineteen restitution programs we surveyed, only five usually involved the victim with the offender in developing a restitution agreement. Nine programs stated that such involvement occurred only occasionally, and five stated that it never occurred.

Data from the study of Minnesota probation practices indicate that direct victim-offender contact is overwhelmingly discouraged by judges on the grounds that such a practice would be against the wishes of the victims or might lead to further victimization.[26] Contrary evidence can be found to suggest that personal contact between victim and offender can minimize the offender's use of rationalization concerning the harm that he has done.[27] In short, ... arguments can be made for or against ... involvement in restitution programs, ... empirical evidence exists to support ... position. It is known, however, that in ... restitution programs emphasizing ... offender contact and involvement in ... development of restitution agreements, ... major problems have been reported. No ... gram forces victim involvement, although ... we do not know the extent to which ... may feel pressure from the program to ... with the offender.

Another question concerns the weight ... be given the views of the victim on whether the offender should be offered an opportunity to participate in a restitution plan. ... becomes particularly important if restitution is perceived as a less severe sanction ... the alternative. For example, the ... County Attorney's Adult Diversion Project in Tucson has instituted the principle of victim approval as a prerequisite for the ... of restitution.[28] Apparently, victims ... veto the admission of offenders into ... program. It is not clear, however, ... cases likely to be vetoed are screened ... program staff.

Our survey of restitution programs ... that only four programs allowed victims ... exercise veto power. In general, then, ... pattern is one of not providing victims ... the power to veto and substituting community service restitution in those cases ... victims do not wish to receive restitution ... be otherwise involved.

To what extent will the fairness and ... propriateness of the restitution requirement vary with the nature of the victims? Should restitution be limited to situations in which the victim is an individual, or should ...

25. Chesney, *supra* note 22.
26. *Id.* at 63.

27. Steward Macaulay and Elaine Walster, ... *Structures and Restoring Equity*, 27 JOURNAL ... CIAL ISSUES 173 (1971). Ellen Berscheid and ... Walster, *When Does a Harm-Doer Compensate ... tim?* 6 JOURNAL OF PERSONALITY AND SOCIAL ... CHOLOGY 435 (August, 1967); J. L. Freedman, ... Wallington, and E. Bless, *Compliance Without ... sure: The Effect of Guilt*, 7 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 117 (October, 1967).

28. David A. Lowenberg, Pima County ... Adult Diversion Project's Second Annual Report ... ber, 1973 through September, 1975, (unpublished ... search report, October 29, 1975).

...d when victims are large busi-
... insurance companies? If so, is
...nger that the restitution require-
...ld lead to the victimization of the

...Nader has expressed concern that
... will perpetuate a pattern of "in-
...tional imperialism" in which indi-
...fenders are held accountable for
...restitution to corporate victims
...any corresponding requirement that
... offenders make restitution to indi-
...ictims.[29] The obvious solution to
...practice, of course, is to make both
...ties responsible for making good
...nal damages.

...sue of the relative extent to which
...m is functionally responsible for
...ctimized is receiving increased at-
...and raises further questions about
...of the victim in a restitution scheme.
...e past several years, a considerable
... of evidence has accumulated to sug-
...at the criminal act can most fully be
...ood as resulting from the behavior of
...tim and offender.[30] Either through
...ace or culpability, individuals may
... their own victimization. To what
...hould such considerations influence
...s regarding the amount and type of
...tion to be made?

...question has been largely neglected
...rational restitution programs; seven-
... nineteen programs said they made no
...ent of victim responsibility in arriv-
... either the form or the amount of
...ed restitution. Similar findings were
...d in the survey of Minnesota proba-
...actices.[31]

...mplications of victim culpability are
...ar. It is reasonable to suggest however
...n in situations provoked by victims,
...s choose from among a variety of
...ive behaviors and should therefore be held accountable for the behavior that is chosen.

Conversely, program managers might consider using the concept of contributory negligence to permit reduction of restitution in relation to the culpability of the victim. Victim compensation programs generally provide that compensation payments can be decreased or denied on the basis of victim culpability.[32] At the same time, however, administrators of compensation programs note great difficulty in assessing culpability and report few denials or reductions of payments on this basis.

In this article we have identified and discussed several major questions arising from the use of restitution within criminal justice programs: the nature of the restitution sanction, the amount of restitution to be ordered, the role of the victim in a restitution scheme, and the relationship of restitution to other criminal justice sanctions. Gaps are apparent in both the operational use of the idea and in the evaluation and assessment of it. Given the limited amount of research evidence available, we simply lack an adequate basis for assess[illegible] the utility of the idea.

While a host of program and research needs are apparent, several areas deserve immediate attention. First, we must clarify what we mean by restitution. In particular, we need case studies of how restitution is implemented in different programs. Second, we need information and assessment of the use of restitution as the sole sanction, not supplemented by other treatments and criminal justice sanct[illegible]ons. Finally, we must develop ways in which victims can participate in restitution schemes and assess the benefits of their involvement for the victim, the offender, and the system of justice. □

...r and Combes-Schilling, *supra* note 1.

...vin E. Wolfgang, PATTERNS IN CRIMINAL ... Philadelphia: University of Pennsylvania ...S. David J. Pittman and William Handy, ... *Criminal Aggravated Assault*, JOURNAL OF ... LAW, CRIMINOLOGY AND POLICE SCIENCE, ...ober, 1964); Menachem Amir, *Patterns in* ...*rape* (Chicago: University of Chicago Press,

...ney, *supra* note 25 at 159–160.

32. Burt Galaway and Leonard Rutman, *Victim Compensation: An Analysis of Substantive Issues*, in Hudson and Galaway, *supra* note 13 at 127–128.

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BURT GALAWAY is an instructor in the School of Social Development at the University of Minnesota at Duluth.

STEVEN CHESNEY is a research analyst for the Minnesota Department of Corrections.

A new program helps offenders "make good" the losses [illegible] have caused—and regain their place in society.

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'osses they

How restitution works in Georgia

By Bill Read

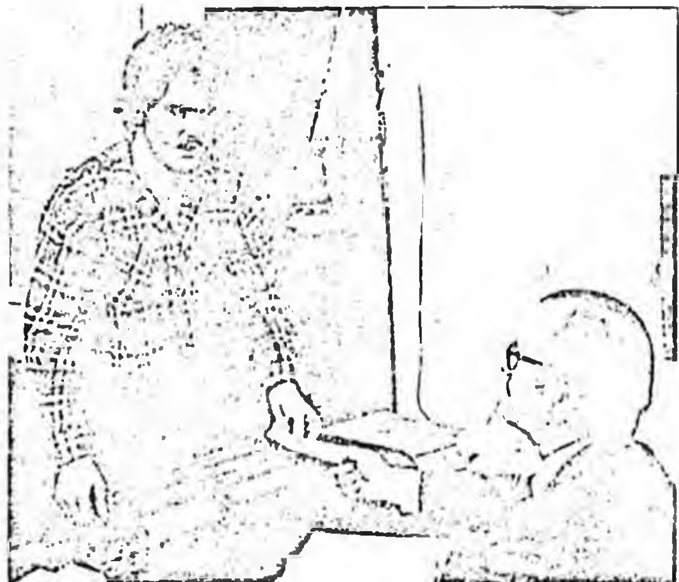
[illegible] most states, Georgia has traditionally [illegible] the restitution sanction through un[illegible]ured local programs. Restitution in [illegible]ia has most frequently been used as a [illegible]ition of probation or in connection with [illegible]spended sentence and is administered [illegible] by the judiciary and the Adult Proba[illegible] Division.

[illegible]hough recommendations regarding the [illegible]ppriateness of restitution are often [illegible] by district attorneys and probation [illegible]visors in presentence investigation re[illegible] the judiciary has historically received [illegible] or no state-level guidance in making [illegible]ution decisions. Before 1975 there were [illegible]ormal programs within which to use [illegible]ution.

[illegible] A Minnesota offender signs a restitution [illegible]ment.

[illegible] An offender in one of Georgia's residen[illegible]stitution centers turns in his paycheck to [illegible]enter's business manager. The offender [illegible] a weekly living allowance and the busi[illegible]manager supervises regular restitution [illegible]ents to victims via check. The rest of the [illegible]eck goes for room and board at the center, [illegible] support and savings.

In the last two years, the Georgia Department of Corrections/Offender Rehabilitation (DCOR) has begun to formally structure the use of the restitution sanction and to experiment with residential and nonresidential restitution programs. In 1975, DCOR initiated a two-year, LEAA-funded, pilot residential restitution program designed to divert offenders from incarceration. This program allows courts and the parole board to require



offenders to make financial and/or community service restitution while living at the restitution center under close supervision.

This program proved so popular both with citizens and criminal justice personnel that the Georgia legislature voted—in a year of austerity budgeting—to assume state funding of the program beginning in fiscal 1977. Most of the DCOR's other residential community facilities have since been modified to incorporate the restitution program policies and procedures developed by the pilot grant.

The second restitution program, also funded by a two-year LEAA pilot grant, is intended to develop a formal, research-based, nonresidential restitution system. This program draws heavily upon experience gained from the residential program. It is applicable to a wide variety of offenders, it can be implemented at any time from presentence to post-incarceration, and it can be easily expanded in Georgia or replicated in other states.

Residential restitution

The original two-year discretionary grant established residential centers in four metropolitan areas: Albany, Atlanta, Macon and Rome. The goals of the program were (1) to reduce the prison population by diverting eligible offenders to the restitution program; (2) to involve citizen volunteers in the rehabilitation of offenders from their own community; (3) to demonstrate effective methods of offender restitution; and (4) to determine the cost-benefit factors of residential restitution.

Offender eligibility: The program is open to "any male offender whom the judiciary or the parole board would normally incarcerate in lieu of program participation and for whom restitution would be appropriate." Referrals are obtained through direct court sentencing, direct parole, and revocation proceedings. Thus, the restitution program is a diversion from prison for eligible probationers and parolees.

The Restitution Center Program began under the legal auspices of existing legislation which enabled the DCOR to make participation in the restitution program a special condition of the probation ord[...] parole decree. If an offender fails to [...] pate satisfactorily in the restitution p[...] his parole or probation may be revok[...] he may be imprisoned.

Program administration: The four [...] have capacities ranging from twenty[...] thirty-three offenders. The total resid[...] capacity is 120. Each center has a bas[...] of nine—usually a superintendent, a [...] ness manager, a typist, a probation [...] supervisor, a counselor, and four co[...] aides and/or correctional officers.

This core staff is supplemented by [...] volunteers, student interns, and citizen [...] unteers. Citizen volunteers take on a [...] of responsibilities. Individuals prov[...] rect one-to-one contact with offender[...] schools, churches, and civic organiz[...] give general support and sponsorship [...] restitution center program.

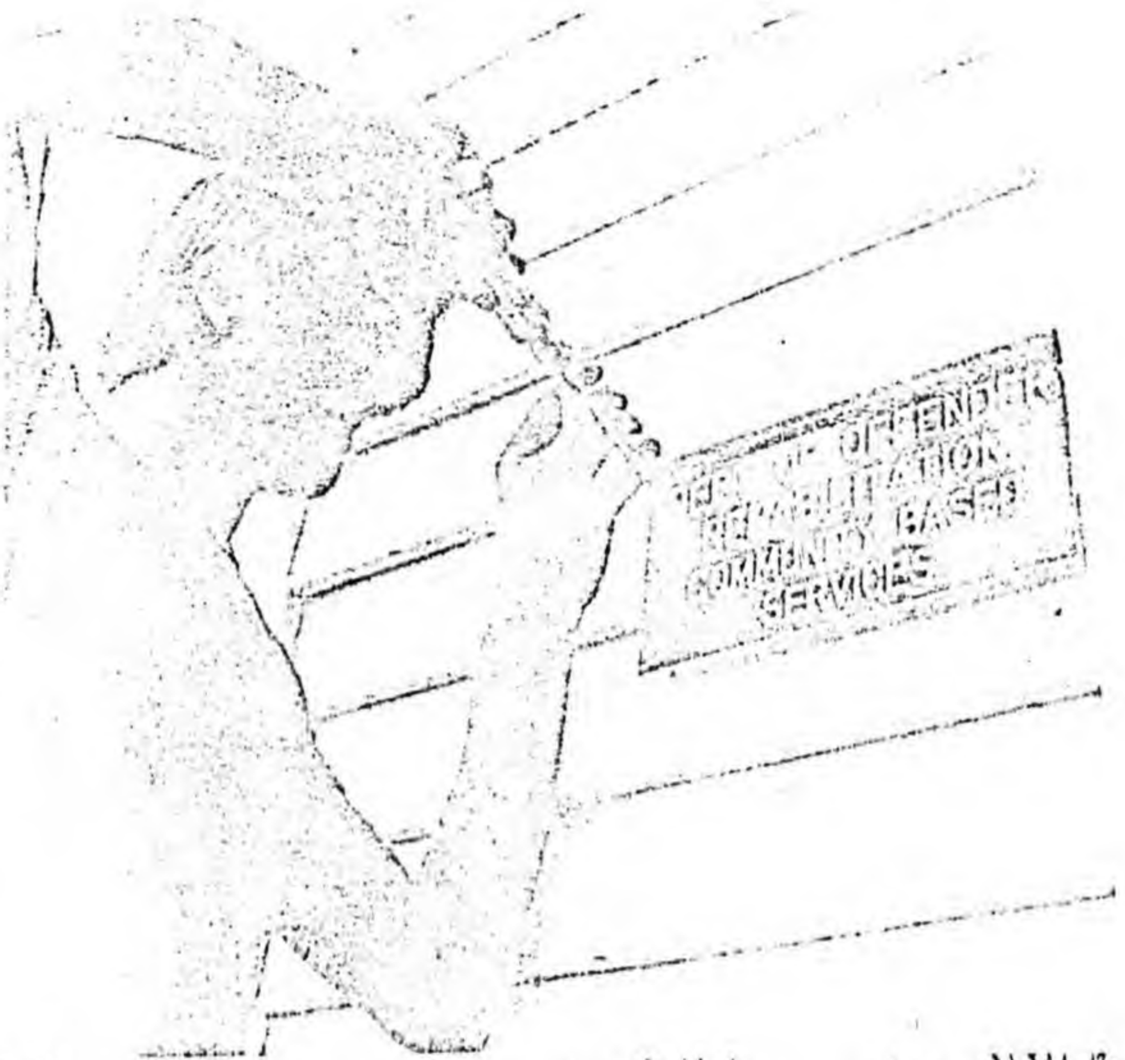
Each restitution center is encoura[...] develop specific treatment programs [...] on the needs and abilities of their resi[...] and staffs and the resources of their [...] communities. Staff members help off[...] to find jobs in the community and to d[...] a realistic budget. The offender must [...] all his pay checks to the business m[...] who disburses the money into s[...] budget category accounts against wh[...] offender draws on a regularly sche[...] basis.

Close surveillance of an offender's b[...] ior and activities continues through[...] residence at the center. He must si[...] each time he leaves the center, repo[...] destination and return to the center [...] specified time. He can visit his famil[...] night periodically if he has obeyed [...] rules and satisfactorily participated in [...] programs.

Each offender receives basic coun[...]

Above: *An offender resident installs the [...] the new Athens, Georgia, Restitution-Adj[...] Center.*

Below: *The Athens center is located in [...] vated suburban house. It typifies the [...] community facility the Georgia Depart[...] Corrections and Offender Rehabilitation [...] ing to promote.*



from center staff, and he can get specialized help from community resource agencies. Also, citizen volunteers are actively involved in in-house educational and informational programs and in helping individual offenders in a variety of ways. Every effort is made to involve the local community in the treatment and rehabilitation of local public offenders and to increase the offender's awareness of community responsibility.

Mechanisms of restitution: The Restitution Center Program uses both financial and community service restitution. With probationers, the judge determines whether the probationer must make full or partial financial restitution. The probationer then begins residence at the restitution center and allots a certain amount of each paycheck toward restitution. Sometimes he is required to live at the center until the total restitution has been paid. More often, however, a probationer who has demonstrated adequate stability and responsibility for several months will be allowed to complete his restitution on a non-residential basis. Probationers may be required to make community service restitution in lieu of or in addition to financial restitution.

Eligible parolees are typically required by the parole board to live at the restitution center for a specified period of time, to maintain stable employment, and to participate in unpaid community service after work on evenings or weekends. The center staff determine the actual nature and extent of the community service to be required. To date, numerous forms of community restitution have been used. Residents have worked in mental hospitals and health centers, repaired the houses of aged pensioners to prevent condemnation, worked with children in recreational programs, assisted in volunteer counseling with juvenile offenders, and conducted community clean-up projects.

Victim involvement: The extent of victim/offender contact in the Restitution Center Program has been minimal. Most victims prefer simply to recover their losses without meeting the offender. Consequently, the victim typically is sent a letter explaining that the enclosed check represents financial restitution being made b[y the of]fender. In occasional cases in w[hich con]frontation is feasible and is deem[ed] important, center staff will arra[nge for the] offender to repay the victim fac[e to face.]

Every effort is made to involve the community in the treatment and rehabilitation of local offenders.

Most such confrontations have b[een well] received by both victims and offend[ers.]

Professional reactions: Profess[ional reac]tions to the Restitution Center Prog[ram have] been extremely positive. Judges like [the pro]gram because it gives them an inte[rmediate] sentencing alternative stronger tha[n] probation and less harsh than pris[on. The] parole board likes the program bec[ause it] can release eligible parolees to a tra[nsitional] experience in the community—a bett[er alter]native than regular parole superv[ision or] release without supervision at the e[nd of] sentence. Probation/parole supervis[ors like] the program because it is a meaning[ful alter]native which they can recommend [to the] judge in lieu of revocation to inca[rceration.] And the supervisors who work dire[ctly in] the Restitution Center Program en[joy the] opportunity to work intensively wi[th] men. Social workers like the Rest[itution] Center Program because it doesn't [disrupt] the family relationship; the soci[al worker] can help the offender and his fami[ly within] the local community, and the offe[nder can] continue to support his family so th[ey do not] become dependent upon welfare.

Community reaction: Communit[y reac]tion to the Restitution Center Prog[ram con]cept has also been strongly posit[ive. Citi]zens particularly appreciate the fac[t that the] Restitution Center Program may [make it] possible for them to obtain either [...]

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stitution of their losses if they ever a victim. They also like the idea of working constructively, paying and partially defraying the cost of rehabilitation. Generally, citizens restitution concept as a much more response to crime than prisons the state spends money to support virtual idleness.

ever, most offenders seem to genu- appreciate an opportunity to redress tial unacceptable behavior through ent direct and relevant positive be-

am statistics: Almost all offenders in the Restitution Center Program een property offenders. The most offenses are burglary, theft, and Eighty-five per cent of the residents mmitted felonies; 15 per cent are restitution for misdemeanors. two per cent are probationers; 18 per are parolees. Fifty-seven per cent are 43 per cent are black. Of the 504 rs accepted into the program through 1976, 120 remain in residential status, 4 have left the program. Sixty-three of these were positive terminations chieved release or release to non- tial supervision), and 37 per cent egative terminations (they were re- r they absconded).

cal 1976, offenders making restitu- residential centers:

- aid $62,500 to victims.
- aid $172,500 in state and federal
- eturned $256,800 to the state in proj- me (room and board maintenance s.
- ent $336,300 in the local communi- living expenses such as food, cloth- sportation, and personal items.
- d $113,100 for financial support of milies, thus reducing state welfare
- ed $61,600 as nest eggs to use when released from residential supervi-

effectiveness: Three basic factors di- ffect the program's overall cost- ness. These factors are diversion certainty, turnover rate and efficiency rate. All figures used here are based on current DCOR statistics.

1. *Diversion certainty.* The importance of diversion certainty can easily be seen by considering a few basic costs. The annual cost of operating a thirty-resident restitution center is about $116,000. The annual cost of supervising thirty offenders on probation or parole (at $205 per offender per year) is $6,150. The annual cost of imprisoning thirty offenders (at $4,045 per offender per year) is $121,350.

Therefore, a residential restitution center cannot be basically cost-effective if it serves only offenders diverted from probation. Thus, a restitution center in which half the residents are divertees from probation and half are divertees from prison will cost $116,000—far more than the $63,750 that usual sanctions cost ($3,075 for field supervision cost plus $60,675 for incarceration cost).

Therefore, a primary objective in diversion-from-prison programs is to ensure that the method of selecting offenders guarantees that program participants are people who would otherwise be imprisoned. Such a method would either have judges subsequently amend the prison sentence of those chosen for the program or have parole boards give parole conditional upon participating in the program.

2. *Turnover rate.* A restitution center can dramatically increase its basic cost-effectiveness by increasing its turnover rate. For example, since the annual cost of operating a thirty-resident center will remain essentially constant, a center with an average turnover rate of six months can serve sixty offenders in twelve months at a cost of $116,000. If we make the assumption that most property criminals who are sentenced to prison will normally serve a minimum of twelve months, then the comparative cost of imprisoning those sixty offenders is $242,700. Thus, another primary objective of a residential restitution program is to select offenders who could be stabilized relatively quickly and could finish making their restitution on a nonresidential basis.

3. *Efficiency rate.* The efficiency rate, or

the percentage of program successes versus program failures (revocations and absconders), is another important factor in cost-effectiveness. Program failures reduce both diversion cost-effectiveness (failures are imprisoned, thus reducing comparative imprisonment cost-savings) and turnover rate cost-effectiveness (failures consume space and time, thereby reducing the number of successful program participants who can flow through the program). Here again, one important key to increasing program efficiency is to ensure that the program staff controls admissions of eligible offenders to the center. Efficiency should incre... only because of increased selectiv... also because of a greater staff commi... working with those offenders wh... personally selected.

Of course, reality is much more co... than these examples. These three f... interact constantly, and there are man... factors, both subtle and overt, that in... the ultimate cost-effectiveness of the ... gram. But a residential restitution ... which ignores these three basic factor... probably never be cost-effective ... courting fiscal disaster.

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These restitution center residents are working on a community service project—repairing the ... of aged pensioners to prevent their condemnation for building code violations. The cons... materials are either donated by charities or supplied by the homeowners.

...sidential restitution

... nonresidential Sole Sanction Res... Program began in fiscal 1977 as a ...search grant to the DCOR from the ... The goals of this grant program are ...develop a research-based restitution ...a which realistically addresses and ...s the needs of the criminal justice ... victims, and offenders; and (2) to ... research into the costs and benefits ...a program.

...is program, restitution is the sole ... probation supervision continues ...til restitution has been made. The ...m emphasizes citizen-supervised ...nity service restitution for indigent ...rs, and it redefines the role of the ...ion supervisor as a community organ... ...izen manager.

...gram administration: The Sole Sanc... Restitution Program is being imple... ...d at both the sentencing and post... ...ration levels in four of Georgia's ...two judicial circuits and involves a ...d seventeen. At the state level, the ...am is coordinated by a planner, a re... ...er, and a secretary. They are respon... ...or the overall planning, development, ...mplementation of both program and ...h objectives and they work with ... personnel, the parole board, and the ... to accomplish grant goals.

...ach of the four judicial circuits, three ...e implement the program—a restitu... ...pecialist, a correctional casework aide, ... typist. They develop the program in ...ld and help collect research data. They ... directly with offenders, victims, and ...minal justice system.

...the field prison level, the program is ...mented by one restitution specialist ...r typist who serve as liaisons between ...role board, the DCOR, and field cir... ...rsonnel. They screen incoming pris... ...from the four experimental circuits at ...orgia Diagnostic and Classification ... and develop restitution plans which ...ole board will review.

...nder selection procedure: Admission ...program is restricted to those offend... ...in the four experimental judicial cir... who have committed non-violent crimes for which restitution is suitable and who can realistically complete restitution within eighteen months. Grant personnel conduct presentence or post-incarceration investigations on all offenders who meet program consideration criteria and work with the offender to develop a proposed restitution plan to submit to the court or parole board. Random selection is used to generate comparable experimental and control groups.

The restitution plan: The restitution plan consists of a performance agreement which specifies the extent of restitution—both the amount and the type—which the offender agrees to make. The restitution specialist develops this plan with the offender and submits it for court or parole board approval, at which time the restitution specialist acts as an offender advocate. If the court or parole board modifies the plan in a way the offender will not accept, he can choose not to participate in the program. (For probationers, the restitution agreement is made a part of the conditions of probation.)

Once his restitution plan is approved, the inmate receives a conditional reprieve from the parole board, and his parole depends upon completing restitution. Normally, the performance agreement specifies that completing restitution will end the offender's involvement with the criminal justice system. Monthly progress reports on the offender's progress go to the court or parole board, and any offender who fails to keep his agreement is returned to the criminal justice system for appropriate disposition.

Financial restitution: Full financial restitution is paid by those offenders who have the earning power to make such restitution and still meet their financial obligations. Those offenders who can afford to make only partial financial restitution must complete the remainder of their obligation through community service restitution. The restitution specialist helps the offender in budget planning, debt consolidation, and vocational counseling, including agency referrals.

Community service restitution: When an offender cannot make full financial restitution, he can substitute community service restitution—unpaid work for the good of the

general local community. The dollar value of restitution owed is converted to equivalent hours of service restitution based on the type of service performed, in a manner which reflects fair market value. Service restitution may be either "in-kind" or general service restitution. "In-kind" restitution is

Through service restitution, the public offender becomes a community resource, rather than a community liability.

an activity related to the original offense (working on a community beautification project after a conviction for littering); general service restitution is an activity unrelated to the original offense (working on community beautification after a conviction for disorderly conduct). To avoid the risk of further victimization or lawsuits, offenders never make service restitution directly to victims.

The restitution specialist organizes citizen advisory committees of local community leaders from all walks of life—businessmen, labor officials, ministers, members of volunteer and charitable organizations, and others. The committees identify suitable tasks which offenders can perform to benefit the local community. Since people recognize the value of these tasks, the public offender becomes a community resource and asset rather than a community liability.

All community service activities are formally sponsored by local community organizations. A "key volunteer" member of each organization works along with the offenders to supervise the tasks. Supervision may be continuous, intermittent, or nominal, depending on the nature of the task. It is only necessary that a few people in service organization know the offender' tus; he himself need not reveal his stat anyone. This arrangement eliminates s stigma so that community service can positive experience for the offender. program tries to find offenders who shown an interest in performing a partic type of community service as a mean making restitution. Then they try to m sure he realizes that the community va his efforts.

Victim involvement: After determi the nature and extent of restitution t made, the restitution specialist notifies victim by letter of the outcome of the and what restitution he can expect. W the offender is making restitution, the vi is kept informed of the offender's progr If the offender is making financial rest tion, his payments serve as the prog reports. If the offender is making serv restitution, the restitution specialist se the victim quarterly progress reports al the activities. If the offender defaults u his agreement, the restitution specialist t the victim what happened and what to pect (delayed payment, revocation proce ing, etc.). Each victim, of course, can wi draw at any time from further contact w the restitution program.

Potential impact: Like all pilot progra this grant program is small in relation Georgia's total problems and has had lit initial impact on the problems facing t DCOR. But, a well-planned experimen program, like a tiny acorn, can lead to impressive outcome in a fertile enviro ment.

This grant program could reshape a revitalize the traditional use of the restit tion sanction in Georgia. By making t probation supervisor a community organiz or citizen manager who ensures restitutio by offenders, the supervisor acquires a veh cle to enlist citizen support of communi correctional efforts. If a truly effective mea of offender restitution can be develop through this program, the presently loo and varied use of the restitution concept Georgia can be consistently structured stat wide as the program concept expands in

...circuits. And, if self-determinant, ...tion restitution proves effective, ...caseloads would probably be re-... a result of faster, more rehabilita-...ler turnover. The restitution pro-...ation could then become the norm ... non-custodial sentencing and com-...stitution facilities could continue ... the ebb and flow of offenders ... halfway house supervision.

...on for prisoners

...restitution has not been used to any ...at degree with Georgia prisoners ...e legal limitations placed on prison ...s and low or non-existent inmate ... viable prison industries program ...ake restitution as successful with ...as it is with probationers and parol-... example, inmates could earn earlier ...onsideration by making restitution ...ges in prison industries. Some of the ...' salaries could be returned to vic-...me could be used to subsidize the ...system, and some could be retained ...offender to receive when he is re-... The restitution sanction has consid-... potential usefulness for the entire ...l justice system—both fiscally and ...matically.

...e directions

...orgia DCOR is already expanding ...tion programming. We hope to even-...stablish one restitution program in ... Georgia's forty-two judicial circuits. ...ly such expansion will require time, ... and local community support. To ...e that support, we plan to emphasize ...at the community can participate in ...gram. The DCOR has already begun ...ize local civic and community lead-...erve on Citizen Advisory Boards for ...unity correctional programs in their ...We are also encouraging the establish-... Community Correctional Associa-... local communities to help generate ... for improved community correc-... programs of all types.

...also plan to increase the use of com-... service restitution both alone and in ...tion with financial restitution. The typically low earning power of the offender and his frequent inability to make full financial restitution is the primary reason for this shift in program emphasis. Furthermore, community service restitution appears to be the area within which the rehabilitative potentials of restitution programming can best be realized.

Finally, we plan to use ongoing research to improve the efficiency of specific restitution programs. We need to determine the costs and social benefits of these programs so that future programs can maximize services while minimizing costs. Research will show what kinds of participants benefit most from each type of restitution program. Thus, we will know whom to select for each program and what results to expect.

The Georgia DCOR—grappling with excessive probation caseloads, seriously overcrowded prisons, and a narrow range of sentencing alternatives—is presently acknowledged to be largely ineffective. But DCOR administrators are dedicated to providing the leadership required to correct deficiencies in the current system and to make each offender directly responsible for the consequences of his own behavior. This long-range plan emphasizes pretrial diversion programs, a broad range of specialized alternatives to traditional criminal justice sanctions, a positive and objective system of contracting with inmates whereby they must *earn* their release from prison, and prerelease/aftercare programs designed to reintegrate ex-offenders into society.

Thus, restitution programming is only one aspect of the comprehensive system which Georgia is building. Since the DCOR firmly believes that offenders must be held responsible and accountable for their behavior, the development and expansion of meaningful restitution programs as an integral part of the improvement of the criminal justice system in Georgia seems inevitable. □

BILL READ is a program development specialist with Georgia's Department of Corrections/Offender Rehabilitation. He has written more about "The Georgia Restitution Program" in the anthology Restitution in Criminal Justice.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 212 Date on Bill: 2/17/83
Title: An Act relating to crime victim compensation; providing effective date
Sponsor: Pestinger and Clocksin
Requestor: HOUSE JUDICIARY

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			120.4	333.6	351.1	362.1		
Total			120.4	333.6	351.1	362.1		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

Not indicated by sponsors of bill

3. Assumptions:

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation, and we would receive 10 death claims and 5 would be awarded, including 2 claims with one dependent per incident and 3 claims with multiple dependents. There will be additional hearings as with the change in the statute, the Board will want to be certain the offender will not receive any of the compensation.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Nola K. Capp, Administrator nkc Phone: 465-3040
Division: Violent Crimes Compensation Board Date: 2/22/83

Approved by Commissioner: [signature] Date: 2/28/83
Department: PUBLIC SAFETY

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

FISCAL NOTE DETAIL
BILL NO. HB 212

EXPENDITURES		FY 83	FY 84	FY 85	FY 86
100	Personal Services	8.9	26.6	28.2	29.9
200	Travel	2.6	7.9	8.4	8.9
300	Contractual	10.7	9.6	10.2	10.8
400	Commodities				
500	Equipment	2.5			
600	Land & Structures				
700	Grants, Claims, etc.	95.7	287.0	304.2	322.5
800	Miscellaneous				
	TOTAL	120.4	333.6	351.1	372.1
FUNDING					
General Fund		120.4	333.6	351.1	372.1
Federal Funds					
Program Receipts					
Inter-Agency Receipts					
Other					
POSITIONS					
Full Time		1	1	1	1
Part Time/Seasonal					
Non-Perm					
Months		4	12	12	12

ANALYSIS:

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation. The average award is $4500.00 per claim so 26 claims would total $117,000. It is estimated the program would receive 10 death claims and 5 would be awarded: 2 claims at one dependent per incident would be $50,000 and 3 claims for multiple dependents would be $120,000 for a total estimated grant money of $287,000.

Because there will be an increase of claims, it is determined it will be necessary to have one more board meeting at a cost of $1500.00. Because of the repeal of the statute it is anticipated there would be 8 hearings at $800 for travel per hearing. The reason for more hearings is because of the change in the statute, the Board will want to be certain the offender will not receive any of the compensation and because of circumstances in some cases, they may order a hearing prior to a final determination by the Board.

The current staff for the Violent Crimes Compensation Board consists of two persons. This change in the statute would necessitate the addition of a clerk typist (range 8) and associated costs, including equipment.

(continued)

Under contractual services, there would be a need for a terminal only for the IBM displaywriter at $3000.00 per year. There would be the cost of hearing officers' fees for 8 hearings at $700 per hearing and a total cost of $5600. Since this will be a major change in the statute, the public must be made aware through TV spots, radio and newspapers. Production of the TV spots will be a one time expense as will the radio spots. These spots should cost around $6500 plus another $1000 for public notices in newspapers around the state.

The costs are assumed to begin 3/1/83.

1.	POSITION TITLE: Clerk-Typist III	RANGE/STEP: 08	BARG. UNIT: G	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT; STAFF MONTHS: 12; RP NUMBER; PCN NUMBER	BRU PRIORITY	LOCATION: Juneau	ELECTION DISTRICT: 4	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	19,176	
6.	Benefits	3,367	
7.	Supplemental Benefits	1,175	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	01	26,598
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	2,484
14.	Other		
15.	TOTAL COST		29,082

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	29,082
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

The number of claims received annually by the Violent Crimes Compensation Board has doubled since 1976 and is projected to double again during the two-year period ending 6/30/84. Yet the program has only the same two-person staff it had in 1973.

It is anticipated the change in the statute will increase the number of claims by 50. This increase, on top of the existing understaffing, will necessitate the addition of a clerk-typist and associated costs, including equipment.

Since this is a major change in the statute, all the applications, brochures and posters will have to be redone. The public must be made aware of the changes through TV, radio and newspapers, again much clerical work. There will be an increase in hearings, which must be transcribed verbatim.

The equipment costs include a desk, chair, file cabinet, table, calculator and transcriber.

13 REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

PROGRAM Crime Identification & Apprehension

BRU Violent Crimes Compensation Board

COMPONENT

Page 1 of 1

Revised Date [illegible]/22/83

FY 84

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 212 Date on Bill: 2/17/83
Title: An Act relating to crime victim compensation: providing effective date
Sponsor: Pestinger and Clocksin
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating			120.4	333.6	351.1	362.1		
Total			120.4	333.6	351.1	362.1		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

Offender Programs

3. Assumptions:

If the proposed legislation is enacted, it is anticipated there would be an increase of approximately 50 claims. It is estimated we would receive 40 assault claims (the statute covers only Assault I and II) of which we estimate 26 claims would receive compensation, and we would receive 10 death claims and 5 would be awarded, including 2 claims with one dependent per incident and 3 claims with multiple dependents. There will be additional hearings as with the change in the statute, the Board will want to be certain the offender will not receive any of the compensation.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Nola K. Capp, Administrator nkc Phone: 465-3040
Division: Violent Crimes Compensation Board Date: 2/22/83

Approved by Commissioner: [signature] Date: 2/24/83
Department:

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

ASSISTANT MINORITY LEADER

1527 H STREET
ANCHORAGE, ALASKA 99501
(907) 278-4188

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

M E M O R A N D U M

TO: Rep. Charlie Bussell
Chairman
House Judiciary Committee

DATE: March 17, 1983

FROM: Rep. Don Clocksin

SUBJECT: HB 104 - Violent Crimes Compensation

I've enclosed backup material for HB 104. Please note that this information refers to bills filed in 1982. Also attached are the two memos I have previously sent to you on HB 104.

The material can also be used as backup for HB 212.

DC:JR:blg

cc: Rep. Sam Pestinger

Attachment

VIOLENT CRIMES COMPENSATION BOARD
POSITION PAPER
ON
HB 869 (HALFORD & CLOCKSIN)

"An Act relating to crime victim compensation; and providing for an effective date."

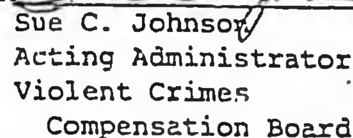
The majority of the Board (one member was unavailable for comment) supports this bill, with the exception of 18.67.130(a)(2) and 18.67.135, to which they are opposed. The Board feels these two amendments would unfairly penalize certain claimants, who because of fear of the offender, may move to dismiss criminal charges. This is particularly true in cases where both parties reside in a small, isolated community and the offender is expected to receive an extremely light sentence or will be released on bail, a common occurrence.

The Board presently has the discretion to deny claims in cases where the victim does not cooperate in prosecuting the offender, and would prefer to retain this discretion so that those few victims who can show just cause for dismissing charges are not arbitrarily denied. While the Board agrees compensation should not be awarded on a "revolving door" basis to victims of domestic violence, they feel it would be inappropriate to make a blanket exclusion such as these amendments.

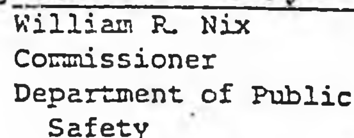
The Board would prefer 18.67.135 be amended to delete the portion dealing with dismissal and forfeiture of awards, while retaining the restriction on subsequent incidents involving the same offender when the victim initiates dismissal of criminal charges.

It should be emphasized, however, that this position does not include the opinion of the Chairman of the Board, who is the member unavailable for comment prior to the hearings on this bill.

The Department of Public Safety supports in concept HB 869.

Recommended by 
Sue C. Johnson
Acting Administrator
Violent Crimes
Compensation Board

Date 2-24-82

Approved by 
William R. Nix
Commissioner
Department of Public
Safety

Date 2-24-82

STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY
COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

JAY S. HAMMOND, GOVERNOR

POUCH N
ROOM 312, GOLDSTEIN BUILDING
JUNEAU, ALASKA 99811
PHONE:

February 23, 1982

POSITION PAPER

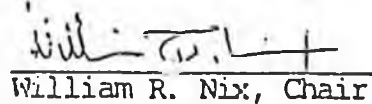
HOUSE BILL NO. 869

AN ACT RELATING TO CRIME VICTIM COMPENSATION

This Bill would amend the present Violent Crimes Compensation Act in order to include family members.

The Council on Domestic Violence and Sexual Assault agrees that innocent victims should be compensated no matter what their relationship is to the assailant. Therefore, the Council supports this Bill

The Council believes that Sec. 3 (a)(2), line 25 is a reasonable protection for the use of state funds and may be an incentive for people not to initiate dismissal of criminal charges.



William R. Nix, Chair

16LH

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
ON
CS FOR HOUSE BILL NO. 345 (HESS)

"An Act relating to compensation for victims of violent crimes; and providing for an effective date."

The Department's former concern that legislation was necessary so the perpetrator did not receive the compensation has been resolved by the compensation being paid directly to the provider in domestic violence crimes. Section 3 (c) limiting compensation to $25,000 per victim per incident also seems reasonable.

The Department of Health and Social Services supports the Committee Substitute for House Bill No. 345.

Recommended by: Elizabeth Muktarian
Elizabeth Muktarian
Director
Division of Adult and
Aging Services

Date: 4/6/81

Approved by: H. D. Beirne
Helen D. Beirne
Commissioner
Dept. of Health and
Social Services

Date: 4/18/81

M E M O R A N D U M

TO: Representative Charlie Bussell DATE: February 9, 1983

FROM: Representative Don Clocksin SUBJECT: HB 104 Violent Crimes Compensation

This memo is to request action on HB 104.

Basically, the bill allows victims of domestic violence to receive compensation under the Violent Crimes Compensation Program. The present law prohibits compensation where the victim lives with the attacker or is related to him. See AS 18.67.130 (b) (1) and (2).

The present exclusion for domestic violence victims is unfair, and denies to victims of these crimes the funds necessary to pay for treatment of their injuries. Protection from fraudulent claims is provided in this bill by the provision allowing vender payments, e.g. directly to the hospital to pay the emergency room charges.

The bill expands the rights of victims of crime, and is, in my opinion, good public policy.

We have requested a fiscal note and will provide it to you as soon as possible. Last year the Violent Crime Compensation Board and the Department of Public Safety supported a similar bill.

Thank you.

DC:JR:blg

MEMORANDUM

TO: Rep. Charlie Bussell
Chairman
House Judiciary Committee

DATE: March 9, 1983

FROM: Rep. Don Clocksin

SUBJECT: HB 104-Violent Crimes Compensation

On February 9 I sent you a memo requesting action on HB 104 and indicating that I would provide a fiscal note to you as soon as it is available. Attached is the fiscal note provided by the Violent Crimes Compensation Board.

That fiscal note is too high.

For an almost identical bill filed by me in 1982, the same person estimated a fiscal impact of $199,800. The fiscal note for HB 104 is $333,600. Included in the fiscal note is almost $50,000 in additional staff and equipment. This bill does not necessitate those expenditures. My bill should not be used as an excuse to increase the budget of the Violent Crimes Compensation Board because of other, unrelated workload problems.

DC:blg

Attachment

bcc: Co-Sponsors:
Rep. Davis
Rep. Goll
Rep. Koponen
Rep. Malone
Rep. Zharoff