



Vol. 2, No. 3
October 2002

Pennsylvania Commission on Sentencing

Research Bulletin

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A Survey of Judges, District Attorneys, and Chief Probation Officers on Restitution in Pennsylvania

by Cynthia A. Kempinen, Ph.D.

This issue of the *Research Bulletin* presents findings from a statewide survey on restitution, which was sent to all criminal court judges, district attorneys, and chief probation officers in Pennsylvania. This survey was conducted as part of a larger multi-year, multi-method, project on restitution that examined the imposition, payment, and effect of restitution on lowering recidivism.

Previous findings from this project indicated that after the enactment of the 1995 mandatory restitution law, restitution was imposed in about 58% of the restitution-eligible cases [see the November 2001 edition of the *Research Bulletin on Restitution Orders in Pennsylvania*]. One purpose of the survey was to elicit more information concerning why the level of restitution imposition was not higher. The survey contained 85 items addressing issues such as factors used to determine restitution, the type of information available when considering restitution orders, and enforcement difficulties surrounding restitution payment.

The overall response rate to the survey was 39%, which is similar to other studies involving surveys of judges. This resulted in a final sample of 225 individuals, with 147 judges [33% response rate], 30 district attorneys [45% response rate], and 49 chief probation officers [73% response rate].

Restitution Project

The survey findings presented in this Research Bulletin are part of a larger study on restitution that is being conducted by **Dr. R. Barry Ruback**, who is a professor of Crime, Law, and Justice in the Department of Sociology at Penn State University and past director of the Center for Research on Crime and Justice [CRCJ] at the University. In 1998 the CRCJ and the Sentencing Commission received a grant from the National Institute of Justice to establish a research partnership. Dr. Ruback's project on restitution was one of the initial projects under the partnership umbrella. In 2000, Dr. Ruback received funding from the Pennsylvania Commission on Crime and Delinquency to extend his research in this area. This Research Bulletin is based on a report written by Dr. Ruback, in conjunction with graduate student, **Jennifer N. Shaffer**. If you are interested in obtaining a copy of the paper, please contact Dr. Ruback at (814) 865-1307 [voice] or bruback@psu.edu [email].

Major Findings

- ◆ Overall, respondents considered victim input and victim injury to be the two primary factors used in determining restitution orders. Judges, however, were significantly more likely than district attorneys and chief probation officers to say that the offender's ability to pay, employment status, family obligations, and the type of sentence given were important in the determination of restitution.
- ◆ Overall, chief probation officers were most likely, and district attorneys were least likely, to indicate that background information about the offender was available prior to sentencing. In addition, respondents in rural counties were significantly more likely than those in urban counties to indicate that the offender's background information was available.
- ◆ Judges and district attorneys were significantly more likely than chief probation officers to view restitution collection as a problem.
- ◆ Respondents were more likely to identify offender-related factors [e.g. inability to pay] than system-related factors [e.g. too much time elapses] as contributors to restitution collection difficulties. However, respondents in urban counties were significantly more likely than those in rural counties to indicate that system-related factors were responsible for restitution collection difficulties.

Findings

Factors used to determine an order of restitution. Respondents were asked to rate the importance of eight factors in determining restitution. Table 1 shows that respondents considered victim input and the extent of victim injury as the two primary factors in determining restitution, while the offender's prior record and family obligations were viewed as less important. Judges, however, were significantly more likely than district attorneys and chief probation officers to indicate that the offender's ability to pay, employment status, obligation to family, and the type of sentence were important in the determination of restitution.

Significant differences were also found with respect to county. Respondents in urban counties were significantly more likely than those in rural counties to place importance on the offender's ability to pay, current offense, family obligations, employment status, and sentence type.

Respondents were also asked to rate the importance of factors used to determine the amount of restitution. Overall, respondents said that they relied primarily on the replacement cost, followed

by insurance estimates, original cost, and victim's personal estimate. Factors ranked as less important were the police estimate and victim's need.

Background information. Table 2 shows how respondents rated the availability of six types of background information. Overall, respondents indicated that they had a high degree of knowledge about the offender's prior record, aggravating or mitigating factors about the offense, and the offender's employment status, but were less likely to have information about the offender's assets. There were some significant differences between respondent types in that chief probation officers and judges indicated that they were significantly more likely than district attorneys to have information on the offender's income, employment status, and assets. There were also significant differences with respect to county, in that respondents in rural counties were significantly more likely than those in urban counties to report knowledge of the offender's background in all areas but criminal record and employment status.

Table 1. Mean Ratings of Factors Used to Determine Restitution by Type of Respondent and Type of County

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

Note: Ratings were made on a 7-point scale, with 7 indicating more importance placed on that factor.

a Judges were significantly more likely than district attorneys and chief probation officers to rate these factors as important.

b Respondents in urban counties were significantly more likely than those in rural counties to rate these factors as important.

Table 2. Mean Ratings of Availability of Background Information by Type of Respondent and Type of County

Background Information	Overall	Type of Respondent			Type of County	
		Judges	District	Chief	Urban	Rural
			Attorneys	Probation Officers		
Offender's criminal record	6.78	6.81	6.89	6.63	6.72	6.88
Offender's family status/ties	5.93	6.07 ^a	5.14	5.98	5.73	6.22 ^c
Offender's income	5.38	5.45 ^a	4.32	5.86 ^b	5.12	5.77 ^c
Offender's employment status	6.08	6.21 ^a	5.14	6.28 ^b	5.91	6.33
Offender's assets	4.32	4.27 ^a	3.50	5.02 ^b	4.01	4.77 ^c
Aggravating/mitigating factors	6.18	6.19	6.11	6.21	5.99	6.45 ^c

Note: Ratings were made on a 7-point scale, with 7 indicating greater availability of the information.

a Judges were significantly more likely than district attorneys to indicate that information was available.

b Chief probation officers were significantly more likely than district attorneys to indicate that information was available.

c Respondents in urban counties were significantly more likely than those in rural counties to indicate that information was available.

Collecting restitution. When respondents were asked about the collection of restitution, judges and district attorneys were significantly more likely than chief probation officers to view restitution collection as a problem. In addition, respondents in urban counties were significantly more likely than those in rural counties to indicate that collecting restitution was difficult.

Respondents were also asked to rate, on a 7-point scale, the various actions that could be taken when offenders had difficulty paying the ordered restitution. Overall, the major response to nonpayment was to allow the offender a longer period of time to pay the restitution [mean=6.40]. Other, less frequent, adjustments to restitution payment failure included: imposing community service instead [mean=2.84], lowering the restitution amount [mean=2.08], and suspending the restitution [mean=1.77].

When asked about how their county responds when an offender fails to pay a restitution order, the vast majority of respondents indicated that they would notify offenders about their lack of restitution payment via mail, telephone, and/or warrants. However, respondents in rural counties were significantly more likely to initiate proceedings for indirect criminal contempt than those in urban counties [85% vs. 69%], whereas respondents in urban counties were more likely than their rural counterparts to turn the account over to a private or government collections agency [34% vs. 16%].

Enforcement difficulties. Respondents were asked to indicate the extent to which eight factors (five system-related and three offender-related) accounted for difficulties in enforcement or collections of restitution orders. Table 3 shows that, overall, the three offender-related factors [i.e., offenders do not believe anything will happen upon nonpayment, offenders cannot be located, or offenders cannot afford to pay] were identified as being more responsible than the system-related factors for restitution enforcement difficulties. In addition, district attorneys were significantly more likely than chief probation officers to indicate that the inability to locate the offender or the offender's belief that nothing will happen as a result of nonpayment contributed to collection difficulties. Judges, however, were significantly more likely than chief probation officers to believe that the county had inadequate collection methods, allowed too much time to elapse, and provided inadequate notification.

With regard to county differences, respondents from urban counties were significantly more likely than those in rural counties to perceive system-related difficulties in collecting restitution, along with the offender's inability to pay. There was only one factor, the inability to locate the offender, that was found to be more problematic in rural counties.

Conclusion

In 1995, the legislature passed legislation requiring that restitution be mandatory. In an earlier phase of this research, however, it was found that judges imposed restitution in only 58% of the restitution-eligible cases after the enactment of this legislation. The findings from this survey shed some light concerning why restitution is not imposed in all cases. First, the survey found that victim input and injury were the two predominant factors considered in the imposition of restitution. This finding was compatible with the researchers' conversations with court officials, who indicated that restitution is often imposed only if the victim requests it, and often victims are unaware of this practice. Second, judges were significantly more likely than district attorneys or chief probation officers to indicate that the type of sentence imposed and the offender's ability to pay were important in determining restitution. As stated by one judge, "I hear only major crimes where 90+ % of the time the offenders are indigent. You can't get blood out of a stone. When you have rapes, aggravated assaults, gun-point robberies [by] those with no skills [and] who have never held a job, what good is restitution? They will be in jail for five to ten years and have no assets."

When asked about the major obstacles to collecting restitution, there was consensus among the respondents that offender-related factors were more problematic than system-related factors. As one judge stated, "This court expends significant resources, including regularly scheduled collection court proceedings, to collect limited amounts of ordered restitution due to low income levels and poverty. Nevertheless, even collection of small amounts reinforces the restorative nature of the judicial system and the need to reinforce accountability to offenders." This suggests that even though offenders may not be able to pay their full restitution, the symbolic nature of imposed restitution serves a purpose.

Table 3. Mean Ratings of Enforcement Difficulties with Restitution Collection by Type of Respondent and Type of County

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

Note: Ratings were made on a 7-point scale, with 7 indicating that the factor is perceived to account more for enforcement or collection difficulties.

a Judges were significantly more likely than chief probation officers to indicate that factor accounts for collection difficulties.

b District attorneys were significantly more likely than chief probation officers to indicate that factor accounts for collection difficulties.

c Respondents in urban counties were significantly more likely than those in rural counties to indicate that factor accounts for collection difficulties.

d Respondents in rural counties were significantly more likely than those in urban counties to indicate that factor accounts for collection difficulties.

The Pennsylvania Commission on Sentencing

P.O. Box 1200

State College PA 16804-1200

Phone: (814) 863-2797

Fax: (814) 863-2129

Web: <http://pcs.la.psu.edu>

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Survey Comments from Judges, District Attorneys, and Chief Probation Officers about Restitution

"...The only times I have refused to order restitution is where the amounts seem extraordinary and cannot be documented and/or when the complainant was involved in illegal activity as well as the defendant." [Judge]

"Since the issue of restitution leaves little discretion to the sentencing court, many restitution orders are on paper with little hope of execution." [Judge]

"Restitution is not claimed in all cases. I order full restitution where claimed. In most cases the parties agree to the amount. I will reduce fines and lengthen the time of supervision to accommodate payment." [Judge]

"We just began to accept credit cards to facilitate payments and to encourage defendants to pay their obligation in full—and then finance through the credit card company." [Judge]

"I would not order restitution to insurance companies if statute didn't require it." [Judge]

"It is routine to institute a payment plan as low as \$5 per month if warranted." [District Attorney]

"The Civil Court seems to have more enforcement powers than the Criminal Court when it comes to collecting money." [Chief Probation Officer]

"...At times the court will order unrealistic amounts on a payment plan that takes years. Act 84 has not increased payment – only has payment being made sooner. But has placed more burden on us and prison system." [Chief Probation Officer]

"Community Service Program is used to earn a source of income to pay victim's restitution; earned monies are paid to victim." [Chief Probation Officer]