

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
Judiciary Committee  
Subcommittee on Crime and Corrections

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Public Hearing on House Bill 1744 :  
and 1745 (Restitution) :  
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Pages 1 through 93 Room 140  
Main Capitol Building  
Harrisburg, Pennsylvania

Wednesday, September 10, 1997

Met, pursuant to notice, at 1:05 P.M.

BEFORE:

- REPRESENTATIVE JERRY BIRMELIN, Chairman
- REPRESENTATIVE BRETT FEESE
- REPRESENTATIVE AL MASLAND
- REPRESENTATIVE PETER DALEY
- REPRESENTATIVE DAVE MAYERNICK
- REPRESENTATIVE DONALD WALKO
- REPRESENTATIVE THOMAS CALTAGIRONE
- REPRESENTATIVE ROBERT REBER
- REPRESENTATIVE CHRIS WOGAN

ALSO PRESENT:

- BRIAN PRESKI, CHIEF COUNSEL
- JUDY SEDESSE, ADMINISTRATIVE ASSISTANT
- HEATHER BARNHART, RESEARCH ANALYST  
(Majority House Judiciary Committee)
- DAVID KRANTZ, EXECUTIVE DIRECTOR
- JOHN RYAN, SPECIAL COUNSEL
- GALINA MILOHOV, RESEARCH ANALYST  
(Minority House Judiciary Committee)

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1 CHAIRMAN BIRMELIN: Good afternoon. I'm  
2 Representative Jerry Birmelin. I'm the chairman of the  
3 subcommittee on crime and corrections and we are here this  
4 afternoon and will be again tomorrow morning for a hearing  
5 on two legislative Bills that we are going to ask for some  
6 input from the public and from those institutions in State  
7 government that have a concern over this.

8 These Bills deal primarily with the issue of  
9 restitutions. There are some other subjects in these Bills.  
10 They are Nos. 1744 and 1745. If any of you are present  
11 today and don't have a copy of them, we will be glad to  
12 provide them for you.

13 I would also add parenthetically that a third  
14 Bill is a part of this package. It is really a technical  
15 Bill. It will be numbered House Bill 1756, which  
16 essentially does a simple mandate of a reporting from the  
17 Parole Board when they release a parolee to a county, to let  
18 the county where he was adjudicated prisoner or adjudicated,  
19 let the county know where his new address is. It is a  
20 rather technical bill and is not a part of the public  
21 hearing, just introduced in the last few days. The bulk of  
22 our hearing is going to deal with the House Bill 1744 and  
23 1745.

24 We had a special session on crime in the  
25 General Assembly in the first year of Governor Ridge's

1 tenure. A rather prodigious and event-filled special  
 2 session, I might add. One of the measures that we passed  
 3 did, not unanimously, with great number of legislators  
 4 supporting it, was a piece of legislation and mandated that  
 5 restitution be considered in cases of indication of  
 6 criminals where it was appropriate. And that was a step in  
 7 the right direction.

8                   Now it is a good thing to do. But  
 9 unfortunately we have found that in the two-plus years that  
 10 legislation became law, that restitution today is varied in  
 11 whatever county the adjudication for the criminal took  
 12 place. There are 67 counties in Pennsylvania, there are 67  
 13 different ways of collecting restitution. Some counties do  
 14 an excellent job and are very concerned about the  
 15 restitution being given to the crime victim and some are not  
 16 as concerned as they ought to be.

17                   So we are attempting with these two bills to  
 18 take that mandatory restitution order one step further. We  
 19 want to put it into law, the fact that the Board of  
 20 Probation of each county is obligated to maintain records  
 21 and reports, restitution orders from the Court.

22                   So these two bills do a number of things.  
 23 Just some of the highlights are, No. 1, there will be -- it  
 24 provides for wage attachment and restitution payments which  
 25 currently is unavailable. It provides for the county

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1 records and county Probation Department to be the conduit  
2 through which the order is fulfilled.

3 A very important part of this is that 50  
4 percent of any moneys collected from a convicted criminal  
5 will go to restitution. So, for example, if the restitution  
6 order is for \$5000 and the criminal is paying a \$100 a  
7 month, \$50 a month is going to go towards that \$5000  
8 restitution payment until it is paid.

9 At that point when all of the restitution is  
10 paid, then the remainder can go to whatever court cost and  
11 fines and other charges that have been placed against that  
12 criminal. But what we have done is we believe that we go  
13 through this legislation is if it is enacted, we will  
14 elevate the status of the crime victim in Pennsylvania so  
15 that he or she is on an equal footing. It is not that way  
16 today unfortunately, and so we think that legislation is  
17 necessary to make this happen.

18 We don't claim that this is perfect  
19 legislation, I've been here 13 years and haven't seen any  
20 yet anyway. And so we are amenable to suggestions as to how  
21 to change it several of our witnesses today I'm sure will be  
22 in a position to give us some good suggestions.

23 We have received some written commentary.  
24 Those you that are interested in the written commentary of  
25 those who are not going to be here, you may want to contact

1 our staff to the far right and copies of any of the letters  
2 and correspondence that we have received on these Bills.

3 I will tell you that the Governor's office and  
4 myself and some other people who are vitally concerned about  
5 this issue of restitution have worked long and hard. This  
6 is the product of several months of negotiations and working  
7 group sessions and things that have involved the input of  
8 many people in Pennsylvania. Though it may not be the final  
9 product it is close to being the final product.

10 So we are looking forward to not only having  
11 the public hearing today and tomorrow, but also to the  
12 strong possibility that the House Judiciary Committee will  
13 vote on this legislation this fall and the House will vote  
14 on it this fall. I know it is not a prophecy and that's  
15 optimistic; but without optimism in politics, you don't have  
16 much hope.

17 So with no further ado, I would like to  
18 introduce the members of the panel who are seated with me  
19 here today, or just ask them to introduce themselves and  
20 I'll start with Representative Robert Reber introduce  
21 yourself on the far left.

22 REPRESENTATIVE REBER: Thank you, Mr.  
23 Chairman. I'm Bob Reber from the 146th District in Western  
24 Montgomery County.

25 REPRESENTATIVE MAYERNIK: I'm Dave Mayernik, a

1 State Representative from Allegheny County, 29th District in  
2 Pittsburgh.

3 REPRESENTATIVE WALKO: Donald Walko, State  
4 Representative of the 20th District, Allegheny County.

5 MS. BARNHART: I'm Heather Barnhart from the  
6 House Judiciary Committee.

7 REPRESENTATIVE CALTAGIRONE: I am Tom  
8 Caltagirone, Democratic Chair of the City of Reading.

9 MR. RYAN: John Ryan, Special Counsel to the  
10 Democratic Chair.

11 REPRESENTATIVE MASLAND: Al Masland, 199th  
12 District, Cumberland County.

13 CHAIRMAN BIRMELIN: Our resident swimmer  
14 extraordinaire. Are you still swimming?

15 REPRESENTATIVE MASLAND: I am still swimming,  
16 I don't think we need any restitution.

17 CHAIRMAN BIRMELIN: I would remind you, again,  
18 that we are meeting this afternoon, we have scheduled four  
19 testifiers and we are meeting again tomorrow morning  
20 beginning at 9:30, in this same room and we again will have  
21 four testifiers tomorrow morning.

22 My office will cooperate fully with anyone who  
23 has an interest in this subject if you have need for any  
24 explanations of the bills or the bills themselves, or any  
25 other input that I've had concerning them, I'll be glad to

1 talk to you.

2 We have just been joined by another member of  
3 the Committee. Circling around, that's Representative Feese  
4 from Lycoming County.

5 I'd like to call upon Mr. Bill Reznor who is  
6 Deputy Commissioner for our Intergovernmental Relations with  
7 the Department of Corrections. He has come here to testify  
8 today. Welcome.

9 MR. REZNOR: Thank you, sir.

10 CHAIRMAN BIRMELIN: You may be seated.

11 MR. REZNOR: Thank you very much.

12 Representative Birmelin and members of the Committee, the  
13 Pennsylvania Department of Corrections Commissioner, Martin  
14 F. Horn -- I'm sorry. The Pennsylvania Department of  
15 Corrections Commissioner, Martin F. Horn, sincerely regrets  
16 that he is unable to attend today's hearing and has  
17 requested me to present to you his statement. So if I may,  
18 he wished me to thank you for the opportunities to appear  
19 before you today to speak to the most -- this most important  
20 issue.

21 Over the last two and one half years, Governor  
22 Ridge and the General Assembly have made remarkable and long  
23 overdue changes in the criminal justice system. Most  
24 importantly, you have established for all time the principle  
25 that in Pennsylvania, victims count and must be represented



1 throughout the criminal justice process.

2           For that reason, the Bill that you are  
3 discussing today is so very important. It represents a  
4 continuation of the commitment that was made to victims of  
5 crime during the special session which concluded almost two  
6 years ago. As you will recall during that session, Act 12  
7 took a very important first step by making restitution a  
8 mandatory component of offenders' sentences.

9           Yet, while it is now certain that the courts  
10 will order restitution in individual criminal cases, it is  
11 far less certain that these orders will be satisfied by the  
12 offender and that victims and communities will be made whole  
13 again for the criminal conduct perpetrator.

14           Recently, a study by the Justice Fellowship  
15 documented the low percentage of restitution collected in  
16 counties. Even more recently, a series of articles appeared  
17 in the Philadelphia Inquirer last month and further  
18 illustrated numerous short comings with the system of  
19 collections.

20           Isn't it simple sense that the debt assessed  
21 an offender follow him or her to prison and that there be a  
22 mechanism whereby the offender's debt is collected from  
23 moneys received by them while confined. Why should the  
24 prison sentence, in effect, relieve the offender of his or  
25 her obligation to the victim and to society for months or

1 years at a time?

2                   The legislation that is in front of you today  
3 provides for just such a mechanism for collections. This  
4 proposal would provide the statutory authority to the  
5 Department of Corrections and County correctional facilities  
6 to tap into and make deductions from the money that inmates  
7 receive while incarcerated. Money deducted would be  
8 transmitted to the county Probation Department, in the  
9 appropriate sentencing counties so that the victims may  
10 begin to be restored, counties may begin to collect for  
11 their cost, fines, et cetera, and offenders may further be  
12 held accountable for their actions.

13                   This statutory authority notwithstanding,  
14 enhanced collections of restitution from offenders cannot  
15 succeed without also providing in statute for the transfer  
16 of information from the county to the department or to the  
17 appropriate county correctional facilities that details the  
18 amount of money that each offender owes to his or her victim  
19 and county.

20                   Under Representative Birmelin's proposal, the  
21 county Clerk of Court would be required to transmit to the  
22 department and counties correctional facilities "certified  
23 copies of all judgments for restitution and amendments of  
24 all alterations thereto, reparations, fees, costs, fines, et  
25 cetera." Further, the Prothonotary or appropriate county

1 agency must transmit to the department on a monthly basis a  
2 record of "the amount of any outstanding restitution and any  
3 other court ordered obligations owed by any defendants".

4           The Department, as well, will be required to  
5 participate in the exchange of information. Following  
6 deductions from inmate's accounts made pursuant to this act,  
7 the department must transfer to the County Prothonotary a  
8 record of each deduction made.

9           Transfer and sharing of information between  
10 the different levels of the criminal justice system are  
11 critically important to the effective operation of the  
12 system and its individual agencies including the Department  
13 of Corrections.

14           Many of you are aware of the Governor's  
15 commitment through the Justice Network, or J-Net Project, to  
16 improving the overall capacity of the system and its  
17 individual agencies to share information with one another  
18 and process offenders. We are extremely pleased that this  
19 legislation offers additional opportunities to improve the  
20 flow of information and processing of offenders throughout  
21 the criminal justice system by requiring that certain  
22 information on each offender be transferred to the  
23 department at the time the offender is committed from the  
24 sentencing county.

25           Information such as medical admissions testing

1 performed by the counties, the results of those tests, is  
2 vital to the Department and is necessary to ensure the  
3 health of our staff and our inmate population. The absence  
4 of such information hinders our ability to prevent the  
5 spread of communicable diseases such as tuberculosis and  
6 hepatitis. Further, it costs taxpayers money when tests  
7 have to be redone.

8           This proposed legislation goes a long way  
9 toward addressing existing deficiencies in the area of  
10 shared information. In doing so, the legislation provides  
11 an additional means of ensuring that the offender is held  
12 accountable for the debt he or she owes their victim and the  
13 community. The bill specifically requires the Department to  
14 advise the Board of Probation and Parole as to the extent to  
15 which an inmate has fulfilled his or her court ordered  
16 financial obligations and empowers the Board to make  
17 continuation of restitution and payment of court cost and  
18 fines a condition of parole.

19           Over the past several months, department staff  
20 have worked very closely with members of the Governor's  
21 office, the office of the Victims Advocate, the Board of  
22 Probation and Parole, and Representatives of county  
23 Probation, and Representative Birmelin's develop -- and to  
24 develop and to redefine the proposal. Our commitment to  
25 this legislation continues and we urge your support for it.

1 That concludes the written statement.

2 CHAIRMAN BIRMELIN: Thank you, Mr. Reznor,  
3 I'll ask the members of the Committee if they have any  
4 questions. I'll begin with Representative Reber.

5 REPRESENTATIVE REBER: None.

6 CHAIRMAN BIRMELIN: Representative Mayernik.

7 REPRESENTATIVE MAYERNIK: I have a question,  
8 I'll present it another time.

9 CHAIRMAN BIRMELIN: Representative Walko.

10 REPRESENTATIVE WALKO: Thank you, Mr.  
11 Chairman. Thank you, Mr. Reznor. I was just curious as far  
12 as the wage attachment, would that apply -- would the prison  
13 be equipped -- the prison system be equipped to attach some  
14 of the wages of inmates as contemplated by the legislation  
15 since many inmates are earning money while they are in  
16 prison. Has that been contemplated by the Department of  
17 Corrections?

18 MR. REZNOR: Yes, it has, with the appropriate  
19 court order, will be able to do so.

20 REPRESENTATIVE WALKO: Just out of curiosity  
21 are there more wage attachments now occurring in the  
22 Department of Corrections with inmates?

23 MR. REZNOR: No, there is -- there is  
24 currently a couple of pieces of -- that are under  
25 consideration, such as the medical co-pay which is being

1 under consideration at this point. But I'm unaware of any  
2 other attachments.

3 REPRESENTATIVE WALKO: But as you said, the  
4 attachment for this purpose would be mechanically feasible?

5 MR. REZNOR: Yes. Yes, we have a collection  
6 process now in which all of the institutions report the  
7 collection of funds that are generated from revenues and  
8 work by the inmates and put into a central accounting  
9 process and that is maintained and an accounting made and  
10 kept of each individual inmate's account. So we have the  
11 mechanics in place now.

12 REPRESENTATIVE WALKO: Thank you, Mr. Reznor.  
13 Thank you, Mr. Chairman.

14 CHAIRMAN BIRMELIN: The democratic chairman,  
15 Representative Caltagirone.

16 REPRESENTATIVE CALTAGIRONE: Thank you, Mr.  
17 Chairman. Bill, I just wanted to find out you had said  
18 previously that there were no collection of any kind taking  
19 place. If there are, in fact, PHEAA or child support or  
20 spousal support, is that not collectable at all? No?

21 MR. REZNOR: Not without the appropriate court  
22 order, we don't.

23 REPRESENTATIVE CALTAGIRONE: If there are  
24 court orders?

25 MR. REZNOR: If we have a court order we would

1 honor the Court order.

2 REPRESENTATIVE CALTAGIRONE: I was just  
3 curious about that. Counsel had mentioned that as something  
4 above that we might know that that may be taking place. The  
5 other thing I was curious about, we have other people that  
6 are going to be testifying here today about the legislation.  
7 Has there been communications, and I'm sure there must have  
8 been some discussion with some of the county organizations  
9 such as Clerk of Courts, Prothonotary, DA's, county  
10 Commissioners, and have they been included in the  
11 discussions so that they would be able to cooperate with us  
12 in this legislation once it becomes law?

13 Because as you know, it is going to be  
14 critical to have that kind of cooperation to make this whole  
15 thing function the way we like to see it.

16 MR. REZNOR: There is no question,  
17 Representative Caltagirone, that the county Commissioners  
18 and the Wardens and even the adult probation and paroles  
19 feel very strongly that information is necessary. As to the  
20 very specifics within the legislation, I don't know that  
21 that is being necessarily discussed to the extend that you  
22 might be alluded to, but we have had general discussions,  
23 yes.

24 REPRESENTATIVE CALTAGIRONE: All well  
25 intentions aside, you and I both know that a lot of the

1 cooperation has to come from the Counties in order to make  
2 sure that these things happen. Whether it is the  
3 collections and the information and then also the records,  
4 of course, which I'm vitally interested in, in following  
5 through on the prisoner from the county to the State so we  
6 can get a handle on the kind of people we are dealing with.

7           And I would just hope that we would have good  
8 dialogue with those other groups pertaining this  
9 legislation, so that when we come up with the finished  
10 product that we don't have any misunderstandings with those  
11 groups because I know commissioners and -- I know this is  
12 true probably throughout the State, Democrats and  
13 Republicans, big counties, small counties, it doesn't  
14 matter, they are always interested in the bottom line and  
15 how much it is going to cost them and their taxpayers and  
16 whether or not we will pass special mandates on them without  
17 any funding.

18           And, you know, I have to share that concern  
19 that we make sure that if there are going to be instances  
20 where it is going to cost them time with their employees to  
21 help us with this area of the law, that somehow we take that  
22 into consideration financially, so that it doesn't burden  
23 any of those offices or the Warden or any of the other  
24 groups that we are dealing with. I just mention that in  
25 passing because I know that in our rush to get legislation



1 through sometimes, we forget that we passed on -- we will  
2 pass on additional costs to the government and in their  
3 saying big brother is at it again.

4 MR. REZNOR: In my former life,  
5 Representative, I was a county Commissioner for 15 years,  
6 and I'm very mindful of that. I will say that I think all  
7 of the parties agree that the need to exchange information  
8 is tremendously important to all of us in the criminal  
9 justice system. How that's done and the particular ways in  
10 which that is done, is probably different depending on who  
11 you are talking to.

12 REPRESENTATIVE CALTAGIRONE: Thank you, Mr.  
13 Reznor. Thank you, Mr. Chairman.

14 CHAIRMAN BIRMELIN: Representative Masland?

15 REPRESENTATIVE MASLAND: Thank you,  
16 Representative Birmelin. I don't have any questions.

17 CHAIRMAN BIRMELIN: Representative Feese?

18 REPRESENTATIVE FEESE: No questions.

19 CHAIRMAN BIRMELIN: And also we have been  
20 joined by Representative Peter Daley in Washington County.  
21 Do you have any questions?

22 REPRESENTATIVE DALEY: No, Mr. Chairman, thank  
23 you.

24 CHAIRMAN BIRMELIN: Thank you very much.  
25 Representative Mayernik?

1                   REPRESENTATIVE MAYERNIK: Yes, Mr. Chairman on  
2 a related matter but one that does pertain to corrections  
3 that I've been attempting to get an answer to for the past  
4 year. It is a program that was in place by the Casey  
5 Administration and is now carried on by the Ridge  
6 Administration, one of Idle Pay.

7                   For the members of the Committee that I have  
8 not heard that term before, basically, it is when the  
9 Commonwealth of Pennsylvania, the tax dollars from the  
10 taxpayers is used to pay prisoners who are not working in  
11 prison. We are paying them an hourly rate when the  
12 Commonwealth cannot find them a job in prison.

13                   There are thousands of inmates receiving an  
14 hourly rate, that's 19 - 18 - 19 cents an hour, that adds up  
15 to over a million dollars in taxpayers dollars going to  
16 prisoners that do not to work. I'm asking you, Deputy  
17 Commissioner, if you can give me an answer of what you're  
18 doing regarding elimination of idle pay so that the  
19 taxpayers that work hard for the money are not paying  
20 prisoners not to work?

21                   MR. REZNOR: Representative, in all due  
22 respect, I am not privy to that particular area of  
23 discussion. I certainly will take your question back to  
24 Commissioner Horn and make sure the issue is raised again.

25                   REPRESENTATIVE MAYERNIK: Can you see that I

1 get an answer? It's been over a year now that I've been  
2 working on legislation trying to get a commitment from the  
3 Commissioner that we can eliminate this. I understand that  
4 they need toiletries and they need soap and things like that  
5 but they are also using it for other items of snacks and  
6 cigarettes, you name it.

7 It doesn't all go to the necessary. It just  
8 doesn't seem fair to the people we represent to pay  
9 prisoners who are not working.

10 MR. REZNOR: I'll refer that to him.

11 REPRESENTATIVE MAYERNIK: Thank you, Mr.  
12 Chairman for withstanding that --

13 CHAIRMAN BIRMELIN: Before I recognize  
14 Representative Caltagirone, I would also be interested in  
15 knowing what the answer to that question is. Representative  
16 Mayernik has raised and I would suggest that if you would  
17 ask Commissioner Horn to address his response to all of the  
18 members of the House Judiciary Committee. Representative  
19 Caltagirone.

20 REPRESENTATIVE CALTAGIRONE: Thank you, Mr.  
21 Chairman, I just have one quick follow-up. A quick  
22 follow-up was, in the accounts that the inmates have and  
23 there are inmates that do work in jobs that are assigned, I  
24 think part of the problem that we have had at the prison and  
25 such over crowding that there aren't enough jobs to go

1 around to keep them busy.

2 But that issue aside, you don't plan -- it  
3 doesn't specifically state in the legislation that you had  
4 drained of an inmate's account completely for that type of  
5 restitution. I mean, there are some needs, so much as we  
6 may not like to admit, of the prisoners for soap and  
7 toothpaste and other items of prison life that they have to  
8 have available.

9 MR. REZNOR: I talked with the Commissioner  
10 before I came over and he wanted me to convey to you if the  
11 question did come up that certainly no one would ever be  
12 deprived of the medical attention or the needs of supplies  
13 as a result of not having sufficient funds in their account.

14 REPRESENTATIVE CALTAGIRONE: Thank you. Thank  
15 you, Mr. Chairman.

16 CHAIRMAN BIRMELIN: Thank you, Mr. Reznor.

17 MR. REZNOR: You're welcome.

18 (Witness excused.)

19 CHAIRMAN BIRMELIN: Our next testifier is Mary  
20 Achilles, the Advocate of the -- Victim Advocate in the  
21 Pennsylvania Board of Probation and Parole. And I believe  
22 she has already circulated the statement and is prepared to  
23 see that and --

24 MS. ACHILLES: Thank you. Good morning -- or  
25 good afternoon. I'm here today to testify on behalf of the

1 Office of the Victim Advocate and Governor Tom Ridge in  
2 support of Representative Birmelin's proposed restitution  
3 collection legislation.

4 I'd like first to start -- talk a little bit  
5 generally about the issue of restitution. What I know about  
6 restitution, I have learned directly from the victims of  
7 crime. The crime victims have said to me over the years  
8 regarding restitution can best be articulated in three  
9 primary points. Those points are: Accountability,  
10 restoration, and the experience of justice.

11 Regarding accountability. When an offender  
12 commits a crime, they incur a debt to the victim of their  
13 crime. That debt should be treated as any other debt  
14 incurred by any law abiding citizen. It should be ordered  
15 and it should be enforced. The payment of the debt should  
16 be central to all efforts to punish and to reintegrate the  
17 offender back into the communities.

18 Offenders need to be held accountable for  
19 those debts. Our efforts pertaining to the enforcement of  
20 the offender's sentence should include a focus on the  
21 victims. Crime victims expect that offenders will be made  
22 aware of and provide a guidance in fulfilling their  
23 financial obligations. That expectation is based on the  
24 belief that if the offender is making restitution payments,  
25 they are in at least one way taking responsible for the

1 crime they committed. Not just serving time in jail, but  
2 recognizing their individual responsibility for the  
3 financial damage caused by their actions.

4           Regarding restoration. Restitution and the  
5 collection of restitution is not only about holding the  
6 offender accountable, but it is about restoring the crime  
7 victim. Restitution demonstrates an effort on the part of  
8 the offender to restore the damage caused by crime.

9           Mandatory restitution enacted by this  
10 legislation during a special session on crime was based upon  
11 the premise that no innocent victim should have to suffer  
12 damaging economic loss. The bills introduced by  
13 Representative Birmelin take the next step, whereas  
14 mandatory restitution insures that restitution is ordered.  
15 The Bills before you today ensure that restitution becomes  
16 part of our mission in the criminal justice system and  
17 provides the system with the tools necessary to engage in an  
18 aggressive restitution collection effort.

19           Regarding the victims' experience of justice.  
20 Holding offenders accountable and restoring the victim goes  
21 way beyond the sentencing order. Holding the offender  
22 accountable and restoring the victim means effectively  
23 delivering on the entire sentence imposed by the courts.

24           Unfortunately, each day across this  
25 Commonwealth, victims leave sentencing courts with a false

1 sense of justice. They leave believing the offender will  
 2 pay the restitution, only to find that there are a maze of  
 3 independent agencies ill-equipped to deliver on the  
 4 sentencing order. These independent agencies do not have  
 5 the necessary tools and information to attempt to engage in  
 6 a meaningful restitution collection effort.

7           The legislation before you today will fill in  
 8 the gaps that exist in our present system regarding  
 9 restitution collection. Clearly defining a process of  
 10 information flow and responsibility for restitution  
 11 information and collection is a logical and necessary next  
 12 step to mandatory restitution.

13           These bills place the responsibility for  
 14 obtaining the necessary restitution information from the  
 15 victim on the district attorney and provides for a method of  
 16 restitution to be ordered by the sentencing court. The  
 17 responsibility for the actual collection is placed on the  
 18 county probation department. That is where the largest --  
 19 and that is where it needs to stay. That is where the  
 20 largest number of offenders are supervised and where the  
 21 overall management is most cost effective.

22           Counties already have the authority to recoup  
 23 the cost of restitution collection efforts from the offender  
 24 and this has been highly successful in Erie county.

25           I believe that the most important aspects of

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1 this legislation are the portions pertaining to  
2 state-sentenced offenders and the development of a wage  
3 attachment ability for the collection of fines, costs and  
4 restitution. The information flow from the counties to the  
5 State and between independent county agencies and  
6 independent State agencies will help build an infrastructure  
7 which can do nothing but enhance our ability to collect  
8 restitution.

9           Too numerous are the times that victims have  
10 said to me while submitting their comments on the potential  
11 release on the inmate, that the offender has not yet paid a  
12 dime of restitution during their entire period of  
13 incarceration. This has always been a very interesting  
14 conversation for me as the Victim Advocate to have with  
15 crime victims, because I find myself explaining that it is  
16 not necessarily an issue of the offender's willingness to  
17 pay, in fact, there is no mechanism that exists to enable  
18 the offender to pay, to force the offender to pay, and/or to  
19 remind the offender to pay since the prison does not even  
20 know what is owed.

21           What I have learned of the last three years is  
22 that justice for victims is not something that is handed  
23 out. It is an actual experience. The victory they feel in  
24 the courtroom soon rings hollow when portions of the  
25 sentence that are important to them are not the system's



1 priority. Yes, they ask for punishment and yes they ask for  
2 incarceration but what they did not know at the time of  
3 sentencing was that those portions of the sentence would  
4 take priority over the restitution order.

5           That is the state of affairs in Pennsylvania  
6 today. What county you live in, whether or not the offender  
7 in your case received a State sentence or a county sentence,  
8 and whether or not the offender is incarcerated for any  
9 portion of that sentence, is a greater indicator of your  
10 chances of receiving restitution than whether or not the  
11 offender has an ability to pay.

12           Representative Birmelin's Bills will rectify  
13 that situation by mandating the flow of information from the  
14 counties to the State and between county and State agencies  
15 by authorizing the Department of Corrections and the county  
16 prisons to tap inmate accounts for the payment of  
17 restitution, by requiring the transfer of information  
18 pertaining to restitution ordered and collected to date, and  
19 by requiring the Board of Probation and Parole and county  
20 probation to require the continuing payment of restitution  
21 as a condition of supervision builds a post-sentencing  
22 system in which we can collect restitution and provide  
23 victims with an opportunity for a greater experience of  
24 justice.

25           In addition, authorizing wage attachments

1 provides Probation and Parole agents in the community with  
2 the necessary leverage to enforce restitution orders. This  
3 tool has been used successfully in Erie county to enforce  
4 restitution while keeping the offender in the community.

5 I ask that you support this legislation as  
6 part of a continued commitment to making the issues of  
7 importance to crime victims more central to our process of  
8 justice.

9 In closing, I would like to add support for  
10 the draft legislation which I believe is now 1746, that  
11 requires the Board of Probation and Patrol to provide  
12 information on the offender's address to the county  
13 probation department when the offender is released. That is  
14 an integral part of the cycle of the flow of information.  
15 Thank you, Representatives.

16 CHAIRMAN BIRMELIN: That's 1756.

17 MS. ACHILLES: I'm sorry.

18 CHAIRMAN BIRMELIN: A few bills in between  
19 1745 and when I got this one into the legislative hopper.  
20 Turning to the Committee Members again, if they have any  
21 questions. Representative Daley?

22 REPRESENTATIVE DALEY: No questions.

23 CHAIRMAN BIRMELIN: Representative Feese?

24 REPRESENTATIVE FEESE: No.

25 CHAIRMAN BIRMELIN: Representative Masland?

1                   REPRESENTATIVE MASLAND: Just a brief comment  
2 and that deals with the statement made on page two that the  
3 prison does not even know what is owed. That is really a  
4 part of the problem. You hear a lot of buzz words today  
5 people want to have a seamless system for educating and  
6 taking care of kids. While I think one of the problems in  
7 this respect that we don't have a seamless system when it  
8 comes to an incarceration.

9                   I recognize that there is some inherent  
10 attention between the Board of Probation and Parole and the  
11 Department of Corrections, and maybe that cannot be taken  
12 care of. There has been talk about putting it all into one  
13 unit. But the problem there is that the Department of  
14 Corrections wants to get people out of the prisons and the  
15 Board of Probation may not be ready to get them out and take  
16 care of it. And there is always going to be that attention  
17 deficit.

18                   But I think the heart of this Bill, these  
19 Bills, and this whole impetus is to try to at least get  
20 people talking to one another so they know what is going on,  
21 so it is not a system where the county sentences you and  
22 then you're sent to prison and who knows what happens and  
23 then you come back and the county tries to pick up from  
24 there.

25                   I've talked to a lot of victims over the

1 years, too. And there is probably nothing more frustrating  
2 than realizing somebody spent a few years in prison and they  
3 haven't done anything towards restitution and hopefully this  
4 will answer this, and that's a very astute observation on  
5 your part.

6 MS. ACHILLES: Can I say something?

7 REPRESENTATIVE MASLAND: Sure you can.

8 Pretend it was a question.

9 MS. ACHILLES: So we can have some dialogue.  
10 Actually, I'm glad you mentioned that because I worked for  
11 15 years in the Philadelphia DA's office and when I came to  
12 Corrections to start the Victim Service Program before  
13 becoming the Governor's Victim Advocate, I mean, it was an  
14 incredible experience for me because the culture of  
15 corrections and the culture of the DA's office are so  
16 diametrically opposed but it was probable one of the  
17 rewarding experiences.

18 But one of the actual most frightening  
19 experiences that I have had was the lack of information that  
20 they had, and victims informations just wasn't there. It  
21 wasn't transferred up from the county. What's interesting  
22 to the victim is that the victim and the police and the  
23 prosecutor and everybody is so, as you know, are so  
24 intimately involved and there is so much intimate knowledge  
25 about the case and then they go to a State sentence and no

1 one knows these little dynamics that make this case  
2 different from that.

3 I think particularly in terms of the  
4 restitution information that we have unintentionally failed  
5 victims in the post-sentencing process that, you know, we  
6 kind of feel good when we get that victim and we get that  
7 sentence but it doesn't get delivered to the victim because  
8 of the lack of the effective seamless process.

9 REPRESENTATIVE MASLAND: And really, part of  
10 the problem is, at least from my perspective, when I was in  
11 the DA's office, is you just assume that they would know  
12 these things. You would assume that they would have this  
13 information and the problem is we assume that everybody has  
14 the same information in front of them but unfortunately we  
15 do not.

16 MS. ACHILLES: I also just wanted to say that  
17 since I'm a Victim Advocate and I work with both the Board  
18 of Corrections, and the Board of Probation and Parole, my  
19 view is that the Commissioner of Corrections and the Board  
20 of Probation and Parole and have a very good relationship.  
21 At least they have been in terms of the issues that I've  
22 worked with them on. So I think things are getting better  
23 with those individuals.

24 CHAIRMAN BIRMELIN: Thank you. Thank you,  
25 Representative Masland. Representative Caltagirone?

1                   REPRESENTATIVE CALTAGIRONE: Thank you, Mr.  
2 Chairman. Mary, just one other thing just as to an addendum  
3 today, the computerizations of these records. I think  
4 having worked in the court computerizations over a number of  
5 years that I think this is absolutely critical that if we  
6 are going to do this and do it right the first time, that if  
7 it is, in fact, computerized, at the county level so that  
8 that exodus of things follow to the State level, I think  
9 would expedite and keep everything more orderly and  
10 organized and save us on the cost of paperwork and the  
11 shuffling back and waiting for papers and papers getting  
12 lost. I just think that hopefully that consideration will  
13 be kept up front so that as regional computerization for the  
14 judicial court system, that this will also be part of that.

15                   MS. ACHILLES: I think Deputy Commissioner  
16 Reznor talked about the J-Net Project which everyone is  
17 aware of. I actually personally upgraded host of that  
18 because you are right, it is the bottom line. I'm just not  
19 sure, I think we need to move these things simultaneously.  
20 I don't feel I can advocate the victims can wait for the  
21 J-Net to become a reality. Although I have all faith that  
22 it will be delivered.

23                   REPRESENTATIVE CALTAGIRONE: Thank you. Thank  
24 you, Mr. Chairman.

25                   CHAIRMAN BIRMELIN : Representative Walko?

1                   REPRESENTATIVE WALKO: Thank you, Mr.  
2 Chairman. I just had a thought, we had hearings at  
3 Cambridge Springs (phonetic spelling) which is a woman's  
4 prison and two inmates testified at one of our hearings and  
5 indicated that in response to my question, they would be  
6 more than willing to provide restitution. And I was  
7 wondering if in your former role, you had interaction with  
8 parole leagues, and in conversations concerning restitution  
9 with them, what were their thoughts and what were your  
10 thoughts?

11                   MS. ACHILLES: It's been interesting to me  
12 with my background to come into this world of corrections  
13 being -- the correctional system and probation and parole at  
14 the State and county level, and actually, I'm really glad  
15 that you mentioned Cambridge Springs because, in fact, that  
16 was a learning experience for me.

17                   We have a program that my office shepherds and  
18 the Department of Corrections runs, called Impact of Crime  
19 classes for inmates. And it's been very highly successful  
20 in a number of institutions and we are spreading that, with  
21 the Commissioner's support, throughout the department.

22                   At the end of the course, the instructors at  
23 Cambridge Springs encouraged the students, the inmate  
24 students, to demonstrate an attitude change. So they are  
25 making their payments, fines, costs and restitution and

1 voluntary contributions to the Crime Victims' Compensation  
2 Board, which has always been real interesting to me with a  
3 number of different entities. They talk about an inmate who  
4 can't pay and I don't think they are we are talking about  
5 the inmate who can't pay. I think we are talking about and  
6 should never lose sight of the symbolic nature of  
7 restitution.

8 I don't know how much idle pay is but I don't  
9 know what, you know, but I know that \$5 or \$10 to an inmate  
10 is much more than \$5 or \$10 to you and I. And I know that I  
11 think that in a course of a five year sentence, if victims  
12 were getting, you know, every quarter, \$25, that it would --  
13 it would have a different feel it to. It would feel that  
14 the offender is taking responsibility. My experience has  
15 been that offenders are willing, but these are not our most  
16 competent people in our community. So we need to address  
17 that with them and provide a mechanism for them to do  
18 that.

19 REPRESENTATIVE WALKO: So would it be your  
20 position that the requirement of mandatory restitution even  
21 with wage attachments would be part of the actual  
22 rehabilitation process for a parole, a former prisoner?

23 MS. ACHILLES: I think that one of the  
24 problems in the State, in the system that we have is that we  
25 view restitution as a commutative sanction. When -- and I



1 think that it is rehabilitative/restorative. Or it is  
2 restorative in the sense that it is restoring the offender  
3 in terms of him learning to be a law abiding citizen and  
4 taking responsibilities for his action in an attempt to  
5 restore the victim to their precrime economic status.  
6 Nobody loses in restitution.

7 I mean, we are not going to put somebody in  
8 jail who is totally destitute. It is not about getting  
9 blood from a stone, but it's all those people in between.

10 REPRESENTATIVE WALKO: Thank you, Ms.  
11 Achilles. Thank you, Mr. Chairman.

12 CHAIRMAN BIRMELIN: All right, if I can, as a  
13 follow up to your comments, because I think they are right  
14 on target. It is good for all of society it is not just  
15 good for the criminal and the victim. I have not seen any  
16 studies, I can't quote any. But I'm willing to bet good  
17 money that people who are involved in restitution payments  
18 making their victims whole, coming clean, if you will,  
19 admitting their guilt and paying for it, are much less  
20 likely to be repetitive as prisoners because they do not  
21 feel as they got away with it. You may have something that  
22 to prove that point. I don't know.

23 MS. ACHILLES: No, I don't. But I 100 percent  
24 agree with you.

25 CHAIRMAN BIRMELIN: Is there anybody in the

1 audience who knows -- any of those statistics, I'd be happy  
2 to see them. But I suspect that when you make a criminal  
3 pay, in terms of not just locking him or her up and, you  
4 know, or getting out of sight for 10 or 15 years but  
5 actually have to pay out of their own pocket, I think that's  
6 when it really hits home, of what they have done and the  
7 cost of what they have done.

8                   So I view this legislation as you do. Right?  
9 That we are doing something that hopefully will cover the  
10 restitution rates. We are doing something that will help  
11 all of society, and we are, hopefully, in some way going to  
12 help towards the rehabilitation of these prisoners.

13                   Quite frankly, unless they are made to pay for  
14 their crime, other than putting them away for a while, they  
15 have not learned anything. All they try to learn is how not  
16 to get caught the next time. So I don't think that that's  
17 all -- so I'm a big proponent of the Bill because of the  
18 fact that I think of the effect that they have on the  
19 criminals and of the victims.

20                   One other thing that I wanted to ask you  
21 about, you're aware, I'm sure, of the inconsistencies in  
22 different counties as to how all restitution is collected  
23 and some as opposed to others. I'd like you to specifically  
24 comment on the proposal in the House Bill 1744 that says  
25 that 50 percent of all moneys collected from these criminals

1 will go towards restitution.

2                   First, do you feel that that's a fair and  
3 adequate compromise to help restore victims and get them  
4 up.

5                   MS. ACHILLES: Yeah, I mean, you know, in the  
6 one part, I would like all of the money to go to them. But  
7 one of the things I think there is a lot of unknowns about  
8 restitution because we never mandated it to be able to  
9 collect figures but we know what everybody collects but it  
10 doesn't compare to what's ordered.

11                   But one of the things and I think that Phil  
12 Legler will be testifying to today from Erie county, and I  
13 think he can address that in that what he has said to me as  
14 a result of his program that focusing on the order is sort  
15 of off center, that it -- we should focus on collecting it.  
16 And that in the end, the order doesn't matter.

17                   So I think that yes, it is a fair compromise  
18 in terms of not knowing some exact data. But I think it's  
19 good. I think that it will be helpful, because I think also  
20 the counties and you will see in Erie county, in Erie  
21 county, the charge is \$10 a month collection fee on  
22 offenders and has a set fee for State offenders because  
23 their sentence tail is so long, and they don't have a  
24 problem with. And I think they have put very few people in  
25 jail and increased their collections three fold in the first

1 two years of operation.

2 CHAIRMAN BIRMELIN: This next question is  
3 going to be one that was proposed to me by someone else.  
4 And I neither endorsed it nor rejected it, but I ask for  
5 your comment and I know you've prepared to answer  
6 questions.

7 Suppose somebody said to you well, this  
8 legislation is fine, but what I'd like to see happen is  
9 their jail sentence, the prison sentence be reduced or ended  
10 by the time they pay the restitution, whether or not they  
11 have met the minimum sentence. What do you think?

12 MS. ACHILLES: So offenders who have money can  
13 get out early?

14 CHAIRMAN BIRMELIN: Yeah, or the next one.

15 MS. ACHILLES: I think that that pretty much  
16 is my response. How's that work? I think that I am  
17 suspicious of some, or cautious I should say is probably a  
18 more polite word, people incorporating victim's issues for  
19 the offender's benefit.

20 I think there are some national studies, I  
21 don't have copies of the surveys that victims have said they  
22 would trade off jail time for restitution. But I think  
23 that's something that belongs in the domain of the  
24 sentencing court. And I don't believe that if an offender  
25 can fulfill their financial obligation in that and entitle

1 them to some early release.

2 CHAIRMAN BIRMELIN: Okay. Thank you very much  
3 for your comments.

4 MS. ACHILLES: Could I -- I wanted to make a  
5 couple of comments, if it is okay.

6 CHAIRMAN BIRMELIN: We are ahead of schedule.  
7 Go ahead.

8 MS. ACHILLES: Okay, in the follow up to some  
9 of the questions that were asked of Deputy Commissioner  
10 Reznor. I think it is important people realize that there  
11 are two issues here, wage attachment and the authorization  
12 of the D.O.C. to tap inmate accounts.

13 The D.O.C., from my experience working there,  
14 cannot touch a particular inmate's account unless they have  
15 a specific court order from that sentencing judge. So that  
16 would require all these court orders, paper flying all over  
17 the Commonwealth.

18 What the authorization to tap in the accounts  
19 allows for them to do that, the law would say they could do  
20 that, they would promulgate some policy, which I'm sure that  
21 I would have some say into as proportion of their accounts  
22 per month or whatever would go, be sent to the counties for  
23 payment of fines, costs and restitution.

24 The wage attachment is a tool primarily for  
25 supervision. And more often I think Erie county can address

1 this better in terms of sort of a threat, a carrot, you  
2 know, if you don't do this, you know, we'll do that. And be  
3 able to wage attach the offender and keep them in the  
4 community. And I think that's really important.

5 I think one of the other issues is that one of  
6 the things that happens is that we need to start addressing  
7 the moment an offender walks into a State correctional  
8 system or county system, what they did. You know, just  
9 processing them and housing them and feeding them is a  
10 humongous task and kind of what they did.

11 I think that by having restitution, we begin  
12 to, again, incorporate well, you're going to have to pay.  
13 You owe this and, you know, the dialogue will begin between  
14 the inmate and his counselor about why they owe that. You  
15 know, that you need to take responsibility for that crime.  
16 But other than that, thanks.

17 CHAIRMAN BIRMELIN: Thank you, very much.

18 (Witness excused.)

19 CHAIRMAN BIRMELIN: Mr. Philip Legler is the  
20 supervisor of the Erie County Adult Probation Collection  
21 Bureau. Mr. Legler, I know that it is early, but it will  
22 give you more time to speak.

23 MR. LEGLER: That might be good.

24 CHAIRMAN BIRMELIN: You may begin whenever  
25 you're prepared.

1 MR. LEGLER: I'd like to thank everyone for  
2 giving me this opportunity to speak in regards to the  
3 proposed legislation on the restitution. I think I'd like  
4 to start out today and tell you a little bit about the Erie  
5 county program so you can get a better idea of where I'm  
6 coming from.

7 The Erie County Adult Probation Collection  
8 Bureau has been recognized throughout the State of  
9 Pennsylvania for the successes we have had in collecting  
10 court ordered criminal justice stats such as restitution,  
11 fines and costs, supervision fees, et cetera.

12 We started this program in March of 1993, and  
13 our first year results showed a 59 percent increase in  
14 collections, which equated to over \$750,000. We collect  
15 from approximately 3,000 to 4,000 clients at any given point  
16 in time currently. And the first year, before we started  
17 the program, we collected approximately 1.25 million  
18 dollars. The first full year of the program, we collected  
19 over two million dollars. So we were very happy with the  
20 success of three quarters of a million dollars.

21 And we have also maintained that level of  
22 success to the present day. We have stayed at or above the  
23 \$2 million level. And in most years, we have had a slight  
24 increase.

25 I feel that there is four key elements that

1 have contributed to the success that we have had in our  
2 collections program. The first of which is our computer  
3 system.

4 We currently use the Info-Con Criminal Justice  
5 Computer System. It is a business-oriented system and the  
6 main thing that it does for us, it creates billing letters  
7 and it sends out late notices to the clients automatically.  
8 That would be 31, 61, 91-day notices. And then ultimately,  
9 if the client doesn't cooperate, they have a 121-day late  
10 notice, which sets up a contempt of court hearing in front  
11 of one of our judges.

12 The second thing that we utilize to increase  
13 collections is our staff. We have an eight-member staff,  
14 and the people that we went out and looked for, and I really  
15 think this is one of the key elements to our success is, we  
16 did not go out and hire people that had a criminal justice  
17 background. We hired people that had a business background.

18 We went out and we hired, for example, the  
19 collections manager of First National Bank. We hired  
20 revenue recovery specialists for National Fuel Gas. We  
21 hired people that like to collect money. Probation officers  
22 do not like to collect money. I know because I was a  
23 probation officer.

24 We currently have about 40 probation officers  
25 on staff and when we started this program, there was one



1 probation officer that liked to collect money and he is  
2 sitting in front of you right now.

3                   The next thing that we utilize is, of course,  
4 the leverage. Now the legislature has given us some  
5 leverage and we have utilized it, I believe, to the fullest  
6 extent of the law and possibly then some. What we -- the  
7 workable sanctions that we use in Erie county are wage  
8 attachments, which is one of the things in this proposal.  
9 Legislation, I'll talk about that more later.

10                   We use, to some extent, the judgments which  
11 the law now allows us to use. And we used to a great extent  
12 contempt of court proceedings, which I referred to earlier  
13 with those 121-day hearing notices. A client in Erie county  
14 who ultimately doesn't pay, and has the ability to pay, and  
15 is not cooperating, faces up to six months in prison.

16                   The fourth thing, and this is really the life  
17 blood of the whole program, is revenue. When we began this  
18 program, the county Fathers in Erie county told us that  
19 unless you can generate a special revenue to pay for this  
20 program, you're not going to get it. So what we decided to  
21 do, and this was an idea we got from Cambria county and  
22 their President Judge, was to charge a \$10 per month  
23 administration fee.

24                   This is something that I didn't see in the  
25 legislation. I understand from talking to Mary Achilles,

1 that there may be other areas of legislation that can cover  
2 this possibility. But this \$10 a month administration fee  
3 provided the funds on a yearly basis to pay for almost the  
4 entire operation of our Collection Bureau.

5 Our collection -- our eight-person Collection  
6 Bureau with computers, postage, salaries, benefits, the  
7 whole ball of wax, costs about \$250,000 a year. The \$10 a  
8 month administration fee brings in approximately \$200,000  
9 per year. So we are almost completely self-sufficient. And  
10 what that administration fee does or how it is set up to  
11 work is for every month a client is on probation or parole  
12 and he owes us -- he or she owes us money, he also owes us  
13 \$10. So if you're on a two years probation, we take 24  
14 times ten or \$240 and we add that to whatever bill they  
15 already owed us in fines, costs, restitution, et cetera.

16 If they owed us \$1000, they now owe us \$1240.  
17 If they take 24 months or more in that example of two years  
18 probation to pay us, they have to pay the \$240 collection  
19 fee. If they pay us off quicker than 24 months, they get a  
20 \$10 per month discount. So in effect, if they pay us before  
21 the first payment is due, they save \$240.

22 What we have done is we have offer them a  
23 discount. And many people in our county pay in full as soon  
24 as they get the bill because they don't want to pay the  
25 collection fee, but it also creates \$200,000 in revenue.

1 I think if probation departments or clerk of  
2 courts throughout Pennsylvania had the incentive to collect  
3 this \$10 fee, they'd go out and start programs similar to  
4 ours. And because without that revenue, you can't go to the  
5 county administration or even to the Court and say I want to  
6 spend \$100,000 - \$200,000 to collect money and not give them  
7 some hope of recovering some of those funds.

8 As far as the legislative changes that have  
9 been proposed in this Act, I'd like to address first the  
10 title 42 legislative changes. First, the wage attachments,  
11 which I believe is section 8127a, 3.25, wage attachments in  
12 the Act had been proposed. This is something that we, as I  
13 alluded to before, we have used extensively in Erie county.  
14 We already use wage attachments. And right now, I did a  
15 count before I came down yesterday, we have approximately  
16 600 wage attachments in Erie county.

17 And our average wage attachment is probably,  
18 they vary, but it is probably about \$20 per week. And I  
19 figure that a very approximate figure, we are bringing in  
20 about \$50,000 a month just from wage attachments. That's a  
21 rough figure. But, and as you can see, that really helps us  
22 out.

23 A lot of our clients are very compliant about  
24 the wage attachments. They would prefer to be wage attached  
25 because it makes it easier for them. Some are more

1 reluctant because, to be quite honest, they don't want their  
2 employer to find out that they had some run ins with the  
3 law.

4 In Erie county, because there is no  
5 legislative backing, at this point, we do it by local order.  
6 As I traveled throughout the State and giving talks to  
7 various clerk of courts groups, judges and probation  
8 departments, I've brought up the idea of wage attachments.  
9 They are always very zealous about using them. They say  
10 that's a great idea but we can't do it because there is no  
11 statutory thing that allows us to do it.

12 And as I said before, we do it by local order  
13 in Erie county. We feel there is case law that backs that  
14 up. But I, obviously, would recommend that it be made --  
15 that this part of the Act be passed because I think it will  
16 really beef up the collection possibilities for the various  
17 counties. Because I know, for a fact, a lot of the counties  
18 and a lot of the judges are reluctant to do involuntary wage  
19 attachments.

20 Secondly, judgments, which is under section  
21 9728, the first thing I would question there, and I don't  
22 know if I'm in complete agreement with this section of the  
23 Act that's proposed, because we tried doing judgements in  
24 Erie county. Obviously, you're already allowed to do  
25 judgements per prior legislation. I don't know if I

1 interpreted this legislation right or not, but I believe it  
2 says that you have to do these judgements because it uses  
3 the word shall and I'm not sure about that.

4           But I believe that the cost of entering these  
5 judgements if they were done on all criminal cases, wouldn't  
6 be a realistic thing. In Erie county, at one point, we  
7 talked about doing a judgment against every single person  
8 that was sentenced, which is approximately 3,000 per year.  
9 We went to the Prothonotary's office, we discussed this at  
10 length and the Prothonotary told me that if we did this,  
11 they'd have to hire an extra person in our county to handle  
12 that, and the cost of that, with benefits, would be probably  
13 be \$20,000 to \$25,000 a year, just to docket those  
14 judgments.

15           In Erie county, what we did two years ago,  
16 approximately two years ago, I talked to our Administrative  
17 Judge of Criminal Court and when our clients reached 91 days  
18 delinquency, we filed judgements against them if they  
19 weren't cooperating. We isolated that particular group.

20           We did 800 judgments the first year. And then  
21 at the President -- or the Administrative Judge's request, I  
22 went back and did a study of how many of those Judges -- or  
23 judgements actually proved fruitful for us and it was only a  
24 handful and I believe it was a less than \$1000. The  
25 additional burden on the probation staff to do those 800

1 judgments, I had to take a clerical person and use 25  
2 percent of that clerical person's time to do those  
3 judgments.

4                   So in addition to hiring a new person in the  
5 Prothonotary, we also had to use up a lot of that clerical  
6 person's time and it took her away from other collection  
7 duties. We abandoned that program after that first year.  
8 And now what we do is we just do judgements on a  
9 case-by-case basis. If we see a person who is not judgment  
10 proof, that has assets, and is not cooperating, we file a  
11 judgment against them.

12                   But we do it -- and it is rare when we use  
13 them. I'm not saying that it is not a good idea, I'm just  
14 saying that I think the costs of doing this for the county  
15 may outweigh the benefits to the victims.

16                   In what I would propose there, is that rather  
17 than file judgements, perhaps, and I think the idea behind  
18 the judgments was to send the judgment to the correctional  
19 facilities so that the money could be deducted from the  
20 inmate's accounts as a method of notification. I think that  
21 the Clerk of Courts, at least in our county, could just send  
22 a bill of costs to the probation department and to the  
23 various correctional facilities and could still achieve that  
24 purpose.

25                   The third thing I would address are these

1 inmate deductions that play along with the judgments. And  
2 that's section 9728b, 5. The Departments of Corrections  
3 inmates, most of the inmates, from what I understand, have  
4 jobs within the institutions, and they get wages from the  
5 institutions, so they do have an income.

6 In Erie county, just to use a small example of  
7 this, we recently had a crime victim contact myself. Her  
8 daughter was a murder victim. She called me on the phone  
9 and she said I'd love to recover some of this money while he  
10 is in the institution. It is my understanding that he has a  
11 job in the institution and he could -- I could take some of  
12 that money or you could attach it for me.

13 I said that's a great idea. I went to the  
14 sentencing Judge, he issued an order to that effect and last  
15 month we got our first check. It was \$12.06 or something  
16 like that, and the woman was thrilled that -- because I told  
17 her, I said, you're not going to get a lot of money. But  
18 she was impressed of the fact that this man was made to pay  
19 that. So again, we did that by a local order. It is only a  
20 one-case instance of that, but I think that it is a great  
21 idea to do this with the Department of Corrections inmates.

22 However, I spoke with our county correctional  
23 facility, and I don't believe the inmates, at least at our  
24 county correctional facilities, I would believe that this is  
25 probably true throughout the other 60-some counties in

1 Pennsylvania, I don't believe that the inmates there who  
2 have jobs are getting salaries. I don't think that most  
3 counties have a set up to give them a stipend or 40-some  
4 cents an hour, or whatever the State Correctional inmates  
5 receive. I think that's what they get, something in that  
6 range.

7                   So I don't really know that they'd have any  
8 money in their inmates accounts to pay this unless they were  
9 perhaps on a work release program. And in that instance, it  
10 might work.

11                   The next area under Roman Numeral IV, there  
12 would be the 50 percent of collections to restitution. I  
13 think that's an excellent idea.

14                   One of the problems as I've gone throughout  
15 Pennsylvania and we have studied this, and we have looked at  
16 and I've seen studies that were done by other entities out  
17 of Harrisburg, in fact, from the Board of Probation and  
18 Parole where they have studied what is the priority of  
19 collection within individual counties. Well, it is a real  
20 mixed bag. Some counties collect the victim's restitution  
21 first. They don't collect anything else until that's paid  
22 in full. Other counties collect the victim's restitution,  
23 believe it or not, last. Some counties collect it along  
24 with the other things which is pretty much what we do in  
25 Erie county, it is sort of given a 50/50 standing.



1 I think to do it 50 percent to the victims is  
2 an excellent idea of the money that comes in. I think that  
3 serves both the victims interests and the county. One of  
4 the things that I think would be -- it might not be good to  
5 go 100 percent because the county has to receive some  
6 revenue too. The Probation Department, in particular, would  
7 not be able to have a collections program such as ours in  
8 Erie county, if all of the money went to restitution and  
9 probation services may also suffer.

10 I've had many victims question me as to why we  
11 don't collect their money first. I tell them that  
12 personally, I would like to collect your money first.  
13 Without you, there would be no crime, without a victim.  
14 However, if we didn't put some of the money towards the  
15 Collections Bureau's expenses, there would be no Collection  
16 Bureau and no one going out there seeking your money. And  
17 they usually understand that.

18 Another additional fact, and this is the study  
19 I've done in Erie county at the request of Mary Achilles, is  
20 that 75 to 80 percent of the cases in Erie county are  
21 victimless cases. So in those cases, it would really be a  
22 moot issue as to whether or not we collected the restitution  
23 first because there is no restitution in those cases. It  
24 would be the same. So I don't think it's going to have that  
25 great of an effect, to change the -- to put legislation

1 through that provides for half of the money to go to the  
2 victim.

3 Under Title 18 legislative changes, this was  
4 something that I had a great deal of interest in, and I  
5 asked the question there, should the District Attorney or  
6 the Probation Department provide restitution information to  
7 the court. Currently, in most counties in Pennsylvania, the  
8 Probation Department does most or all of the restitution  
9 investigation.

10 I noted that this legislation proposes that  
11 that burden be placed on the District Attorney's office. I  
12 think that's an excellent idea, because the District  
13 Attorney has earlier contact with the victim than the  
14 Probation Department does. They are often times their  
15 first -- that's the person that they meet the first in the  
16 Criminal Justice System, at least when we get to the  
17 courthouse.

18 And secondly, it has always been my belief  
19 that the District Attorney represents the victim. He is, in  
20 fact, the victim's attorney. He is the Commonwealth's  
21 attorney but I believe, in my own personal feelings, that  
22 they are the victim's attorney also. And shouldn't it be  
23 right that the victim's attorney should present the victim's  
24 loss to the court.

25 In A.R.D. hearings, and pleas with immediate

1 sentencing in Erie county and I would believe that this is  
2 the case throughout the State, the court often times makes  
3 general orders of restitution. The Court does not order  
4 the exact amount of loss to the victim at the sentencing  
5 and they defer that responsibility to the Probation  
6 Department. The Probation Department, often times, gets  
7 incomplete information and they end up in the days and weeks  
8 and months following the sentencing trying to figure out how  
9 much money is owed. That takes away from our collections  
10 process.

11           The Collection Bureau that I'm in charge of in  
12 Erie county, I would estimate that we spend 10 to 20 percent  
13 of our workday just figuring out restitution amounts so that  
14 we can't spend 100 percent of our time enforcing these  
15 restitution orders. So I think it would be great if the  
16 District Attorneys would be able to bring that information  
17 to court at the time of sentencing.

18           Also, as a side light to that issue, section  
19 1106, which is what we are addressing here under Title 18,  
20 the case law under that, which we have researched  
21 thoroughly, indicates that the judge is not to defer  
22 responsibility to figure out the restitution amount to the  
23 Probation Department. That amount is supposed to be given  
24 in its exact amount at the time of sentencing.

25           Often times, because there is incomplete

1 information, especially at pleas, an immediate sentencing  
2 where there is no background investigation done, that  
3 information is never ascertained. And then we end up having  
4 to contact the victim and it is a long process.

5 We like to get the collection process started  
6 with the client the day they are sentenced to impress upon  
7 them the seriousness. Often times we can't even tell them  
8 what the restitution amount is because we don't know yet.

9 An additional item that is not listed on the  
10 handout that I gave you is -- is a comment I wanted to make  
11 under Title 18, section 1106c2, ii. I'll just read to you  
12 what the current legislation says on that.

13 It says that, "may order restitution in a lump  
14 sum, bimonthly installments or according to such other  
15 schedule as it deems just, provided that the period of time  
16 during which the offender is ordered to make restitution  
17 shall not exceed the maximum term of imprisonment for which  
18 the offender could have been sentenced for the crime of  
19 which he was convicted." What that means is that, in my  
20 interpretation, is that a person can't be collected or  
21 ordered to make restitution for any period longer than their  
22 length of sentence.

23 What that means is that a felony one person  
24 that receives five years probation, they can be collected,  
25 under Pennsylvania law, for a total of 20 years. A felony

1 one could receive 10 to 20 years in prison, so that person  
2 can be collected for a maximum of 20 years. That gives us a  
3 pretty good amount of time to collect them.

4                   However, a misdemeanor two, D.U.I., is  
5 punishable by a maximum term of imprisonment of one to two  
6 years. Now, half of our case load in Erie county are  
7 D.U.I.'s. That means, technically, under the current law,  
8 we can only collect that case for two years. If you  
9 interpret it that way. And I think that's really a negative  
10 thing.

11                   We are telling -- and a lot of these D.U.I.  
12 cases, for example, they have extremely large amounts of  
13 restitution for medical injuries and property damage. What  
14 this law says, if it is interpreted the way it is worded  
15 there, they can only be collected for two years. I think  
16 that's something that is not addressed in this legislation.  
17 It was something that we came up with, to be honest with  
18 you, very recently and I thought it's something I should add  
19 today and maybe something you might want to look at as  
20 amending that to give the Probation Department and the judge  
21 the right to sentence and to collect these people for a  
22 longer period of time. Thank you.

23                   CHAIRMAN BIRMELIN: Thank you, Mr. Legler.  
24 Let's turn right back to where you just left off. As I  
25 understand, your objection to it, you're basically saying

1 that if the person has a real short sentence, it may be very  
2 difficult, if not impossible, to collect the full  
3 restitution?

4 MR. LEGLER: Right, because you have to  
5 collect people according to their ability to pay. The case  
6 law in Pennsylvania is explicit about that. And at two  
7 years on a D.U.I. is sometimes it's long enough. But if a  
8 person does have a large restitution order, that's pretty  
9 prohibitive.

10 CHAIRMAN BIRMELIN: Yeah, I'm looking at  
11 the -- do you have a copy of the Bill in front of you?

12 MR. LEGLER: Yeah.

13 CHAIRMAN BIRMELIN: On page four, the last  
14 three lines.

15 MR. LEGLER: M-hm.

16 CHAIRMAN BIRMELIN: On lines 20 and

17 21 --

18 MR. LEGLER: Period of time.

19 CHAIRMAN BIRMELIN: On page four, last three  
20 lines.

21 MR. LEGLER: M-hm.

22 CHAIRMAN BIRMELIN: It says that the District  
23 Attorney may, as appropriate, recommend to the court that  
24 the restitution order be altered or amended as provided in  
25 paragraph three.

1 MR. LEGLER: Right.

2 CHAIRMAN BIRMELIN: Does that effect that  
3 subsection that you had referred to?

4 MR. LEGLER: Well, what that says is--

5 CHAIRMAN BIRMELIN: Can you amend that or  
6 consider that or because this subsection that I referred to  
7 said it has to be done within the maximum term.

8 MR. LEGLER: I think what they are saying is  
9 they can amend the amount, but I don't know that there is  
10 anything provided that says that they can collect it for any  
11 longer.

12 Now, under the judgment -- the Act, it  
13 provided for judgments, it is already in effect. It says  
14 that these judgements don't need to be revived and that they  
15 basically will last forever. So, from a civil standpoint,  
16 we can place a judgment against someone. But from the  
17 criminal side, it says that we are limited as to the amount  
18 of time that we can collect it. It is kind of  
19 contradictory.

20 CHAIRMAN BIRMELIN: Would you suggest that if  
21 we altered this or if we amended this to say that the  
22 District Attorney could also recommend or could have power  
23 upon recommendation of the D.A. to extend the time period?

24 MR. LEGLER: That would probably address that.

25 CHAIRMAN BIRMELIN: Running it through the

1 D.A. in the first place, anyway?

2 MR. LEGLER: Right. I think if the District  
3 Attorney would ask for that, yes. Either that or I don't  
4 know how you would address it, exactly, if you would just in  
5 general make a longer timeframe for all cases so that they  
6 can be collected for a longer period of time.

7 This is not an issue that we have been that  
8 particularly concerned with in Erie county because it hasn't  
9 been raised a lot, if at all. But I -- in looking at it, I  
10 can see it is a potential thing that a criminal could hang  
11 his hat on. He could say hey, you can't come after me  
12 anymore. I'm a misdemeanor one and my five years is over.  
13 You can't collect from me. That's the danger.

14 I don't know how exactly how you would rectify  
15 it. But I got to believe that there is something that could  
16 be done. That's a good suggestion you have, that the  
17 District Attorney ask for a longer period of time because  
18 of a prohibitive restitution amounts that is so large.

19 CHAIRMAN BIRMELIN: That is the rational for  
20 that. The subsection that you questioned is that we have  
21 got closure this -- sooner or later, we can't let the  
22 restitution go on forever. If we can help it.

23 MR. LEGLER: Right.

24 CHAIRMAN BIRMELIN: That's why that is in  
25 there to begin with.



1 MR. LEGLER: Right.

2 CHAIRMAN BIRMELIN: But understand --

3 MR. LEGLER: I understand that.

4 CHAIRMAN BIRMELIN: -- but the front end of  
5 the problem is the short sentence. And then you know when  
6 somebody has to pay \$20,000 in two years, that's pretty  
7 tough to do.

8 MR. LEGLER: That's tough. It doesn't happen  
9 in most cases.

10 CHAIRMAN BIRMELIN: Let me ask you a couple  
11 other questions if I could. In the -- on the first page of  
12 your comments, in fact, under the four key elements which  
13 contributed to your success, No. 4 was the revenue and the  
14 \$10 a month collection fee.

15 I think what you've suggested is that you  
16 don't think that the legislation and the upper courts gives  
17 the county the authorization to collect that amount.

18 MR. LEGLER: No. But my understanding is that  
19 there was legislation just a couple of years ago, I believe,  
20 I don't have it with me, that -- one of my cohorts, I think,  
21 has it -- that states, I believe, and I spoke to Mary on the  
22 phone about this a week or so ago, that you can pass the  
23 cost of collection on to the client. Here, I'll read from  
24 it.

25 It is under costs, et cetera. It says any

1 sheriff's costs, filing fees and costs of the county  
2 probation department, clerk of courts or other appropriate  
3 governmental agencies shall be born by the Defendant, and  
4 shall be collected by the county probation department or  
5 other appropriate governmental agency, along with the total  
6 of the judgment and remitted to the appropriate agencies at  
7 the time prior to satisfaction of judgment.

8           So I guess what they are saying is that we can  
9 pass along those costs to the Defendant. What we have done  
10 in Erie county is when we enacted that \$10 administration  
11 fee, again, we did it by local order of our President Judge  
12 at the time and our Administrative Judge of Criminal Court.  
13 And in Erie county it became lawful.

14           What -- I thought that perhaps by putting it  
15 in legislation, and actually calling it whatever you will,  
16 administration fee or whatever, it would draw attention to  
17 the probation departments and say to them, look, here is  
18 some incentive to start a program and go out and pay for it.  
19 And that's really the only way you're going to get this.

20           Because the people that pay the bills in the  
21 different counties are very reluctant to hire new people and  
22 I know they are in my county and I have talked to other  
23 probation chiefs throughout Pennsylvania and they are  
24 just -- they are not of a mind to put on new people. If you  
25 can pay for it, they will do it. And it's just a good idea.

1 This may cover it and that may be correct. I just thought  
2 we can draw attention to it by calling it an administration  
3 fee.

4 CHAIRMAN BIRMELIN: Did you tell us what you  
5 just referenced?

6 MR. LEGLER: This is under title 42 97 28, I  
7 don't have -- okay, here we go. 97 28 G, it is costs, et  
8 cetera.

9 CHAIRMAN BIRMELIN: Thank you, very much. We  
10 will research that particular question. And if  
11 we feel that it is necessary to amend the legislation to  
12 read mandatory, we will. I'd be hesitant to amendment it if  
13 we already had something in statute. I also intend to put  
14 it in language in some stable form, say in a dollar amount.

15 MR. LEGLER: Right.

16 CHAIRMAN BIRMELIN: Because of inflation and  
17 things that happen. We know what happens to the dollar  
18 amount. A couple of the questions when you talk about wage  
19 attachments, page two of your testimony, how do you decide  
20 how much you're going to deduct from the wages of a payer?

21 MR. LEGLER: What we do is we use a general  
22 rule of thumb that a client should pay approximately five to  
23 ten percent of their net wages, depending on their personal  
24 economic findings -- I'm sorry, income and expense  
25 situation, family size.

1                   For example, a person who has a marginal wage  
2 of say \$1000 clear a month, and has two or three children  
3 and a wife. We might take that down to as low as five  
4 percent per month or \$50 a month. If they are on a biweekly  
5 pay period, we take \$25 a week.

6                   If we have a person that lives at home with  
7 mom and dad or a single person with a pretty good wage, has  
8 no dependents other than themselves, we might go 10 percent,  
9 we might even go 15 percent on that person. So we try to  
10 base it, again, to the case law which says the client's  
11 ability to pay.

12                   And we talk to the clients about it. We  
13 discuss it with them. Our wage attachments are involuntary,  
14 but we do discuss it with the client. A lot of our clients,  
15 when I bring up the topic of wage attachment, they say go  
16 with it.

17                   Some of them are reluctant, and as I alluded  
18 to before, they say I don't want to be wage attached because  
19 if you wage attach me, I never really told my employer about  
20 my criminal involvement here, and if they find out about it,  
21 it might jeopardize my position with the company. And what  
22 we say, that's fine, we won't wage attach you. But as soon  
23 as you miss two payments, we are not even going to call you,  
24 we are just sending the wage attachment.

25                   We will send them a letter and ask them to

1 make payments, but we warn them up front and then when we do  
2 it, sobeit. You know, we gave them an opportunity. And it  
3 works very in our county.

4 CHAIRMAN BIRMELIN: Are you aware of anything  
5 in law today that sets a ceiling level by which a wage  
6 attachment, there is no minimum or maximum, if you will?

7 MR. LEGLER: No. I guess what we use is we  
8 use just a common sense type of thing. We don't try to hit  
9 anyone harder than we feel they have the ability to do it.  
10 And we are not going to take money out of their mouth or  
11 their children's mouths, but there is nothing that says  
12 what's the most we can take out. In fact, there is no  
13 legislation that says that we can do it. We do have case  
14 law --

15 CHAIRMAN BIRMELIN: But there is wage  
16 attachment for other things?

17 MR. LEGLER: For child support.

18 CHAIRMAN BIRMELIN: Any --

19 MR. LEGLER: Right. I'm not really sure, the  
20 legislation that I've read very thoroughly over the last  
21 several years, that where you're putting it in, and  
22 basically, all it says is that it just says you can't wage  
23 attach in Pennsylvania. It gives four exemptions, I  
24 believe, like child support, and board and divorce.

25 CHAIRMAN BIRMELIN: They are included in this

1 legislation.

2 MR. LEGLER: Right, they were already in. And  
3 then --

4 CHAIRMAN BIRMELIN: And we are just adding the  
5 one?

6 MR. LEGLER: Right. And I don't know of  
7 anywhere where it actually defines that. Perhaps our  
8 Domestic Relations Office would know that.

9 CHAIRMAN BIRMELIN: Well, let me do some  
10 homework on that, I think. On the issue of judgments that  
11 you discussed. I think the bottom line is what you told me  
12 was it maybe not your words per se, it costs more or as much  
13 as --

14 MR. LEGLER: Right.

15 CHAIRMAN BIRMELIN: -- you get in return.

16 MR. LEGLER: Right.

17 CHAIRMAN BIRMELIN: Now, as you read this  
18 legislation, I think what you said was that you weren't  
19 quite sure but you think that this mandates that the county  
20 probation department will file judgements in the local  
21 courts.

22 MR. LEGLER: Right. I wasn't sure in reading  
23 it if it actually said we shall do it or if there is an  
24 option to do it. My interpretation of it was that we shall  
25 do it, and that we had to do it and I'm just not sure --

1 CHAIRMAN BIRMELIN: Well, you have raised a  
2 question in my mind, too. On page four, on line five, uses  
3 the word judgements will be transferred to the Department of  
4 Corrections. And then later on page five, about, you know,  
5 the same term, judgements. Judgments is not in the language  
6 that we are adding to the bill. However, we are adding the  
7 provision that you must do it and not that you may.

8 MR. LEGLER: Right.

9 CHAIRMAN BIRMELIN: So I'm not sure where we  
10 stand on that matter. That's another question I think we  
11 need to research a little more fully.

12 MR. LEGLER: You know, in fairness to the  
13 Committee, when I said we did 800 judgments that first year  
14 as a test and to see how they went, and then we abandoned  
15 the program. The 800 that we did, because we isolated the  
16 people that were 91 days delinquent, they were the worst 800  
17 people we could have picked. So most of them were probably  
18 judgment proof.

19 We probably could have filed judgements  
20 against everyone and they would have been -- they probably  
21 would have been of greater use. When we discussed the  
22 judgments with our Administrative Judge of Criminal Court,  
23 the feeling was by both parties, the Probation Department  
24 and himself, I believe was that to file judgements against  
25 everyone, it may not be fair to some of the clients because

1 a judgment gets picked up by a credit bureau. And in a lot  
2 of cases, that's going to help us. Because people can't get  
3 loans and they can't sell their home and get free and clear  
4 title.

5 But a lot of the people we file a judgement  
6 against and they come in and pay a couple of months later,  
7 and particularly a D.U.I. case. Well, a lot of our D.U.I.  
8 clients are very fine people. They are not the typical  
9 person that we deal with a lot of times. They are not your  
10 burglars and your thieves and that, and they are the type of  
11 person that they get that judgement on there, and it is a  
12 real black strike on their credit that they have to explain.  
13 And maybe it wasn't really necessary to do that with them.

14 I guess maybe that's sort of a lenient  
15 approach to that, but that was our personal feeling. But I  
16 have to say that the 800 people that we did the judgment on,  
17 they weren't the best people to do judgements on. So maybe  
18 it may not have been a good sampling of the community.

19 CHAIRMAN BIRMELIN: My last question for you  
20 is on the Title 18 comments that you made. Section Roman  
21 Numeral Ia, A.R.D. hearings and pleas with immediate  
22 sentencings often result in general orders of restitution  
23 with incomplete victim info for probation.

24 I know that you were saying that this is the  
25 basis on which you think that it was good idea to have the



1 District Attorney do it as far as the Court?

2 MR. LEGLER: Right.

3 CHAIRMAN BIRMELIN: I guess my question is  
4 then, what is exactly a general order of restitution as you  
5 understand it?

6 MR. LEGLER: Okay, a general order of  
7 restitution is at the time of sentencing, the judge says I'm  
8 ordering restitution and either uses the word general or  
9 just says the word restitution, and either alludes to at the  
10 time of sentencing that the restitution has to be determined  
11 later by the Probation Department or just leaves it open.

12 And what that means is that, in effect,  
13 whenever that happens, I would assume in almost 100 percent  
14 of the cases, the Probation Department in that county ends  
15 up doing the restitution investigation. That's a pretty  
16 accepted practice throughout Pennsylvania. I can certainly  
17 testify to that fact. I've talked to many probation chiefs.

18 And that's contrary to 1106. 1106 says the  
19 judge must order the exact amount of restitution at the  
20 sentencing. And a lot of times, in fairness to the court,  
21 those figures are not always available at the time of  
22 sentencing. And also, the law provides that they can be  
23 amended later if restitution is put on the record at the  
24 time of the sentencing.

25 You brought that up how the District Attorney

1 can petition later to have the restitution amount changed.  
2 But really, my main reason for -- that I would like to see  
3 an exact restitution figure at the time of sentencing is  
4 because we can't begin the collection process in its  
5 entirety without a restitution amount.

6 Often times, we bill clients and one of the  
7 things we do in Erie county is we interview the client right  
8 after they are put on probation. The day they are  
9 sentenced. Because like I testified to earlier, we like to  
10 impress upon them the seriousness of the financial end of  
11 the probation and parole immediately.

12 A lot of times we have to say to them, well,  
13 you owe \$1206 and we will get back to you about the  
14 restitution. We will send you a second bill. Sometimes it  
15 takes, as I said, days, weeks, months to iron that out.  
16 Insurance information, a lot of other factors. And it would  
17 be nice if we had that at the time of sentencing, and it  
18 also would be according to the law.

19 CHAIRMAN BIRMELIN : Thank you, very much, Mr.  
20 Legler. I'll ask the members of the Committee if they have  
21 any questions. Representative Walko?

22 REPRESENTATIVE WALKO: Thank you, Mr.  
23 Chairman. Congratulations, Mr. Legler, on a wonderful job  
24 you're doing in Erie county.

25 MR. LEGLER: Thank you.

1                   REPRESENTATIVE WALKO: For fear of being  
2 redundant of what you and the Chairman are discussing on the  
3 limitations on the time-ordered restitution, I would just  
4 like your opinion, again, on that. Ms. Achilles had alluded  
5 to three basic points which reflected the concerns of many  
6 crime victims.

7                   Namely, they want accountability, restoration,  
8 and experience of justice. Given those concerns as noted by  
9 her, would you suggest that we eliminate the provision in  
10 House Bill 1745, that the period of time during which the  
11 offender is ordered to make restitution shall not exceed the  
12 maximum term of imprisonment in which the offender could  
13 have been sentenced for the crime?

14                   Because that would seem, particularly in light  
15 of the fact that some of that restitution could be paid when  
16 they are in prison during some of that sentence. And that  
17 their salary during that time might be 41 cents an hour, if  
18 they do have prison inmate labor work. And we know that  
19 they don't necessarily have work.

20                   Would you recommend in order to allow victims  
21 to be restored and to gainful restitution, that we eliminate  
22 that provision or will there be too many open-ended cases  
23 going on ad infinitum that would just throw the entire  
24 judicial collection system out of wack?

25                   MR. LEGLER: Well, obviously I'd recommend

1 that you eliminate it. What we do in Erie county as far as  
2 open-ended cases is we do continue to collect the people  
3 until they are paid in full. After their probation or  
4 parole is over. And again, as I said, we don't revoke  
5 clients, we collect them under the leverage of contempt of  
6 court for failure to comply with the existing order of  
7 restitution or fines and costs or whatever.

8 But we do have certain cases that because we  
9 can't find the client or the client is just -- has a  
10 hardship, can't work, has a mental problem and is  
11 institutionalized, we do make determinations where we no  
12 longer pursue cases. Because we don't -- I run -- well, I  
13 shouldn't say I, but we run this collections bureau like a  
14 business. And businesses often make decisions not to pursue  
15 certain clients, they call them charge offs. At banks, and  
16 finance companies. They do charge offs because they don't  
17 feel it is worth their while to pursue the client any  
18 longer. We do the same thing. We do it rarely, but we do  
19 it. A lot of times it is because we can't find the client.

20 REPRESENTATIVE WALKO: Do you think it is  
21 possible that by eliminating that provision, we would open  
22 ourselves up to more litigation on the -- in the out years,  
23 so to speak, because the only limitation might be what is  
24 deemed to be just, would that perhaps lead to explosion of  
25 litigation?

1 MR. LEGLER: I don't understand. Litigation  
2 by whom?

3 REPRESENTATIVE WALKO: By the inmates in  
4 challenging whether or not the Court order --

5 MR. LEGLER: Whether or not it could be open  
6 ended?

7 REPRESENTATIVE WALKO: Yeah, whether or not it  
8 is a just order.

9 MR. LEGLER: I really don't know. That would  
10 be a legal question, I don't believe I can answer whether or  
11 not they could fight that. I would imagine they would. I  
12 will say this, this issue does not come up in our county.  
13 We don't have people flooding in the door saying hey, my two  
14 years are up, I don't want to be collected anymore. You  
15 can't do it quoting this legislation -- previous legislation  
16 under 1106.

17 All I'm saying is that I think it is -- you  
18 know, if you are going to protect the victim's rights -- if  
19 we are going to protect the victim's rights in Pennsylvania,  
20 to limits us, particularly in D.U.I. cases which are our  
21 biggest docket here in the State, it is the biggest problem  
22 we have criminally -- I think it is one half of our case  
23 load, approximately -- to limit us to two years to collect  
24 these restitution amounts, it is just very prohibitive.

25 And you know, our clients, our average client,

1 exclusive of restitution on a D.U.I. owes over \$1200 in Erie  
2 county. So the cost and fines would suffer too, if this  
3 issue became a -- if it was addressed more often.

4 REPRESENTATIVE WALKO: So as the law stands  
5 now, your restitution orders are actually not in accordance  
6 with the law. Is that what you're saying? I'm sorry, I'm a  
7 little confused.

8 MR. LEGLER: Our restitution orders, the  
9 judges don't say you have to pay it within two years or  
10 whatever, we just pursuit it until it is collected in full.  
11 That's our internal policy.

12 REPRESENTATIVE WALKO: Thank you, very much.

13 CHAIRMAN BIRMELIN: Representative  
14 Caltagirone?

15 REPRESENTATIVE CALTAGIRONE: Thank you, Mr.  
16 Chairman. Representative Walko pretty well nailed down the  
17 questions we were -- counsel and I were talking about. I do  
18 complement your responses. You did answer an awful lot of  
19 questions that were being asked. Thank you, Mr. Chairman.

20 CHAIRMAN BIRMELIN: Representative Masland?

21 REPRESENTATIVE MASLAND: Thank you, Mr.  
22 Chairman. I'm picking up on that same issue, we haven't  
23 talked about it enough. The problem, obviously, is going to  
24 be with D.U.I.'s and not other misdemeanor twos that  
25 basically, where the grade is based on, in many cases, the

1 amount that was stolen or the damage that was done. There  
2 you're not going to have an exorbitant amount of time  
3 necessarily amount of restitution for most misdemeanor twos,  
4 the problem being the D.U.I.'s.

5 Now we had, in part, addressed that with some  
6 legislation, I guess, back in '95 or '96, that made third or  
7 subsequent D.U.I.'s a misdemeanor one which does give some  
8 more time. My proposal might be just to make all D.U.I.'s a  
9 misdemeanor one, not change mandatory minimums, just make  
10 them all M ones and give us a little bit more time with  
11 those cases. Because that's probably, as you say, the one  
12 area where you could run into a problem.

13 MR. LEGLER: Right. And as I said, we have  
14 not run into that problem and I certainly don't want to red  
15 flag it today. But in my thoughts, that could be a  
16 potential problem in the future where people could jump on  
17 that if it became a popular item of concern.

18 But it's -- the -- I will say this, I think it  
19 takes, in general, in probation and parole, most of our  
20 clients are not paid in full at the end of their two years,  
21 the D.U.I.'s. The collection rate in probation and parole  
22 for all of the things that are owed fines, costs and  
23 restitution is not that good throughout the Commonwealth.

24 We are probable one of the better counties, I  
25 would hope, because of the efforts we put forth. But most

1 of our clients, I don't know what the percentage is, but a  
2 vast majority of our clients, when we get to that two year  
3 period, we are still collecting. And they are still paying,  
4 most of them, on time.

5                   But a lot of these people just don't have the  
6 ability to pay these figures within those limits. Sometimes  
7 it is a misdemeanor one. A lot of times on some thefts, it  
8 takes these people -- we have a lot of people that are  
9 paying between \$10 and \$20 a month. At a rate \$20 a month,  
10 we are talking about \$240 a year. If you have a \$1200 bill,  
11 it is going to take quite a long time. That is if they make  
12 every payment and a lot of them don't, takes longer than 48  
13 months -- I'm sorry, 24.

14                   REPRESENTATIVE CALTAGIRONE: One other comment  
15 and that is with respect to section 1106 in the A.R.D.  
16 hearings and the general orders of restitution. Having been  
17 in charge of A.R.D. in Cumberland county before I came over  
18 here, I imagine that can be a problem, I'm sure it is in  
19 other counties. But it doesn't have to be a problem. There  
20 is certainly, in our case at least, we did all the research  
21 and the leg work on what the restitution was before anybody  
22 ever got close to A.R.D.

23                   There was an understanding they were going to  
24 have to pay that in full, obviously, as a condition of even  
25 being in A.R.D., and we, basically, had the victim sign-off



1 on this is the amount that they will require. So it doesn't  
2 have to be a problem. And if it is, that's basically  
3 because the District Attorneys office aren't doing enough  
4 work ahead of time.

5 MR. LEGLER: Right

6 REPRESENTATIVE CALTAGIRONE: And maybe they  
7 are trying to fast track some of these people through.

8 MR. LEGLER: That's great that in that county  
9 it worked that way. Again, I can't testify for what happens  
10 in these other counties, but I do discuss this with other  
11 probation chiefs and people in collections and other  
12 counties that have a program, and what I have found is that  
13 there are certain counties in Pennsylvania where there is no  
14 restitution investigation done prior to sentencing and the  
15 judge does a general order of restitution in every case,  
16 where they know there is a victim. And the probation  
17 department or a restitution section of the probation  
18 departments contacts the victim after the sentencing. And I  
19 was aghast when I heard that.

20 REPRESENTATIVE CALTAGIRONE: I concur. Thank  
21 you.

22 CHAIRMAN BIRMELIN: Mr. Legler, we want to  
23 thank you for your testimony here. In my dealings with  
24 those, I've dealt with in developing this legislation, I  
25 have continually heard what a great job your county does and

1 I guess that's done due to your work.

2                   And I would also hope that we may be able to,  
3 if needed, call on you again as a resource person who can  
4 give us some additional advice or guidance and common  
5 experience in the trenches, if you will, that will help us  
6 in developing these legislations. And I know we have your  
7 phone number and how to get a hold of you. We know it is a  
8 long ride so we don't want to ask you to come down here  
9 unless you have to.

10                   MR. LEGLER: Okay.

11                   CHAIRMAN BIRMELIN: Perhaps if we need some  
12 additional information as to how your system works in Erie  
13 county. I think you have been very constructive today, and  
14 as the prime sponsor of these Bills, you've given me real  
15 good insight that I think we can take a look at it a little  
16 bit better and I would like to thank you for that and thank  
17 you for coming a long ways down here to visit with us.

18                   MR. LEGLER: Thank you. We will be more than  
19 willing to come down if you needed the help.

20                   CHAIRMAN BIRMELIN: Thank you. Our next and  
21 last testifier for this afternoon is Charles Junod who is  
22 the Assistant District Attorney with the Philadelphia  
23 District Attorney's Office. Mr. Junod, if you please come  
24 up here and give your testimony.

25                   MR. JUNOD: Good afternoon, Mr. Chairman, and

1 members of the Subcommittee. Let me first thank you for  
2 this opportunity to present testimony to you regarding this  
3 very important issue.

4           Before I move to those things, rather than  
5 just read it, there is something that the last witness --  
6 I'm not sure because I don't work with welfare fraud, but I  
7 think that the welfare fraud statute has a provision that  
8 prevents -- that allows the collection of the welfare fraud  
9 regardless of the fact that the maximum penalty is seven  
10 years and I think it's been done before. And I'm sure that  
11 something could be done to extend it.

12           Also, if there is an original probation order,  
13 that order could be extended if the restitution hasn't been  
14 paid. But I see that as a problem, too, if someone does get  
15 wise and we have a very efficient defenders association in  
16 Philadelphia to -- especially -- maybe because they weren't  
17 being collected as well as they should, they aren't looking  
18 at these things. But if there gets to be beefed up  
19 collection of restitution and they will be looking for ways  
20 out and they will land on that section of the statute and  
21 try to use that. And it could be a problem in the future if  
22 it isn't already.

23           But I'm here to express the support of  
24 Philadelphia District Attorney Lynne Abraham for House Bills  
25 1744 and 1745. She also wishes to inform you that she will

1 be working with the entire Pennsylvania District Attorneys  
2 Association to seek its full support for this proposed  
3 legislation.

4                   In my capacity as Supervising Attorney of my  
5 office's Pretrial Unit, I am responsible for overseeing my  
6 office's participation in the Philadelphia Court of Common  
7 Pleas Expedited Case Management Program which we call the  
8 Track Program. I've been involved with this program since  
9 its inception in January of 1990.

10                   The purpose of the program is to  
11 institutionalize a mechanism for the speedy disposition of  
12 cases at a conference scheduled in advance of the actual  
13 trial listing. This program is responsible for the final  
14 disposition of an average of 3,000 cases in the Court of  
15 Common Pleas in Philadelphia each year. And that figure  
16 represents nearly one third of all the Common Pleas criminal  
17 dispositions.

18                   The types of cases which are scheduled in the  
19 program include what can be described as the less serious  
20 property crimes. I am reluctant to use that term "less  
21 serious" because to the victims of these crimes and to my  
22 office, they are indeed serious. But I think that's the  
23 types of things where we get most of the restitution  
24 figures. The theft offences, although, of course, assaults  
25 result in high medical bills and victims crime fund outlays,

1 but they are also the most common type of offenses in  
2 Philadelphia.

3                   In order to cope with the enormous volume of  
4 these cases, my office has dedicated two full time  
5 victim/witness coordinators to the Track Program. These  
6 persons, as the title suggests, and whose boss used to be  
7 Mary Achilles, when she was in the District Attorney Office,  
8 are responsible for contacting thousands of victims and  
9 witnesses whose cases are scheduled in the program I just  
10 described.

11                   One thing that has become evident to me, both  
12 through personal experience and through my interactions with  
13 the victim/witness coordinator, is that victims of crime are  
14 extremely interested in obtaining restitution for the losses  
15 they suffered. In fact, if I were to choose the greatest  
16 concern of victims of these types of crimes, it would be  
17 restitution.

18                   To many victims, the Criminal Justice System's  
19 recognition that they should be made whole is the best  
20 indication to them that the system is intended to work for  
21 them, too. Understanding this, we have developed an  
22 extensive system for contacting these victims and obtaining  
23 a restitution figure to present to the judge at the time of  
24 sentencing.

25                   But for a number of reasons, such as

1 continuing medical treatment or an unresolved insurance  
2 claim, we are not always able to have an exact restitution  
3 figure available at the time of sentencing. When this  
4 occurs, we ask the judge to order that the restitution be  
5 left to be determined after sentencing, which sounds like a  
6 general restitution order from a previous speaker.

7           In our program, that the judge will always  
8 order restitution to be determined when we don't have a  
9 specific figure. And in most of the cases, despite the  
10 volume, we do. When we have determined the figure, the  
11 judge then enters an order for that amount of restitution.

12           And one suggestion that I would make is to  
13 make it clear in the legislation to specifically allow for  
14 this although on the one hand, it is not such a good idea,  
15 it might encourage the persons to not have figures at the  
16 time, it will only say restitution to be determined.

17           I'm not really sure if I'm allowed to do that  
18 although we have done it on thousands of persons and have  
19 had orders entered and haven't had a problem with it yet.  
20 But I guess we could go around it by having just make up  
21 \$100 figure and then we will amend that later. But I think  
22 it would be more appropriate if it is to be determined in  
23 the true here's what we know now and we don't know enough so  
24 leave it open.

25           There have been many recent changes in the

1 legislation and the Commonwealth concerning the restitution  
2 of crime victims. In my opinion, all these recent changes  
3 have truly benefited victims of crime, providing for  
4 mandatory restitution and the prioritizing of restitution as  
5 set forth in the 1995 amendments are particularly important.

6           What continues to be a problem is the  
7 collection of the restitution after it is ordered as part of  
8 a sentence. I sometimes feel when I report to a victim that  
9 restitution was ordered, that I'm making a false promise.  
10 We've got your restitution ordered and I should probably  
11 just turn to the side and say, I don't know if you'll get  
12 any of it, but it is ordered and I don't intend that at all  
13 but that's often the result in Philadelphia.

14           House Bill 1744 and 1745 address this concern.  
15 It includes many significant improvements in the actual  
16 collection procession. Particularly useful, in my opinion,  
17 are the provisions for entering and docketing of judgements  
18 and for wage attachments. It is predictable that many  
19 Defendants may be unable to pay restitution when ordered or  
20 for some time thereafter.

21           For this reason, it is important that once a  
22 restitution is reduced to judgment, it will not go away. If  
23 there comes a time when the Defendant does have assets, they  
24 can be used to satisfy that restitution order.

25           There are also Defendants who can pay

1 restitution orders but simply refuse to do so. Of course,  
2 the sentencing judge can find that Defendant in violation of  
3 the court order and impose sanctions such as incarceration.  
4 But both the judgement provisions and wage attachment  
5 provisions of this legislation would be greatly helpful in  
6 obtaining the goal sought -- to get the money into the hands  
7 of the victim.

8           Ensuring the payment of restitution is not  
9 just something to satisfy crime victims. I sincerely  
10 believe that imposing the requirement of restitution on the  
11 Defendants instills in them a recognition of their  
12 responsibility for their acts and enhances the likelihood of  
13 their rehabilitation. It is for this reason that not only  
14 prosecutors, but all citizens of this Commonwealth, should  
15 support this important legislation.

16           Again, let me thank you for the opportunity to  
17 appear before the Committee to give the support of  
18 Philadelphia District Attorneys Office for House Bill 1744  
19 and 1745.

20           CHAIRMAN BIRMELIN: Thank you, very much. I  
21 would like to ask you a couple of questions, if I could. I  
22 sort of wrote things down as you were speaking so I'm back  
23 to the pages when I wrote them down in your opening page you  
24 had mentioned the fact that you thought welfare fraud law  
25 could be used to extend the restitution time period beyond



1 maximum.

2 MR. JUNOD: Not to use the welfare fraud law,  
3 just that there is a precedent. The reason I notice in that  
4 room that I work in where all these dispositions occur,  
5 often welfare fraud cases come in and the person in charge  
6 of that is Peter Burson (phonetic spelling) in our office.  
7 When they have these figures of \$47,000 over three years of  
8 welfare fraud, you know, how are you going to get that at  
9 \$10 a month with a seven year limit on the statutes. And he  
10 said, and this is what I believe it, I had no reason to look  
11 for it myself, that the welfare fraud statute allows for  
12 that restitution to exceed the maximum penalties of the  
13 statute itself.

14 CHAIRMAN BIRMELIN: You're not familiar with  
15 the statute to know whether or not you're filing to a  
16 specific area of restitution or -- in this case, I guess  
17 it's probably related to the child support payment?

18 MR. JUNOD: No. It is the persons who are  
19 either working or have someone else living in the household.  
20 Persons -- whoever obtained welfare when they shouldn't have  
21 been receiving it.

22 CHAIRMAN BIRMELIN: It is not done on the wage  
23 attachment then, I --

24 MR. JUNOD: No, it is just when he gets the  
25 order of restitution at the time that they enter their

1 plea --

2 CHAIRMAN BIRMELIN: Would you ask your friend  
3 to show you where exactly in the statutes that is?

4 MR. JUNOD: Sure, sure.

5 CHAIRMAN BIRMELIN: We would appreciate that.

6 MR. JUNOD: And I'll send somebody down.

7 CHAIRMAN BIRMELIN: The second question I have  
8 for you is in your testimony on page three, when you were  
9 talking about the delay of being able to obtain a  
10 restitution figure and then you had in parens, such as  
11 continuing medical treatment or an unresolved insurance  
12 claims. Why is insurance claims to be a part of a  
13 restitution judgment?

14 MR. JUNOD: Well, I think recent amendments --  
15 at one time the case law was that insurance companies were  
16 not included as victims under the statute. Then there was a  
17 subsequent case in superior court that said, well, they are  
18 not victims, but you can order the total restitution  
19 including what the insurance company paid and then the  
20 insurance company can get it from the victim.

21 Mary and I didn't like that very much that  
22 we'd be having setting up our victims -- it didn't matter  
23 whether we liked it or not. We thought that it would be  
24 better to get the restitution to the person who actually  
25 suffered the loss. But then there is legislation that

1 amended restitution -- I mean amended the definition of  
2 victim under the restitution act to include insurance  
3 companies.

4                   And aside from the fact that I would need to  
5 know or care to know what the insurance company was out, I  
6 don't always know what the victim themselves is out until I  
7 find out what the insurance company has decided we are going  
8 to pay them. As far as medical treatment, a person could be  
9 seriously injured enough that requires rehabilitative  
10 services and maybe even that surgery that had to come six  
11 months later after fixing the scars and those type of things  
12 that you may not know.

13                   CHAIRMAN BIRMELIN: I understand the medical  
14 treatment half of what you were commenting. I was wondering  
15 why would you say if a person suffered damages we will not  
16 make the victim pay for all the damages whether or not the  
17 victim had the insurance for it?

18                   MR. JUNOD: Oh, no, I don't mean that. I  
19 meant sometimes the way that we have of determining what the  
20 total loss was, was what the insurance company is out and  
21 what the victim was out. And if we haven't had it resolved  
22 yet, we don't know what those figures would be.

23                   CHAIRMAN BIRMELIN: Thank you. On page four,  
24 you were here for the -- Mr. Legler's testimony. And you  
25 had raised the issue of enforcing judgments. It is his

1 opinion that House Bill 1744, if enacted today as is, would  
2 mean that a probation department of the county would have to  
3 file a judgment against every Defendant; is that your  
4 opinion?

5 MR. JUNOD: I would think with the shall  
6 provision, that is the magic word, in the law that says that  
7 they have to do it, I --

8 CHAIRMAN BIRMELIN: Do you agree that that  
9 should be the way it is or --

10 MR. JUNOD: Well, I'm not the expert. Since  
11 he is successful in collecting restitution, that's our  
12 ultimate goal. If there was some way to compromise that it  
13 is available and would not expire as some judgments do after  
14 a certain period of time and if someone wanted to then enter  
15 it at a later date, that would be fine.

16 I just like the judgment provisions because,  
17 as I said, it is something that doesn't go away. We do have  
18 a lapsing of the time in which the restitution could be  
19 collected. Sometimes people don't have the money, then  
20 maybe they do. Maybe they win the lottery. Maybe they get  
21 up off their -- get out to work and get out and make some  
22 money and want to buy a house and they have this waiting for  
23 them, it won't go away.

24 It creates the problem that isn't solved by  
25 there being a collection fee imposed, which presumably

1 wouldn't be collected because they are in the process of  
2 entering a judgment, they have a provision that just allows  
3 for the entry of judgements that -- I remember from law  
4 school, sometimes they kind of die out if you don't keep  
5 renewing them.

6                   The other thing is that I wouldn't want it to  
7 be that it is the victim who has to go through some other  
8 process of their own to have to enter these judgments. So,  
9 I mean, I like the judgment provision but if it is unduly  
10 burdensome on the persons that have to enter them and as a  
11 result, I don't think it should go away completely.

12                   Perhaps there is a way to make it still there  
13 but less onerous to this person.

14                   CHAIRMAN BIRMELIN: Is that in theory one of  
15 the sections that you would mandate that a judgment has to  
16 be filed against the Defendant?

17                   MR. JUNOD: I think that that would be the way  
18 that that would be interpreted.

19                   CHAIRMAN BIRMELIN: Then you would agree with  
20 Mr. Legler that this is a potentially very draining process  
21 to have to file a judgment against every Defendant because  
22 there are some, you know, that isn't going to do any good.

23                   MR. JUNOD: I'm sorry.

24                   CHAIRMAN BIRMELIN: There are some Defendants  
25 that you know that a judgment isn't going to make any

1 difference. As he used the frame -- the term judgment  
2 proof.

3 MR. JUNOD: Right.

4 CHAIRMAN BIRMELIN: But we would like to  
5 obviously you agree that the ability to do that should be  
6 represented.

7 MR. JUNOD: The ability to do it, but if there  
8 is some way that it isn't such a burden on the victim, I  
9 would completely. I would imagine in Philadelphia, although  
10 I wouldn't know what total amount would be restitution order  
11 cases, some would not have restitution figures, there is  
12 approximately 18,000 felony cases alone each year and I  
13 think something like 25,000 misdemeanor cases handled in the  
14 municipal court.

15 Let's take out half for being drug cases and  
16 we have got 20,000 cases with potential, I suppose, for  
17 restitution. That would probably put quite a burden on the  
18 Prothonotary's Office, in my opinion.

19 CHAIRMAN BIRMELIN: You've been working in the  
20 District Attorney Office, I think, since 1990, you're at  
21 least in this particular case management program?

22 MR. JUNOD: That program I've been in the  
23 office -- I've been in the office since 19 -- I just vested,  
24 1987, and I was in private practice for six years before  
25 that.

1 CHAIRMAN BIRMELIN: Have you had a chance to  
2 talk to the defendants very much? Before and after?

3 MR. JUNOD: Not as much as now as I used to.  
4 When I was in private practice, I did handle criminal  
5 matters. It was interesting that as a defense attorney, one  
6 might of -- and there wasn't nearly as much of an emphasis  
7 on restitution as now. It was always as if there was a way  
8 to get kind of a better result for the defendant if there  
9 was this willingness and the ability to pay the restitution.

10 I suppose that gets to the can you buy your  
11 way out of punishment? Which would be a problem. But I  
12 don't -- only through their attorneys, do I talk about  
13 sometimes my concern is that the restitution be first and  
14 that something, a less harsh sentence that would encourage  
15 the payment of restitution, might be recommended by me if I  
16 can see the variable to do that. But I don't speak directly  
17 about it.

18 CHAIRMAN BIRMELIN: In your opinion, I think  
19 you alluded to it in somewhat in your closing paragraphs,  
20 what do you see as beneficial from if these Bills were  
21 enacted or beneficial to citizens of Pennsylvania? As a  
22 whole, not just the victims and the Defendants. Do you see  
23 any hope or any positive effect on our higher criminal scene  
24 as a result of these Bills?

25 MR. JUNOD: Well, I didn't just put the part

1 in about that I do sincerely believe that a person who has  
2 an order of restitution and continues to pay on that, is  
3 continuing to remind themselves that they did something  
4 wrong. But they are also continuing to remind themselves  
5 that they are making up for it. So I think, in that sense,  
6 it does benefit the rehabilitation of the Defendants or the  
7 sentenced prisoner.

8 I think it would benefit all the citizens of  
9 Pennsylvania to have presuming in practice that it works out  
10 that persons are paid restitution and it becomes a system  
11 where that's expected of everyone who has committed a crime  
12 and it will happen. I think it benefits all the citizens it  
13 gives them more confidence in the sentence that was imposed,  
14 as I said.

15 And I think Ms. Achilles said it too that it  
16 was always that you tell them the restitution has been  
17 ordered but the ability to get it is always the problem. If  
18 it becomes the perception that not always restitution gets  
19 ordered all the time, but you get it or at least some of it  
20 or somebody is trying to get it, I think that benefits all  
21 the citizens of Pennsylvania.

22 CHAIRMAN BIRMELIN: Thank you, very much.  
23 Representative Masland, do you have any questions?

24 REPRESENTATIVE MASLAND: No.

25 CHAIRMAN BIRMELIN: Representative Walko?



1                   REPRESENTATIVE WALKO: Thank you, Mr.  
2 Chairman. Thank you, Mr. Junod. In order -- by the way in  
3 Allegheny county, we have a very similar program to the Fast  
4 Track or the Track and that would be P.D.Q. And that stands  
5 for Pretty Darn Quick for those who aren't from Allegheny  
6 county.

7                   But I was wondering concerning the judgments  
8 and the liens which are -- result from there being a  
9 judgment order, is there a way or legally that we were -- is  
10 there some mechanism that we could propose or should we  
11 propose a mechanism that would make restitution order arise  
12 to the level of an automatic lien, therefore making a  
13 judgment entry an irrelevant procedure. So that all the  
14 attributes of the judgment being ordered or entered would be  
15 had by operation of law?

16                   MR. JUNOD: I suppose, but -- I don't want to  
17 be I might sound a little sarcastic. Somebody has to enter  
18 that, they have to find that and when they do a credit  
19 search or a title search or some mechanical process by which  
20 these orders come down to someone and they are automatically  
21 entered.

22                   Apparently, there is no need to renew them. I  
23 suppose once they are in there that would work but I think  
24 we'd be moving it to the Clerk of Courts or the clerk of  
25 quarter sessions at the time of the sentencing rather than

1 as it says, at the Prothonotary. But it would -- it would  
2 have to be docketed or however it is done in each particular  
3 county, I think. I mean, if it were an automatic --

4 REPRESENTATIVE WALKO: So the issue then is  
5 actually the mechanics of entering. So perhaps if they are  
6 not on a computerized system, that's the problem?

7 MR. JUNOD: Well, no. Actually, I was  
8 responding -- I particularly feel that they should have the  
9 judgements entered and that it should stay there. It  
10 shouldn't have to be the job of the victim to get that  
11 judgment entered within probation department. This should  
12 be something that's just done as a matter of course.

13 However, having heard the previous witness,  
14 there is that problem of scaring away employers who were, in  
15 an attempt to get loans, and those types of things. I  
16 myself have or we have no problem with that as it is. But I  
17 think the fact of some kind of judgment mechanism is the  
18 important part.

19 And whether there needs to be a compromise to  
20 prevent me from being too onerous to those who have to enter  
21 these judgements and prohibitive to the persons who have to  
22 collect the restitution, that can be left open. But I --  
23 and unfortunately, I don't have any suggestions as to how  
24 that can be left open.

25 I wouldn't want to see that person, can't get

1 that next step because there is no assets of the job or  
2 whatever they have got because this judgment was entered,  
3 but also, as I said, I don't want to see this go away. I  
4 want that to always be their responsibility until it is  
5 paid.

6 REPRESENTATIVE WALKO: We do have to weigh out  
7 whose interest is more important victims or the persons  
8 seeking employment?

9 MR. JUNOD: Well, that's true and only -- not  
10 to belabor it, but the problem is that if you're getting  
11 something from somebody as opposed to those judgments proof  
12 persons, then why spoil that? If it happened to something I  
13 didn't realize it until I listened to the previous witness.

14 REPRESENTATIVE WALKO: Then I have a real  
15 general policy question of you as a prosecuting attorney.  
16 Do you think that -- would you recommend that good time and  
17 parole after inmates have served their minimum sentence to  
18 recirculate them into society to enable them to earn the  
19 money to be able to pay restitution.

20 Do you think as a matter of policy, we should  
21 start looking at providing a good time for moral prisoners  
22 in the cases after they have served their minimum?

23 MR. JUNOD: We have good time and earned time  
24 in the Philadelphia county prisons. I think it does serve  
25 somewhat of a purpose of helping to control -- it gives a

1 mechanism for corrections officers to be able to keep  
2 persons under control better.

3 I personally, and I'm not speaking for  
4 District Attorney Abraham, I think it's too easy to get  
5 earned time in Philadelphia. I think that for one thing,  
6 they allow seven days of earned time for a particular  
7 program that you are in. If you're working in the laundry  
8 that might be worth more earned time days than working in  
9 some other places. I think the general concept is good. I  
10 think they give too much of it for too little effort in  
11 Philadelphia.

12 But I think that if it is leading to their --  
13 the sooner they pay off that restitution, I think you also  
14 approach that -- that level of if I can pay this off, they  
15 will let me out early. And I really don't think that is a  
16 good idea at all because restitution is very important, but  
17 so is punishment. They, you know, they have to admit the  
18 crime, they should do some time for it.

19 And then we get into the effort of the problem  
20 of a person who is able to pay or has somebody that will do  
21 it for them buying a lesser sentence and I could not support  
22 that at all.

23 REPRESENTATIVE WALKO: Thank you very much,  
24 Mr. Junod. Thank you, Mr. Chairman.

25 CHAIRMAN BIRMELIN: Thank you, Mr. Junod. We

1 appreciate you coming here and giving your testimony. And  
2 we will look forward to you researching that one question.

3 MR. JUNOD: I had better write that down.

4 CHAIRMAN BIRMELIN: Just a reminder to the  
5 Committee that we are going to adjourn now and we are going  
6 to meet again tomorrow morning, in this same room, at 9:30  
7 a.m. Meeting is adjourned.

8 (Whereupon, at 3:03 p.m., the hearing was  
9 adjourned.)

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C E R T I F I C A T E

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I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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