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USE AND EFFECTIVENESS OF RESTITUTION AS A CRIMINAL SANCTION: IMPLICATIONS FOR OKLAHOMA

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Introduction

Restitution, that is, offenders compensating victims for harm and injury, as a means of redressing wrongdoing is well known throughout human history (Schafer, 1968; Jacobs, 1977; Nader and Combs-Schilling, 1977; McDonald, 1988). "An eye for an eye" pre-dated most other human laws and served to moderate and to set proportionality on what a victim could legitimately demand from a transgressor. As personal and communal justice gave way to the increasing formal power and scope of the "state" and its sovereigns, however, the responsibility for balancing offenses transferred from victims to public officials, as did the re-compensation.

Increasingly over the last three decades in the U.S., interest in and concern for victims of crimes and their treatment in the criminal justice system have generated renewed enthusiasm for restitution as a criminal sanction (Klein, 1997; Kennedy and Sacco, 1998). Kennedy and Sacco noted, however, that there are "no reliable statistics to show how widespread the practice has become" (1998, p. 204). As states such as Oklahoma consider alternative sanctions, therefore, a more thorough analysis of restitution seems justified.

This report examines the different types of restitution and their purposes, the advantages that they provide both victims and offenders, the reasons why they are favored by criminal justice participants, and the use of restitution generally in the U.S. Then it will summarize problems with use and implementation of restitution and the evaluation literature on its effectiveness and implementation. An overview of its current utilization in Oklahoma will follow, and, finally, the report will provide conclusions and recommendations for consideration by those interested in its future application in the state.

Types of Restitution

As practiced, restitution is generally of two types: financial or service. Those provided restitution are also generally of two types: the actual victim or the community as a whole (Galaway, 1977). Thus, possible restitution can be financial payments to the victim and/or the community, and/or service to the victim and/or the community. Financial payments to the community are usually classified as fines; therefore, most restitution orders are confined to financial payments to the victim or service to the victim or the community. The former are frequently

considered "restitution" and will be referred to herein as "victim restitution" to distinguish it from the general form. The latter are re-named "community service," usually even if the service is to the victim. According to Klein, the chief distinction between victim restitution and community service is that the former is based more on the victim's loss and the latter on the seriousness of the offense (1997).

Eglash (1977) noted that restitution/service historically has taken one of four forms: (1) spontaneous–immediately and voluntarily performed by the transgressor in recognition of the harm done; (2) mandatory–specified and required by a court in a civil or criminal action; (3) ritual–voluntarily accepted by the transgressor but specified by an authority; or (4) creative–required by an authority but left to the transgressor to determine. Of these, all but the first are available options to the criminal justice system, but the mandatory appears to be the most frequently used. (Where the agreements reached voluntarily by both the transgressor and victim, such as through victim-offender mediation (Umbreit, 1994), fall in Eglash's categorization is not clear.)

Purposes of Restitution

Galaway proposed the following purposes for restitution in the criminal justice system:

1. Redress for the victim
2. Availability of less severe punishments for offenders more proportionate to the offense
3. Rehabilitation of the offender
4. Reduced demands on criminal justice agencies
5. Reduced need for vengeance in a society (1997, p. 83).

To those who insist on the retributive function of sanctions, McAnany pointed to four ways that restitution may be equated with retribution:

1. It "clearly is based on a justice relationship between victim and offender";
2. ". . . the emphasis on the moral rightness or wrongness of the criminal act, the blame element in criminal law and sentencing, is carried over in restitution practice";
3. It "is grounded on a backward-looking, act-based approach to responsibility"; and
4. ". . . the equality among offenders that retribution underscores as essential to a system of justice is clearly present in restitution" (1978, pp. 24-25).

An interesting study of offenders assigned restitution found rough agreement with these purposes. Allen and Treger (1994) discovered that a majority of the offenders surveyed (51.2%) believed that the purpose of restitution should be repayment of the victim while 40.2% singled out punishment. (6.1% favored rehabilitation and 2.4% deterrence.) The rehabilitation function, however, should not be underestimated, nor the potential for overlap among the purposes. As one offender explained,

> Although the fine was only $600, at first I was unable to make any payments because I was unemployed. Then I began to receive threatening letters from the officer. These letters threatened me with drastic collection, including going back to court. I became scared, found a job . . . and a second job to keep the payments up to date. I have to tell you that although the system created psychological hardship for me, it really helped me get myself back on track by forcing me to find a job . . . a job I might not have found without the threats (pp. 36-37).

Keve (1978) also emphasized what he called the "therapeutic" uses of restitution, outlining four principles for ensuring its rehabilitative effect:

1. The payment should truly be an extra effort, a sacrifice of time or convenience.
2. The assigned restitutional effort should be clearly defined, measurable, and, without being easy, it should be achievable.
3. The restitution effort should be meaningful.
4. The restitutional assignment should be designed to produce rewards (pp. 60-63).

In their work advocating establishment of "restitutionary courts" as an alternative to the present adversarial, state-initiated system, Abel and Marsh (1984) detailed the interests of both victims and offenders that could potentially be served by use of restitution. The interests of crime victims, the authors asserted, fell into two groups–personal and property. The personal interests included physical integrity; physical and mental freedom from coercion and threat; emotional state, good name, and privacy; and general physical and mental health (p. 160). The property interests included earnings and earning capacity, depreciation of property value caused by crime, loss of use of property or repairs necessary to make it useful, and nonpecuniary (sentimental) value the property might have (p. 161).

Among the offenders' interests possible served by restitution were due process guarantees, rehabilitation, the problem (if any) which originally disposed the offender to the crime, and collateral interests, such as families, jobs, etc. (p.

162). To these, McDonald (1988) added as offender interests possibly served the development of usable skills, improved work habits, a "quasi"-employment record, and recognition of the consequences of one's actions.

Do criminal justice professionals see utility in the application of financial restitution and/or service to the victim and/or the community? Gandy (1978) reported results of surveys of (1) police, social work graduate students, members of women's community service organizations, and juvenile and adult probation and parole officers and (2) judges, solicitors, and practicing attorneys in South Carolina. In the first set of groups, all groups questioned expressed majority support for restitution and saw its rehabilitative value; they believed that it was best used for property crimes and favored monetary payments to victims and service to the community over service to victims. The second set of groups surveyed agreed in their interest and support, preferred its use for property crimes (with some indecision over burglary), believed it best used on juveniles and first-time offenders, and prioritized monetary restitution to victims first, service to the community second, and service to the victim last. Gandy concluded that, because of the multiple purposes and interests outlined earlier served by restitution, support for its use could and did cut across ideological lines. He stated that, "Liberals support restitution since it entails more than mere imprisonment; conservatives are attracted to the concept because it forces offenders to be responsible for their actions and pay for their crimes" (p. 127).

Thus, the use of restitution–financial or service–as a possible sanction for offenses could serve traditional criminal justice purposes, provide support for both victims and offenders in the process, and find approval in appropriate cases among practitioners and related publics. As a result and as earlier stated, its applications have grown in recent years in the U.S. It is to that use that this report now turns.

Use of Victim Restitution/Community Service in the United States

Financial restitution was first upheld as a punishment, alone or as a condition of probation, regardless of specific legislative authorization, by the District of Columbia Municipal Court of Appeals in 1944 (Klein, 1997, p. 156). Community service sentences were formalized in California in 1966 in a program to punish indigent women violating traffic and parking laws (McDonald, 1988). U.S. adoption of the practices spread with experience and broadened to include males and other offenses, especially after successful implementation of a nationwide community service program in Great Britain (McDonald, 1988) and after early foundation funding of experimental programs by the VERA Foundation (Klein, 1997).

Statewide programs gained recognition, such as the Minnesota Restitution Program in 1972, which allowed offenders to shorten or avoid sentences through paying restitution (Klein, 1997), or the Texas Restitution Center Program in 1983, which created centers to house offenders discharging victim restitution/community service sentences (Lawrence, 1990). Federal emphases also increased efforts toward restitution. In *Tate v. Short* (1971) the Supreme Court held that indigent defendants could not be held for nonwillful failure to pay fines. The court extended this ruling in 1983 to nonpayment of victim restitution, which made the community service alternative more attractive (Klein, 1997). Also, the federal Victim and Witness Protection Act of 1982 required restitution independently of probation, with victim losses and offender ability-to-pay left to judicial determination (Kennedy and Sacco, 1998, p. 204). Nevertheless, despite these state and federal catalysts for its spread, McDonald in the late 1980's reported that many courts did not use restitution of any sort as a sanction and that those that did, did not do so extensively (1988).

A March 1998 Bureau of Justice Statistics (BJS) report affirmed McDonald's conclusion, as of 1994 (Brown and Langan, 1998). Table 1 shows the penalties added to felony sentences by state courts, by offense, in 1994. Overall, state courts used restitution in only 18% of felony sentences and community service in only 7%. Property offenses received restitution sanctions more than other offense types while "other" offenses (receiving stolen property, vandalism, etc.) received the highest percentage of community service sanctions. Both offense types obviously fit a broader "property" offense category than the UCR classification used by BJS in its report. Drug and weapons offenders were less likely than violent offenders to be ordered to pay victim restitution but more likely to be ordered to perform community service. In no category, however, was a majority of offenders sentenced on felony convictions to prison or probation also sanctioned with a form of restitutionary punishment (1998, p. 12).

Why have victim restitution and community service not been more broadly embraced despite the multiple goals and interests that they embrace and their general, if abstract, support within the criminal justice community? The answer lies at least in part in two areas: (1) problems with implementation and (2) paucity of evaluation demonstrating effectiveness.

Problems with Implementing Restitutionary Programs

Davis, Smith, and Hildenbrand (1991) identified five factors closely associated with both offender compliance and victim satisfaction with restitution sanctions:

1. Ability to pay
2. Close program monitoring of offenders
3. Determination of risk factors of nonpayment
4. Improved program efforts for victims generally
5. Increased program resources (cited in Kennedy and Sacco, 1998, pp. 204-5).

Table 1. Use of Victim Restitution and Community Service by State Courts, by Offense, 1994

Most serious conviction offense	Percent of Felony Sentences with Victim Restitution	Percent of Felony Sentences with Community Service
All Offenses	**18%**	**7%**
Violent	**17%**	**4%**
Murder	9%	1%
Rape	14%	3%
Robbery	13%	2%
Aggravated Assault	20%	5%
Other	20%	8%
Property	**29%**	**8%**
Burglary	27%	6%
Larceny	26%	8%
Fraud	38%	10%
Drug	**11%**	**6%**
Possession	8%	8%
Trafficking	14%	5%
Weapons	**9%**	**6%**
Other	**14%**	**10%**

SOURCE: Jodi M. Brown and Patrick A. Langan, *State Court Sentencing of Convicted Felons, 1994* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, March 1998), p. 12.

McDonald (1988) reported that satisfaction of judges with restitution depended on:

1. Strict enforcement
2. Clear bureaucratic responsibility for ensuring compliance
3. A perception of punitiveness.

If restitution in general is still not as widely used as possible, it is likely that the reason has to do with failure to achieve these factors adequately.

Indeed, general listings of problems with restitution by students of the process have catalogued many failures in these areas. For example, one author cited the following as problems:

1. Inability to collect from indigent offenders
2. Lack of information about offenders' assets
3. Inappropriate payment schedules
4. Lack of resources to enforce restitution payments (*Criminal Justice Newsletter*, 1997)

Abel and Marsh added these difficulties:

1. Appropriate application of restitution to violent offenders, particularly murderers
2. Offenders who will not work
3. Class differences in application
4. The government's role/responsibilities for providing work when other sources unavailable
5. The effect of inflation on payment schedules
6. The apportionment of restitution when insurance has been obtained
7. Court discretion in application (1984, pp. 183-184).

Hudson and Chesney (1978) also point to problems of application when a business is the victim, as is the usual case, rather than an individual.

Faced with these problems, it is relatively understandable that judges are hesistant to approve victim restitution or community service and that the sanctions, when applied, are predominantly for low-cost property offenses in which monetary amounts or service hours are comparatively small. Similarly, offenders unable or unwilling to pay and victims uncertain or dissatisfied about the amount of repayment are unlikely to embrace the practice. It would be useful, therefore, to know how and under what conditions restitution programs of all types are most effective. That requires attention to the available evaluation work on the topic.

Evaluation of Victim Restitution and Community Service

Unfortunately, as noted earlier, research on restitution effectiveness is not extensive, contributing in part to the failure of the practice to disseminate more widely. However, evaluation efforts have been made over the last two decades, giving hope that the scarcity of information will improve.

In 1977, Galaway concluded his analysis of the development of restitution with five questions that should be asked of any restitution program when considering its funding or continuation (1977). He asked

1. Is the type of restitution requirement to be imposed clear and stated explicitly?
2. Is the purpose or desired outcome of restitution clear?
3. Is the group of offenders for whom this type of restitution is thought to lead to the desired outcome clearly specified?
4. Is restitution the sole criminal justice sanction to be required of these offenders?
5. Is there a project evaluation design that will permit reasonably confident conclusions concerning the relation of restitution to the accomplishment of the purposes? (pp. 84-85)

Presumably, positive responses will provide the context in which the project evaluation design spoken of can be pursued.

An early effort at evaluation was the National Evaluation of Adult Restitution Programs in 1977, sponsored by the now-departed Law Enforcement Assistance Administration. Assigned to evaluate seven restitution programs, the National Evaluation outlined the sorts of questions necessary for any such evaluation, summarized briefly as follows:

1. Who are the offenders being assigned to restitution, and what characteristics of offenders make success more or less likely?
2. Who are the victims who are being repaid, and what characteristics of victims make success more or less likely?
3. What kind of incident characteristics (offenses, contexts, victim-offender relationship, etc.) are the primary bases for restitution, and how are they related to success?
4. How are restitution plans implemented and ended, with what incentives, sanctions, and community supports?
5. How do the extent and type of restitution relate to the characteristics of offenders, victims, and incidents?

6. To what extent are restitution orders met, and what reasons account for failures?
7. Compared to a matched set of offenders not receiving restitution, how do those ordered to restitution do in recidivism, employment and home stability, and changes in attitudes and personality characteristics?
8. How do attitudes of victims in restitution programs compare to those of victims not in programs after completion?
9. How does restitution affect the criminal justice process in terms of case processing time, proportion of offenders incarcerated, etc.?
10. Does restitution work better at some points in the criminal justice system than others, such as whether it is a sentencing alternative versus a component of a work release program?
11. What are the cost-effectiveness implications of restitution versus other sentencing alternatives? (Warren, 1978, pp. 113-114)

McDonald reported that, despite the early guidance available, few studies existed on the effectiveness of restitution programs on reducing recidivism. Of the studies that did reach defensible conclusions, most found that recidivism rates of offenders sentenced to victim restitution/community service were no worse, but no better, than those sentenced to alternatives. Nevertheless, he stated that such sanctions remained "add-on" sanctions to other, usually non-incarcerative penalties (1988).

Turning from outcome to process evaluations, Klein's review of federal studies of restitution indicated that

> the overwhelming majority of offenders, both adults and juveniles, ordered to pay restitution will comply with their orders if they are allowed to pay in installments and are monitored by probation officers or other program staff. This holds true regardless of the seriousness of the offense, the seriousness of the offender's past record or whether or not the offender is employed at the time of disposition (1997, p. 182).

More detailed support for Klein's review came from the study of Illinois probationers in 1992 by Allen and Treger. Those researchers determined that

> A statistical cross-tabulation between payment plan and outcome reflects that when full payment of the . . . restitution was articulated in the court order, there was a statistically significant . . . higher rate of compliance. Conversely, when no plan was indicated or when "best effort" or "officer's discretion" were indicated, there was a low compliance rate (1994, p. 37).

They also discovered that, ". . . if the first payment is made within 30 days there is a higher probability of full satisfaction of the . . . restitution" (p. 37). Allen and Treger reported that almost two-thirds of their sample had paid in full at the time of their writing and perceived the sanction as punitive.

An interesting study of the effectiveness of victim-offender mediation programs shed light on the issues of full repayment of ordered restitution. Umbreit (1994) looked at restitution completion rates of matched samples of juvenile offenders receiving and not receiving mediation of sentences with their victims in Minneapolis and Albuquerque in 1990. His findings stated that "offenders who negotiated restitution agreements with their victims through a process of mediation were significantly more likely to actually complete their restitution obligation than similar offenders [without mediation] who were ordered by the court to pay a set amount of restitution" (p. 111). 77% of the mediated offenders in Minneapolis and 93% in Albuquerque completed restitution compared to 55% and 69% in the matched, un-mediated group (p. 112). While generalizability to adult offenders is not addressed, these results do indicate that process variables can influence completion rates.

As implied in the Umbreit study, some evidence exists that restitution programs may be effective at the juvenile level. A 1989 review of juvenile restitution programs in Boise, Idaho; Washington, D.C.; Clayton County, Georgia; and Oklahoma County, Oklahoma by the federal Office of Juvenile Justice and Delinquency Prevention discovered that recidivism rates declined more greatly for randomly-chosen juveniles receiving restitution sanctions in three of the four jurisdictions. Only Oklahoma County reported no impact (OJJDP, 1989, pp. 9-10). The authors also noted the importance of formal versus "ad hoc" restitution programming, with the former demonstrating significantly better outcomes (p. 10). Similarly, a cohort analysis study of Utah juveniles in 1992 concluded that offenders receiving restitution along with probationary sentences had lower recidivism rates than offenders receiving probation alone. This result held for both informal and formal dispositions (OJJDP, 1992).

Despite these overall positive findings, the number of evaluations is small, and few come close to attaining the criteria set out above by Galaway and by Warren. Contexts remain to be delineated, and comparisons with alternative sanctions remain to be done. Some observers are bleak in their assessment. For example, Immarigeon (1998) states that "Community service and restitution are now widely used, but they are routinely applied without apparent purpose or principles. . . . Both community service and restitution are in dire need of clarity of definition and purpose, sound evaluation research on various outcome measures, and a critical rethinking of the use and position within the larger panoply of

criminal justice sanctions" (p. 59).

Nevertheless, the results presented herein indicate promise for restitution to reduce recidivism among some offenders at least as well as alternatives and to be successfully implemented if necessary conditions are met. It is now time to examine the use of victim restitution and community service in Oklahoma, with the goal of using the presentation thus far as a guide for future use.

Victim Restitution and Community Service in Oklahoma

A legislated requirement of the Oklahoma Sentencing Commission (OSC) when created in 1997 was to gather sentencing data on all felony convictions for projection and analysis purposes. In fulfillment of that requirement, OSC staff developed data sets including information on victim restitution and community service sentences for FY1997 adult felony probation cases and for FY1998 adult felony prison and probation cases. (Data on victim restitution or community service sentences from FY1997 adult felony prison cases were unavailable from the Oklahoma Department of Corrections.) The FY1997 probation data represented roughly two-thirds of all cases, and, as of this writing, over 2500 prison and probation cases for FY1998 had been coded and entered into that data set. (Data on juvenile cases were not available at this time.)

Table 2 reveals the distribution of victim restitution and community service sentences in the FY1997 probation data set by type of controlling offense, that is, the offense with the longest time to be served on probation. As the table shows, of all offenders receiving victim restitution as an additional sentence to probation in FY1997, 8.0% had violent controlling offenses, 78.9% nonviolent, 4.2% DUI, and 8.2% drug. Of all offenders receiving community service as an additional sentence to probation, 9.7% had violent controlling offenses, 51.9% nonviolent, 11.3% DUI, and 25.7% drug.

Not surprisingly in light of earlier discussion, nonviolent property offenders were most likely to have victim restitution and/or community service added to their probationary sentence. These offenses were far more likely to receive victim restitution requirements, compared to other offense types. DUI and drug offenders were predictably far more likely to have community service mandated than victim restitution, since these are frequently considered "victim-less" crimes; that they received restitution sanctions of any type at all might be more surprising. Violent offenders were slightly more likely to have to give community service than victim restitution.

Table 2. Distribution of Victim Restitution and Community Service Sentences, by Offense Type, FY1997

Controlling Offense Type	Victim Restitution	Community Service
Violent	8.0%	9.7%
Nonviolent	78.9%	51.9%
DUI	4.2%	11.3%
Drug	8.2%	25.7%
Not Applicable*	0.7%	1.4%
TOTAL	**100.0%**	**100.0%**

*–Unknown or misdemeanor cases in the data set.

Tables 3 and 4 show how community service hours and total victim restitution payments were assigned and distributed, again by offense type. Table 3 demonstrates that, of all offenders with violent controlling offenses, 78.2% received no community service penalty, 11.1% received 1–99 hours to complete, 7.6% 100-199 hours, and 2.9% 200 hours or more. Of all offenders with nonviolent controlling offenses, 66.8% received no hours to complete, 19.0% 1–99 hours, 11.4% 100-199, and 2.7% 200 hours or more. Comparable figures for all DUI offenders were 78.3%, 10.5%, 9.7%, and 1.3%; for all drug offenders,

Table 3. Distribution of Community Service Hours for FY1997 Offenders Sentenced to Probation, by Offense Type

Offense Type	0 hours	1–99 hours	100-199 hours	200-299 hours	300-399 hours	400+ hours	not specified
Violent	78.2%	11.1%	7.6%	1.8%	0.3%	0.8%	0.3%
Nonviolent	66.8	19.0	11.4	1.9	0.3	0.5	0.3
DUI	78.3	10.5	9.7	0.9	0.1	0.3	0.1
Drug	75.8	12.3	9.0	1.2	0.4	1.0	0.2
TOTAL	**72.7%**	**14.7%**	**9.9%**	**1.5%**	**0.3%**	**0.7%**	**0.2%**

75.8%, 12.3%, 9.0%, and 2.6%. Overall, of all offenders 72.7% received no community service penalty, 14.7% received 1–99 hours to complete, 9.9% 100-199, and 2.5% 200 or more.

Thus, over one-fourth of the FY1997 adult felony probation offenders in Oklahoma received a supplemental community service penalty. The most frequent range of hours to complete for all offense types was between 1 and 99, and few offenders received 200 or more. Violent and DUI offenders received the lowest percentage of penalties and nonviolent offenders the highest. Violent offenders received the highest percentage of penalties of 200 or more hours and DUI offenders the lowest.

Table 4. Distribution of Total Victim Restitution Payment for FY1997 Offenders Sentenced to Probation, by Offense Type

Offense	$0	$1-$999	$1000-$9999	$10,000-$49,999	$50,000+	Not specified
Violent	83.8%	5.3%	3.3%	1.1%	0.5%	3.2%
Nonviolent	62.3	16.8	11.1	2.7	1.6	5.4
DUI	93.9	1.7	1.3	0.1	0.0	3.0
Drug	94.2	3.2	0.3	0.0	0.0	2.2
TOTAL	**79.4%**	**9.1%**	**5.5%**	**1.3%**	**0.8%**	**3.8%**

Table 4 reveals that, of all offenders with violent controlling offenses, 83.8% were not required to pay victim restitution, 5.3% were required to pay $1-$999, 3.3% $1000-$9999, 1.1% $10,000–$49,999, and 0.5% $50,000 or more. Of all offenders with nonviolent controlling offenses, 62.3% were not required to pay victim restitution, 16.8% were required to pay $1-$999, 11.1% $1000-$9999, 2.7% $10,000-$49,999, and 1.6% $50,000 or more. Comparable figures for DUI offenders were 93.9%, 1.7%, 1.3%, 0.1%, and 0.0%; for all drug offenders, 94.2%, 3.2%, 0.3%, 0.0%, and 0.0%. Overall, of all offenders, 79.4% were not required to pay victim restitution, 9.1% were required to pay $1-$999, 5.5% $1000-$9999, 1.3% $10,000-$49,999, and 0.8% $50,000 or more.

Thus, just over one-fifth of the FY1997 adult felony probation offenders in Oklahoma were required to pay victim restitution to supplement their probation sentence. The most frequent range of required payment for all offense types was $1-$999, and few offenders were required to pay $10,000 or more. DUI and drug offenders were less likely to be required to pay, while nonviolent offenders were far more likely to be required to pay and to pay higher amounts.

While far from complete at this writing, the FY1998 data set has enough cases and demonstrates enough comparability in the probation data to affirm confidence in the FY1997 data set, as shown in Table 5. The FY1998 data set also

shows that only 0.8% of offenders (primarily nonviolent) sentenced to prison received supplemental community service sanctions while 9.5% of those sentenced to prison (again, primarily nonviolent) were required to pay victim restitution.

Table 5. Comparison of FY1997 and FY1998 Distributions of Victim Restitution and Community Service for Probation Offenders, by Controlling Offense Type

	Victim Restitution		Community Service	
Controlling Offense Type	**FY1997**	**FY1998**	**FY1997**	**FY1998**
Violent	8.0%	6.0%	9.7%	10.4%
Nonviolent	78.9	87.9	51.9	54.8
DUI	4.2	2.8	11.3	11.0
Drug	8.2	3.1	25.7	22.2

(Totals do not add to 100.0% due to unknown or other types of offenses not shown.)

Oklahoma's structured sentencing system (due to go into effect July 1, 1998, at this writing) breaks offenders into categories ("levels") based on their prior felony conviction records and some of the characteristics of the controlling offense for which they are going to prison. "Level 1" offenders, for example, are first-time convicted adult felons with no other enhancements to their sentences; "Level 2" offenders may have a low-level prior adult felony conviction or a sentence enhancement; and so on. The lower the level, the less serious and/or habitual the prior criminal history of the offender and the less serious the characteristics of the offense.

Table 6. Distribution of FY1998 Victim Restitution and Community Service Offenders, by Level and Controlling Sentence Type

	Victim Restitution			Community Service		
Controlling Sentence	**Level 1**	**Levels 2-4**	**Levels 5-9**	**Level 1**	**Levels 2-4**	**Levels 5-9**
Prison	43.9%	40.7%	15.4%	71.4%	28.6%	0.0%
Probation	74.4%	19.4%	6.2%	77.8%	20.5%	1.7%

Tables 6 and 7 illustrate the use of victim restitution and community service as sanctions based on the degree of seriousness of the offender and the offense as

determined by the offender's "level." Table 6 shows greater differences in the addition of victim restitution between prison and probation sentences than in the addition of community service. Victim restitution is assigned to more serious offenders sentenced to prison than to probation. First-time offenders receiving probation are most likely to receive both victim restitution and community service sanctions. Community service is not often assigned to serious offenders sentenced to prison or probation, who likely receive longer terms, although the data are not available to determine that at this time.

Table 7. Distribution of FY1998 Offenders Sentenced to Prison and Probation and Receiving Victim Restitution or Community Service as an Additional Sanction, by Level and Offense Type

	Victim Restitution						Community Service					
	Prison			Probation			Prison			Probation		
Offense	Level 1	Levels 2-4	Levels 5-9	Level 1	Level 2-4	Level 5-9	Level 1	Levels 2-4	Levels 5-9	Level 1	Levels 2-4	Levels 5-9
Violent	20.0%	18.9%	14.3%	4.3%	10.0%	15.8%	14.3%	0.0%	0.0%	11.0%	20.0%	0.0%
Nonvi-olent	77.5	70.3	78.6	93.9	81.7	78.9	28.6	28.6	0.0	68.9	45.0	100.0
DUI	0.0	5.4	7.1	1.7	6.7	5.3	0.0	0.0	0.0	11.8	20.0	0.0
Drug	2.5	5.4	0.0	9.7	1.7	0.0	28.6	0.0	0.0	8.3	15.0	0.0

Table 7 demonstrates the now familiar pattern of nonviolent property offenders receiving the most additional sentences of victim restitution or community service, holding true across all levels of offenders. Violent offenders are consistently second most frequent. Of interest, however, is the greater likelihood of DUI offenders having to pay victim restitution as offender levels rise. That is, first-time offenders, frequently receiving these additional penalties in the other offense categories, are unlikely to receive them if convicted of DUI. Only as the DUI offender gains more felony convictions and sentence enhancements is he/she likely to have to pay victim restititution as part of the sentence.

At present it appears that Oklahoma's use of victim restitution and community service as supplemental additions to prison or probation sentences follows the national pattern detailed earlier. Use for probationers is limited to one in five cases for victim restitution and one in four cases for community service. (The FY1998 data set is not representative enough at this writing to determine if Oklahoma uses the two sanctions more than the national figures from 1994 cited above.) Use of each sanction is predominantly toward nonviolent, property offenses and predominantly first-time adult felony offenders, except for victim restitution for offenders sentenced to prison. At least it is fair to say that

Oklahoma does use the two restitutionary options at comparable rates to the national level. Therefore, conclusions and recommendations for future use may be safely based on the material presented generally in this report.

Conclusions and Recommendations

While use of restitution, in its forms of financial restitution for victims and/or service to victims or the community, has increased on state and federal levels in recent decades, its adoption remains constrained. Applied mainly to nonviolent property offenses, restitution seems not to have established itself as well as the admittedly meager evaluation reports of its success or the individual and systemic interests and purposes that it serves appear to justify. Based on the material presented, what recommendations, then, for implementation of restitution programs should be considered by future courts and prosecutors?

1. Thorough determination of offender ability to pay
2. Development of screening mechanisms to determine best cases
3. Adequate monitoring and collection mechanisms managed by trained officials
4. Definite enforcement and lines of accountability
5. Adequate financial and personnel resources
6. Alternative sanctions available when restitution unpaid
7. Clear perceptions of punitiveness.

Allen and Treger, in their survey of Illinois probationers, discovered the following additional concerns of offenders:

1. Careful consideration of ability to pay, based on a presentence investigation
2. Proportionate amounts of restitution, based on ability to pay
3. Consistent collection efforts among probation officers
4. Improved collection and payment accounting mechanisms (1994, pp. 38-39).

Although these factors, even if fully and successfully implemented, would clearly not guarantee success of a restitutionary sanction program, enough experience has accumulated to warrant confidence for cases such as nonviolent, property crimes. Failure to attain most or all these factors will just as clearly lead to failure, and inability to match them should caution disuse. As a state comparable to the national use of restitution and a state considering expanded alternative sentencing to deal with prison overcrowding, Oklahoma could profit from consideration of these factors and their supporting evidence and from deliberate implementation where possible.

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