

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

Public Hearing on House Bill 1744 :  
and 1745 (Restitution) :  
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Pages 1 through 82 Room 140  
Main Capitol Building  
Harrisburg, Pennsylvania

Thursday, September 11, 1997

Met, pursuant to notice, at 9:35 A.M.

BEFORE:

- REPRESENTATIVE JERRY BIRMELIN, Chairman
- REPRESENTATIVE BRETT FEESE
- 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)
- GALINA MILOHOV, RESEARCH ANALYST  
(Minority House Judiciary Committee)

Commonwealth Reporting Company, Inc.  
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CHAIRMAN BIRMELIN: Good morning. We are about to start. There may be some other members joining us, but we will get started. It is shortly after 9:30. I'm Representative Jerry Birmelin. I'm the chairman of the House of Representatives Subcommittee on Crime and Corrections.

Today we are having a hearing on House Bill 1744 and 1745 of which I am the prime sponsor. These deal primarily with the issue of restitution and also have some correlating subjects in them including transfer of information which should accompany prisoners when they go from State to County level or vice versa and some other related issues.

We had four testifiers yesterday and thankful for their wisdom and their insight and they were able to provide for us, they were, I think, well versed in the legislation and made some good suggestions and also gave us a wealth of knowledge from their experience that they had, especially a gentleman that came from Erie County.

Today we have four testifiers as well. And before I call on our first one, I'm going to ask the members of the panel to bear with me this morning if they introduce themselves starting to my far left.

REPRESENTATIVE REBER: Representative Bob

1 Reber, Montgomery County.

2 REPRESENTATIVE FEESE: Representative Brett  
3 Feese, Lycoming County.

4 REPRESENTATIVE CALTAGIRONE: Representative  
5 Caltagirone, Berks County.

6 MS. BARNHART: I'm Heather Barnhart with the  
7 Judiciary Committee.

8 CHAIRMAN BIRMELIN: And we may have some other  
9 members of the panel joining us as we proceed this morning.  
10 I'm going to ask Larry Frankel, Executive Director of the  
11 American Civil Liberties Union, if he'd come and give his  
12 testimony. Mr. Frankel, when you're ready, you may begin.

13 MR. FRANKEL: Good morning, Chairman Birmelin  
14 and other members of the Subcommittee. My name is Larry  
15 Frankel and I am the Executive Director of the American Civil  
16 Liberties Union of Pennsylvania. I want to thank you for  
17 providing me the opportunity to testify today.

18 I will only be testifying with regard to House  
19 Bill 1744. I have no comments to offer with regard to House  
20 Bill 1745.

21 The American Civil Liberties Union of  
22 Pennsylvania favors the use of restitution as an alternative  
23 to incarceration. Certainly victims of crime should recover  
24 for their economic losses. We think it is appropriate to  
25 hold a criminal defendant accountable for the harm that he

1 or she causes. We also believe that restitution can be an  
2 important component of rehabilitation. The ACLU agrees with  
3 Dick Wertz of the Justice Fellowship when he characterized  
4 restitution as the "cornerstone" of an effective criminal  
5 justice system.

6                   However, society must have realistic  
7 expectation when it comes to the actual payment of  
8 restitution. It's been estimated that 85 percent of  
9 criminal defendants, those who are convicted, are  
10 impoverished. They are indigent. They weren't working when  
11 the crimes were committed and the chances of employment are  
12 probably pretty low once they are released from prison. The  
13 chance that they can make full restitution is pretty nil.

14                   And I -- in preparing for my testimony, I came  
15 across a note about a story that appeared in the 1995  
16 Chicago Sun Times that found that the U. S. Attorneys Office  
17 in Chicago collected just four cents on the dollar for fines  
18 and restitution. And that was the U. S. Attorneys Office  
19 and they generally have more resources in a lot of other  
20 areas in the prosecutor and probation parts of our criminal  
21 justice system. So, it is pretty difficult to collect the  
22 restitution sometimes and additional tools would probably be  
23 helpful, but again I think we have to be realistic about how  
24 much is going to be paid in many of these cases.

25                   Imposing further duties on the courts,

1 prisons, and probation departments in the hopes of obtaining  
2 larger payments from impoverished defendants, will not only  
3 require additional funding for those agencies, but will  
4 divert them somewhat from performing other important  
5 functions.

6           For those defendants who are able to find a  
7 job, attaching their wages will impose additional cost and  
8 administrative burdens on employers. Hopefully, this will  
9 not act as a detriment to the hiring of a person who is  
10 under court order to make restitution payments. But it  
11 cannot be denied the private businesses will pay a price for  
12 hiring an individual for whom there is a wage attachment.

13           Given these barriers, the ones imposed by  
14 poverty and the costs associated with collection by prison  
15 officials, probation officers and employers, I would like to  
16 draw your attention -- your attention to an idea I read  
17 about in the Philadelphia Inquirer on August 18th of this  
18 year. Rena Singer, Inquirer Staff Writer, described the  
19 various problems related to collection of restitution which  
20 I believe you heard about to some extent yesterday. Towards  
21 the end of that story she wrote about a suggestion of  
22 Philadelphia Court of Common Pleas Judge C. Darnell Jones,  
23 II. Judge Jones who worked as a Public Defender prior to  
24 becoming a Judge of the Court of Common Pleas and therefore  
25 was familiar with the problems of impoverished defendants

1 proposed to the establishment of a cash reserve fund with  
2 private and public money that would pay poor and unemployed  
3 convicted offenders for court ordered community service with  
4 wages being sent to the victims for restitution. The  
5 article was not clear whether Judge Jones thought all or a  
6 portion of the wages would be earmarked for restitution, and  
7 while the ACLU would not support the idea of all the wages  
8 being used for restitution, I would ask you to consider the  
9 possibility of creating such a community service fund.  
10 Indigent defendants who have been ordered to pay restitution  
11 could be ordered to perform community service projects. The  
12 defendants would be paid for their work and a portion of  
13 what they earn could go to make restitution payments.

14           Such a program would even help the victims  
15 receive what they expect, a clear advantage over the  
16 existing system. At the same time, building some of inner  
17 cities could be rehabilitated, neighborhoods improved, other  
18 important services provided. Society would gain another  
19 benefit from this. Furthermore, just possibly the offenders  
20 would be rehabilitated and actually learn some employable  
21 skills so maybe they could go on to paying work later on.

22           I realize that there are many details that  
23 would need to be worked out in this program. I'm merely  
24 offering a suggestion for you to ponder today. I'm also  
25 cognizant of the fact that there will be a variety of

1 objections to such a program. But I think it is important  
2 for legislators and advocates to begin thinking about how we  
3 can make the system really work for victims not try to get  
4 blood out of a stone, make society safer and more secure and  
5 begin providing some means of rehabilitation for some of  
6 these offenders. I hope that you will have an opportunity  
7 to explore the idea suggested by Judge Jones as a realistic  
8 approach for securing those worthy goals.

9 I would now like to turn to one aspect of what  
10 is now introduced legislation regarding information that is  
11 to be provided to the Department of Corrections upon  
12 commitment of an offender to the custody of the Department  
13 of Corrections. Among the information to be provided is  
14 medical admission testing performed by the County and the  
15 results of those tests including but not limited to  
16 hepatitis, HIV/Aids, tuberculosis or other infectious  
17 disease training.

18 This provision would conflict with the  
19 Confidentiality of HIV-Related Information Act. That Act  
20 which has been recognized as one of the nations foremost law  
21 for the protection of privacy of HIV status, requires the  
22 consent of the person tested for HIV prior to disclosure of  
23 that test result. The spirit and letter of the Act require  
24 maintaining confidentiality of any information that might  
25 reveal HIV status. With regard to prisoners as can be



1 particularly important because if other prisoners become  
2 aware that one of the fellow inmates is infected with HIV,  
3 they could be subject to some serious assault. And you know  
4 this information does get around the prison. And with the  
5 disclosure of the information required under the Act, we  
6 fear there could be greater disclosure with adverse  
7 consequence to some prisoners.

8           Furthermore, the results of the HIV tests  
9 administered via county prison at the time of admission  
10 might not even be relevant to the State facility because it  
11 takes a number of months for the antibody to develop. The  
12 test and may be administered by the county may be  
13 irrelevant. So if the State prisons really feel they need  
14 to know this information, they are probably going to have to  
15 test it themselves. Obviously, a positive test isn't going  
16 to turn negative but the negative test won't be  
17 determinative when the person is transferred to the State  
18 facility.

19           For these reasons, we recommend that the  
20 provision be amended to make it clear either that the  
21 HIV/Aids information will not be provided or will only be  
22 provided with the express consent of the prisoner. A  
23 prisoner may indeed consent to provide that information if  
24 it means they receive better medical care. But it should be  
25 the prisoner's decision given the risks involved. that

1 would eliminate the confidentiality with HIV-Related  
2 Information Act, protect the prisoners from the undue misuse  
3 of the information and be more consistent with the  
4 recommendation of the public health officials.

5 I would be happy to answer any of the  
6 questions you have. I have seen the testimony of one of the  
7 witnesses later who certainly got much more firsthand  
8 experience with some of the issues here, but nevertheless, I  
9 would be happy to answer any questions about the issues I've  
10 raised.

11 CHAIRMAN BIRMELIN: Thank you, Mr. Frankel.  
12 Let me ask you a couple of questions if I could. On page  
13 two of your testimony, that suggestion that you made about  
14 the establishing a fund paid for community service. Is this  
15 community service that you're suggesting that they are  
16 currently doing that they are not getting paid for as a part  
17 of their sentence or is this in addition to whatever else  
18 they were required to do so that they could pay their court  
19 fines or their restitution?

20 MR. FRANKEL: I think it could be either way.  
21 One could be payment for the work they are doing as  
22 community service, they are not paid for now. But I think  
23 it would permit an expansion of the community service  
24 possibilities if there were some funding to pay people for  
25 doing it. There obviously would be funds to go pay people

1 to supervise them to do this work. It's been a required  
2 expenditure of some public funds, but I think it can apply  
3 to what is already being done but would permit an expansion  
4 of what could be done.

5 CHAIRMAN BIRMELIN: I'm assuming that a  
6 defendant would have to prove that they were unable to pay  
7 your bills any other way.

8 MR. FRANKEL: I would assume the Judge would  
9 require a means test. I would certainly suggest that a  
10 means test is appropriate. But again, I mean I think we all  
11 know that most of the people who are convicted are  
12 impoverished. That's why they have public defenders and in  
13 many cases that may be why they are getting involved in some  
14 of this activity.

15 CHAIRMAN BIRMELIN: One of the closing  
16 statements you made in regard to this proposal that I also  
17 realized there will be a variety of objections to such a  
18 program. Tell us what those objections would be.

19 MR. FRANKEL: The two that immediately -- well  
20 three that I guess immediately come to mind. One, it is  
21 going to cost public money. And nobody wants to spend money  
22 so prisoners can do work. I think you'll hear those  
23 objections.

24 Second, will be questions about public safety.  
25 If they are working on, you know, construction projects,

1 highway projects, whatever they will be concerned, are they  
2 properly supervised. What happens if they run away from the  
3 project. Depends on whether we are talking about people who  
4 are released at the end of their sentence and we are looking  
5 at the restitution to be paid. I think those public safety  
6 concerns become less.

7           And third, I would anticipate there would be  
8 some objections from some labor unions. That if we can fund  
9 these projects, why aren't we paying people that haven't  
10 committed these crimes to do these projects. Why are we  
11 creating a special entitlement so to speak for those who  
12 commit crimes. But I think those objections can be  
13 addressed.

14           CHAIRMAN BIRMELIN: And I would agree because  
15 I think advances from all three of those. I wonder if  
16 anybody -- if you're aware of any other states or maybe  
17 counties or any other government entity in the United States  
18 has done anything similar to this. Or where maybe in Judge  
19 Jones who I don't know, has thought this through at all or  
20 not. I wonder if there is any more information available on  
21 this proposal. Do you have any or do you know where it can  
22 be obtained?

23           MR. FRANKEL: I don't have any at present. I  
24 really -- I did read the article over the weekend, which did  
25 give me only a limited amount of time. Although I did speak

1 to Judge Jones briefly I guess the advantages that I did  
2 appear before him once and he sentenced my client to prison  
3 so I can assure you that he is not totally soft on crime.  
4 And he hasn't done anything further from his experience  
5 seeing that we are ordering restitution to be paid from  
6 people who can't pay it. And here it is a possibility to  
7 look at. I will -- I will do some checking. We have the  
8 capacity at least to check with our other affiliates in  
9 other states to find if they know that other programs exist.

10 CHAIRMAN BIRMELIN: I would appreciate if you  
11 could do that, or that committee, that would be helpful.

12 MR. FRANKEL: That would be very helpful.

13 CHAIRMAN BIRMELIN: I'm not saying that the  
14 idea is one we are going to run with and without merit. I'd  
15 just like to know more about it before I make a decision one  
16 way or the other. The last question I have for you may be  
17 more of a comment is dealing with the HIV/Aids  
18 Confidentiality Act. We will look into that objection that  
19 you raised. I don't know to what extent that applies to  
20 prisoners. I'm not that familiar with the Act. If your  
21 point is valid and there needs to be a change made in order  
22 for us to be in cooperation with, or maybe not to be in  
23 conflict with the law, I'm amenable to that, that's not a  
24 problem. I wasn't aware that it was. Thanks for bringing  
25 that to our attention. We will address that. I'll turn the

1 questioning now over to the members of our panel.

2                   And also we'd like to introduce our two newer  
3 arrivals to my far right is Representative Don Walko and  
4 next to him is the Democratic Chairman for The House, Tom  
5 Caltagirone. And Representative Walko, you're first.

6                   MR. WALKO: I have no questions, Mr. Chairman.

7                   CHAIRMAN BIRMELIN: Representative  
8 Caltagirone?

9                   REPRESENTATIVE CALTAGIRONE: No questions.

10                  CHAIRMAN BIRMELIN: Representative Feese?

11                  REPRESENTATIVE FEESE: Thank you, Chairman.

12 Mr. Frankel, your testimony refers to the possibility that  
13 you could not collect restitution from a number of  
14 prisoners. But I did not see in your testimony or in your  
15 questioning whether or not your organization supports the  
16 wage attachment provisions, supports the provisions which  
17 would allow withdrawals from inmates or whether your  
18 organizations opposes those aspects of the proposed  
19 legislation?

20                  MR. FRANKEL: We take no position on those  
21 aspects of proposed legislation.

22                  REPRESENTATIVE FEESE: Your testimony referred  
23 to U. S. Attorneys Office in Chicago collecting four cents  
24 on the dollar at 85 percent of defendant's are indigent.  
25 And I believe what your point is that you're not going to be

1 able to collect the money anyway. Would you agree that to  
2 this point the efforts of many prosecutor's offices or the  
3 efforts of many probation offices has not been what it  
4 should be to try to collect restitution and so maybe those  
5 numbers would not appear as bad as they were if we had more  
6 effort?

7 MR. FRANKEL: Well, I'm not that familiar with  
8 their operations. I would assume they can be better. I  
9 assume they could be given even more tools and more  
10 concentration they can be better. But if people aren't  
11 working, wage attachments won't help. I don't believe  
12 prisoners earn that much in prison that they are going to be  
13 able to pay large amounts of restitution through working  
14 through the prison system. I also -- if it was in my  
15 testimony for all of those victims where no one is convicted  
16 ever, no restitution is ever obtained for them. So, I think  
17 there are limitations to what can be done. I don't deny  
18 that more could be collected.

19 But I guess I urge all of you to think about  
20 not creating an expectation and I don't presume any of you  
21 want to -- that this is the key to getting 100 percent  
22 restitution. I think some of the frustration that I have  
23 heard about and read about is sometimes the statements that  
24 maybe we have really done something and in the end it  
25 doesn't accomplish much. It probably accomplishes a little

1 bit but society has some expectations get pretty escalated  
2 when they hear, you know, what all of us, including myself,  
3 sometimes say with regard to legislation. And that's why I  
4 brought up the point that I think we need realistic programs  
5 to try to obtain more. Given the problems of getting jobs  
6 for people with criminal records, I think the wage  
7 attachment is only going to be of limited help.

8 REPRESENTATIVE FEESE: But a help nonetheless?

9 MR. FRANKEL: But a help nonetheless.

10 REPRESENTATIVE FEESE: Just one comment with  
11 regard to the program that Judge Jones discussed. If you're  
12 researching that issue, you might talk to the Chief Juvenile  
13 Probation Officer Harry Jones in Lycoming County. They have  
14 a fund established to do just what you're suggesting.  
15 That's all.

16 REPRESENTATIVE FEESE: Thank you.

17 CHAIRMAN BIRMELIN: Representative Reber?

18 REPRESENTATIVE REBER: Thank you, Mr.

19 Chairman. Mr. Frankel, in looking at the language of the  
20 proposed legislation, it is adding a specific subsection,  
21 section 8127, which is the section which provides for  
22 authority to bring about wage attachments for different  
23 types of proceedings that are authorized by law; otherwise,  
24 no such procedure exists and the subsection filed that was  
25 the restitution of crime victims, costs, fines. Looking



1 more from a procedural standpoint as far as workability.

2 First of all, in your opinion, if, in fact, a  
3 wage attachment, I assume that the way this reads it is  
4 going to be done per a court order emanating from a  
5 sentencing phase of the criminal proceedings. Is that your  
6 understanding?

7 MR. FRANKEL: That's my understanding.

8 REPRESENTATIVE REBER: I mean I don't know of  
9 any other time when there would be a dialogue if you will or  
10 a presentation of any kind of testimony, evidentiary in  
11 nature, that would allow for the determination of the  
12 restitution order, do you? I don't see where it is going to  
13 happen.

14 MR. FRANKEL: You have all sorts of double  
15 jeopardy involved unless you do it at that time.

16 REPRESENTATIVE REBER: That being said, it  
17 then further appears to me that the current law in the Bill  
18 at least on page six, line eight, a priority provision not  
19 withstanding any of the statutory provision of this -- any  
20 other title, any lien obtained from under the section, shall  
21 maintain its authority indefinitely and no other revival may  
22 be filed. So for all intents and purposes, this follows the  
23 judgement that of the convicted criminal for his entire life  
24 without any necessity for revival or any other kind of civil  
25 process that we traditionally know about in the civil

1 proceedings for judgments and things of that nature.

2           That being said, I guess my concern is this.  
3 How much is going to be extracted on this wage attachment?  
4 And again I guess that would be said, your understanding  
5 from the order would be entered at sentencing that levies  
6 the attachment in the first instance. Or are we going to be  
7 attaching 100 percent of the wages? It seems to be to me to  
8 be nebulous at best the way the language hangs out there at  
9 the current time.

10           MR. FRANKEL: From a procedural point of view  
11 taken of my own experience, I don't know how a particular --  
12 if the Defendant is being sentenced to prison and you don't  
13 know what his wages will be in the future, how can you  
14 specify the amount at that time.

15           REPRESENTATIVE REBER: But that's the point I  
16 was making earlier. It seems to me that really -- I'm not  
17 suggesting this isn't a good idea. But the workability and  
18 the application of it to some extent seems to me to be  
19 rather cumbersome with at least my knowledge of how the  
20 legal system works in trying to get this done. It is not a  
21 situation, for instance, where you have an attachment for  
22 support, where it is ongoing where there is an evidentiary  
23 hearing, where there is determination guidelines and what  
24 have you. I just wonder from my standpoint and in your view  
25 whether this needs some -- some refinement. Otherwise, we

1 could have different Counties operating in different  
2 fashions on this and in respect to probation parole officers  
3 also being hung out there with some confusion as to how they  
4 should go about enforcing. And quite possibly we may elicit  
5 some additional testimony. But at least in my mind as we  
6 look at this, I am not worried about the situation where  
7 there is attachment to the prisoners wages. That's  
8 relatively easy to control and you know where they are at.  
9 And it is relatively easy to follow but with this priority  
10 of lien language of perpetuity, if you will, there is going  
11 to be ongoing problems with subsequent employers and I'm  
12 sure we are going to have individuals that are going to have  
13 numerous employers during their lifetime, if you will, as  
14 this unfolds.

15                   So I guess my concern, I ask, is it a concern  
16 of yours, is my concern well founded that we really really  
17 have to ratchet this thing down as to fundamental fairness  
18 as to how it is going to be applied. Otherwise, it becomes  
19 a rather self executing, if you will, as an earlier  
20 enforcement of a way.

21                   MR. FRANKEL: Based on what you say, and my  
22 own experience, I don't see this as self executing  
23 whatsoever. It just -- its essence will authorize the court  
24 to attach wages. The wage attachment won't be necessarily  
25 perpetuity, because only the judgement is in perpetuity, the

1 way that the attachment can be modifiable.

2                   The real question is the duty then -- another  
3 duty of the probation or parole officer to arrange for  
4 hearings frequently to make sure that an appropriate wage  
5 attachment is issued. What are you going to do when a  
6 person gets a raise, if they get a raise, is the wage  
7 attachment going to change. What if they go get their own  
8 job -- go get another job? What if they start their own  
9 business, this doesn't necessarily apply. In many cases --  
10 I'm thinking back to child support, the hardest people to  
11 collect money from are the people who are self employed. I  
12 don't think there is sufficient detail here to ensure us  
13 that we both have procedural fairness throughout the  
14 Commonwealth, but there is consistency from County to  
15 County.

16                   REPRESENTATIVE REBER: That was my concern,  
17 the consistency with the counties operating different ways  
18 and frankly some burdens of being placed upon probation.  
19 When you have a person that has otherwise fulfilled all the  
20 obligations of probation but you have a tremendous order  
21 hanging out there for clients, costs, restitution, et  
22 cetera, that could go on in perpetuity and these people then  
23 become married for life to the probation officer or officers  
24 that may track this over the next millennium.

25                   MR. FRANKEL: But they are already -- the same

1 probation officers are already supposed to track, I mean,  
2 you're adding another duty I but also I guess the  
3 precautionary side of that is, I guess, we learned this  
4 summer once the legislature starts making some more specific  
5 rules that might relate to court procedures, the court may  
6 strike it down. I mean you've got to find the appropriate  
7 balance here. And it's a question that requires probably  
8 more exploration than can be had in this set of hearings at  
9 the moment.

10                   But how far can the legislature go in  
11 prescribing the court procedure for carrying out what the  
12 legislature clearly can do which gives the court the  
13 authority to attach wages. Can they establish rules as to  
14 how frequent hearings can be and what has to go on at those  
15 hearings. I cannot based on what we have seen in court  
16 decisions. So, you know, I'm thinking about these issues  
17 while I'm testifying here. But I agree with you, those  
18 dangers are out there, I don't know if they are legislative  
19 solutions or that the Court is going to have to make some  
20 rules that are consistent from County to County. And when  
21 the court makes those rules be cognizant of Federal and  
22 State cases that limit the amount of wages that can be  
23 attached.

24                   REPRESENTATIVE REBER: All right. I thank you  
25 very much. Mr. Chairman.

1 CHAIRMAN BIRMELIN: Representative Reber and  
2 Mr. Frankel, what do you think if you look at this as part  
3 of this package 1745 page three, line 11. I think,  
4 Representative Reber, that answers part of your question is  
5 does this line for perpetuity. The answer is no, the  
6 restitution is to be paid for the duration of what would  
7 have been their maximum term of imprisonment had they been  
8 in prison. I think that answers the question you were  
9 asking. I'm not sure.

10 But the other point that you raised about the  
11 restitution amount, that was a question that arose yesterday  
12 when we talked with the probation collections officer from  
13 Erie County and I asked him specifically how much can you  
14 take and are you restricted by law and how do you decide  
15 what you're going to take. Well, after the lump sum is  
16 decided by the Judge, we are going to say X number of  
17 dollars is what you owe for restitution, he then has the  
18 Probation Collections Department of Erie interview the  
19 person, the Defendant to find out what they feel is an  
20 acceptable amount. They said they never receive 15 percent  
21 of his net pay. I don't know if that's just an Erie County  
22 rule or that's something the State court system has said or  
23 it is case law that sort of drawing that line, I'm not sure.  
24 But I suspect that if we did put it in legislation, it would  
25 be received as extending our hand too far into the court

1 system and, therefore, we don't want to put it in here  
2 because number one, it would probably take away flexibility  
3 for the courts probation department to make those  
4 determinations. He said that they do frequently change a  
5 person's percentage.

6                   It, obviously, doesn't usually go up, usually  
7 goes down. I know the circumstances change and the  
8 Defendant petitions for some other amount. But I don't  
9 think we need to legislatively address that portion of  
10 Representative Reber's question and I guess I would agree  
11 with you, Mr. Frankel, that that would be an issue that the  
12 courts need to work out for themselves.

13                   We want to thank you for your testimony.  
14 Thank you for coming here today for your suggestions. We  
15 will follow through with looking forward to some of that  
16 information you provide to us as well.

17                   MR. FRANKEL: Thank you very much.

18                   CHAIRMAN BIRMELIN: Our next testifier is  
19 Stover Clark. He is the Executive Director of the County  
20 Chief Probation and Parole Officers Association of  
21 Pennsylvania. Thank you, Mr. Clark, for coming. We  
22 appreciate your testimony this morning and you may feel free  
23 to present it whenever you're ready.

24                   MR. CLARK: Good morning, ladies and  
25 gentlemen. As stated, my name is Stover Clark and I'm the

1 Executive Director of the County Chief Adult Probation and  
2 Parole Officers Association of Pennsylvania. The  
3 Association consists of county adult probation and parole  
4 executives from the 64 counties that operate departments.  
5 On behalf of the membership, I want to thank you for this  
6 opportunity to present testimony regarding those legislation  
7 before us today.

8           Before I present my comments and suggestions  
9 on the legislation, I want to give you a brief overview of  
10 county adult probation and parole and its role in the  
11 delivery of correctional services in the Commonwealth. In  
12 1996, 1250 county adult probation and parole officers  
13 supervised over 157,000 offenders, an average caseload of  
14 126. In addition to providing supervision services, county  
15 adult probation provides a vast array of services to the  
16 court and the community such as specialized offender  
17 programs, pretrial programs, and on and on.

18           Let me put that in perspective relative to the  
19 Statewide offender population. Again in 1995/'96, there  
20 were a total of 234,000 offenders under some kind of  
21 correctional supervision in Pennsylvania. Of that number,  
22 20,000 were supervised by the Board of Probation and Parole.  
23 35,000 were under the control of the Department of  
24 Corrections. 22,000 were in county jails. County adult  
25 probation parole again was responsible for 157,000 or 67



1 percent of the total. While we were directly responsible  
2 for 67 percent, the entire offender population, at one time  
3 or another, has been involved with the county probation.

4 I give that information because it influences  
5 my comments and suggestions specific to the proposed  
6 legislation we are discussing today.

7 Regarding the restitution, our Association  
8 supports the overall intent of the legislation, that is  
9 requiring the offender to make every attempt to make the  
10 crime victim hold through restitution. We cannot, however,  
11 endorse the legislation before us today for a number of  
12 reasons.

13 First, as written, the bill requires that all  
14 county probation departments take on the added  
15 responsibilities of collecting restitution funds. Currently  
16 within the counties, the collection of costs, fees and  
17 restitution is carried out by a number of various county  
18 officers and I did a quick total. 31 chief -- clerk of  
19 courts offices do collections, 31 adult probation  
20 departments, seven counties have established their own  
21 collection bureaus or offices, one prothonotary does the  
22 collections, one county treasurer does the collection, and  
23 one district attorney. Now those numbers don't equal up --  
24 or they exceed. That is because some counties, the  
25 probation collects ARD clients and the clerk of courts

1 collect other fines, so there is various ways of doing it.

2 We are requesting that the legislation does  
3 not require that adult probation be responsible for it. The  
4 counties are better equipped to determine depending on their  
5 size, financial resource, and structure. They're better  
6 equipped to determine who was the better collection agent of  
7 that county.

8 While a number of county probation departments  
9 now collect fines, fees and restitution, again the trend is  
10 moving away from probation to other county offices. This is  
11 occurring for several reasons. As demonstrated by the  
12 information presented earlier, the volume in case -- the  
13 volume of cases and responsibilities of probation have  
14 increased dramatically over the past ten years requiring the  
15 adult probation to focus its resources on maintaining its  
16 mission and ensuring public safety while assisting the  
17 offender to maintain a crime-free life style. We agree that  
18 the payment of court ordered financial obligations are an  
19 integral part of sanctions placed on the offender. Our  
20 experience has demonstrated that as long as we are provided  
21 the correct information, the status of the court ordered  
22 payments, we can incorporate it into our probation and  
23 parole supervision.

24 As written, the legislation -- number two --  
25 as written the legislation requires the county probation and

1 parole is responsible for the collection of restitution from  
2 offenders under the control of the Pennsylvania Board of  
3 Probation and Parole. We believe this requirement has no  
4 rationale. We have no supervisory responsibilities for  
5 offenders placed on state parole and it is cumbersome and  
6 actually a redundant task for us to have this responsibility  
7 of collecting fines and fees. Putting another stint on it,  
8 the Board has increased -- over the last two years has  
9 increased their officer compliment to the point where now  
10 there will under an average caseload of 60 probably  
11 somewhere around 30 to one. Given that information, I think  
12 they have the time and the resources to collect the fines,  
13 fees and restitution from the people under their control.

14                   That leads in to the third point. There are  
15 two counties that currently do not have adult probation  
16 offices, Mercer and Venango counties. The way this  
17 legislation is written that the county adult probation  
18 department will be responsible for the collection of the  
19 fees. If they don't have a county adult probation  
20 department, I'm certain that people could under probation in  
21 Venango and Mercer counties, there would be nobody to  
22 collect the fines, fees and costs. This goes back to the  
23 earlier point that we need to ensure that there is  
24 flexibility within these bills to allow the county to  
25 determine which is the most appropriate way to collect the

1 fees.

2                   Number four, the requirement that not less  
3 than 50 percent of all moneys collected shall go towards  
4 restitution is understandable but the potential impact on  
5 county government and its ability to collect these funds  
6 must be discussed. We are in agreement that it is important  
7 that victims of crime to receive restitution, but the  
8 reality is that this will not happen just because -- I think  
9 Mr. Frankel talked to this earlier -- just because we say it  
10 is going to happen. The reality is that it is our ability  
11 to provide supervisor services and to collect costs, fines  
12 and fees is based on resources. If we do not have the  
13 adequate resources to provide new services, we can't do  
14 that. As stated earlier, county probation is responsible  
15 for an average of 67 percent of the entire offender  
16 population. We provide these services with very little  
17 assistance from the Commonwealth. The State subsidy known  
18 as Grant-in-Aid has not kept pace with county probation  
19 needs. The law calls for 80 percent reimbursement rate of  
20 probation officer salaries. In fiscal year 1997/'98, we  
21 will realize a reimbursement rate of under 50 percent.

22                   With the passage of the Supervision Fee Act of  
23 1991, county probation has been forced to generate the  
24 revenues through the monthly supervision fee. The  
25 requirement that half of the funds collected be set aside

1 for restitution has the potential of decreasing the Act the  
2 funds that we have available to provide proper supervisory  
3 services.

4           We'd like to offer two potential solutions to  
5 this problem. First, we urge you to exclude supervision  
6 fees from the 50 percent set aside requirement. I hinge  
7 this on if we receive additional funds from the  
8 Commonwealth, on par with the increases that The Department  
9 of Corrections and the Board of Probation and Parole have  
10 received. If we don't do that, it will be difficult for us  
11 to realize the intended benefits of this legislation.

12           Our second suggestion is the establishment of  
13 a restitution collection incentive program. It is our  
14 feeling that the Commonwealth should assist the counties to  
15 increase restitution collections. An incentive program  
16 based on a formula such as, for every dollar collected for  
17 restitution, the Commonwealth will match 50 cents that can  
18 be used by county government to enhance their collection  
19 capacity. We believe this approach is well-balanced, in  
20 that the counties in the Commonwealth are in a partnership,  
21 and will provide the counties with the necessary resources  
22 to build their capacity to increase collections.

23           Now, I'd like to turn my attention to my  
24 comments regarding the information sharing the requirements  
25 of the legislation.

1 Both of these -- both the issues of  
2 restitution collection and criminal history information  
3 transfer underscore the principal that all components of the  
4 criminal justice system require timely and accurate offender  
5 information to carry out their functions of public safety  
6 and offender accountability. As with the restitution  
7 requirements, we agree that the information is required.  
8 But again disagree with the manner in which the issues are  
9 addressed. Placing a mandate on the county will not satisfy  
10 the intent of the legislation. I say this for several  
11 reasons.

12 The underlying assumption of -- in this part  
13 of the proposal that the Department of Corrections is not  
14 receiving the information needed to carry out its functions.  
15 I just raise the question, are we sure the Department of  
16 Corrections is accessing and using all the criminal history  
17 information that is currently available to them? An example  
18 of that in my travels in the State, talking with county  
19 probation, wardens and clerks of courts, is they often tell  
20 the story that when a person is transferred to the  
21 Department of Corrections Intake Center at Camp Hill, the  
22 proper information is transferred along with that offender.  
23 When that offender is classified and transferred to one of  
24 the 23 or 24 institutions within the system, oftentimes that  
25 information does not follow that offender. The receiving

1 institution will then write a letter to the Probation  
2 Department, the Clerk of Courts or the jail requesting an  
3 additional -- a second copy of the information that was sent  
4 to the Department of Corrections. This just raises the  
5 question to me and to a lot of people out in the counties  
6 that, is, in fact, the Department of Corrections using the  
7 information they have? Is it traveling along with the  
8 defendant? We should look at and examine those issues.

9           Second, issue we raise is the proposed  
10 legislation requires that the sheriffs shall provide  
11 offender information, including presentence reports, fact of  
12 crime, and so on to the Department of Corrections. We  
13 agree, again, that this information is important for  
14 classification and diagnosis purposes, but it is critical to  
15 understand that this information may not be available to the  
16 sheriff from one point of contact from within the county.

17           In many respects, county government mirrors  
18 the state government and inability to gather and share  
19 criminal justice history data. Currently, there is no  
20 single repository of information needed by the criminal  
21 justice system, both county or state. Each state agency and  
22 county office maintains information important to its  
23 function without the capacity to electronically exchange  
24 data. On the county level, arrest information resides with  
25 the police, which is the municipal not the county function.

1 The district attorney maintains criminal complaint  
2 information -- excuse me -- the district justice maintains  
3 criminal complaint information. The district attorney  
4 maintains information relative to the charges. The  
5 probation department maintains their information and so on  
6 and so on. Currently, all of that information resides in  
7 hard copy requiring redundant reentry of data as it travels  
8 through the system. As a result of this, the requirement  
9 that the sheriff would have to gather information I think  
10 places an unnecessary burden on county government to  
11 transfer and gather all that information.

12           Again, we do not want to dismiss the  
13 importance of gathering or sharing this information. And  
14 that presents some constructive suggestions for your  
15 consideration. There are a number of state and county  
16 initiatives that are being undertaken that I think and my  
17 membership thinks will satisfy the intent of the legislation  
18 without placing additional burdens on the county criminal  
19 justice system.

20           On the state level, the county -- the  
21 Commonwealth is moving forward with its Justice Network,  
22 appropriately call the JNET project. That project, which  
23 includes Corrections, Probation and Parole, the Board of  
24 Probation and Parole, the Board of Pardons, State Police,  
25 Sentencing Commission, Juvenile Court Judges Commission,



1 Attorney General and the Commission on Crime and Delinquency  
2 is moving towards the development of a criminal justice  
3 information system that will be designed to capture the  
4 offender and case information that will continue throughout  
5 the criminal justice process. At any time during this  
6 process, the up-to-date status of the case and the offender  
7 will be available electronically to any JNET user. An  
8 integral part of this project, is incorporating offender and  
9 case data from the county criminal justice agencies.

10 At the county level, nine counties are  
11 currently undertaking a project similar to JNET. Those nine  
12 counties are Montgomery, Dauphin, Berks, York, Somerset,  
13 Indiana, Snyder, Lancaster and Cumberland. The project is  
14 funded and managed -- it is a criminal justice information  
15 project. Like the JNET projects, these counties are  
16 developing the capacity to build an electronic case file  
17 that will follow the offender through the county system,  
18 from arrest to disposition to release. Again, the  
19 information can and will be transferred to the JNET system.

20 In a related effort, the Commission on Crime  
21 and Delinquency has provided funds for the development and  
22 placement of standardized case management systems for county  
23 jails, adult probation, juvenile probation, district  
24 attorney and juvenile detention centers. These systems are  
25 currently in use in 52 jails, 42 adult probation

1 departments, 40 juvenile probation departments, 39 district  
2 attorneys offices and five juvenile detention centers.

3           The Department of Corrections is currently  
4 electronically linked to 47 county jails. They can receive  
5 statistical and other offender information on a daily basis  
6 from the county jail.

7           The Board of Probation and Parole is working  
8 on a project to electronically link with county adult  
9 probation departments to the Board to collect case status  
10 information. By the end this year, 20 probation departments  
11 will be connected providing offender data to the Board. I  
12 think it is important to mention these efforts because they,  
13 I think, are creating the capacity to gather and transfer  
14 important offender information, including the collection of  
15 court costs, fees, fines and restitution the offender case  
16 and behavioral history among county agencies as well as  
17 provide pertinent information to state agencies. I think  
18 they represent really the infrastructure that we need to  
19 gather and transfer this information.

20           The Association encourages the General  
21 Assembly to assist with these endeavors and will provide as  
22 for they will provide the mechanisms necessary to satisfy  
23 the intent of the protection of the proposed legislation  
24 before us today without adding additional financial  
25 responsibilities in the county government.

1                   In closing, on behalf of the Association, I  
2 want to thank you for the opportunity to present these  
3 comments and we look forward to working together to fine  
4 tune it. If there are any questions, I'll try to answer  
5 them.

6                   CHAIRMAN BIRMELIN: Thank you, Mr. Clark, we  
7 appreciate you coming in. It apparently is a big job doing  
8 your homework and reading the bills. And I do have some  
9 questions. If we could go through your testimony, and  
10 that's the best way for me to do it as we made statements, I  
11 made notes and question marks. But on page one, the last  
12 full paragraph it says we suggest that the legislation be  
13 allowed counties to decide the most appropriate department  
14 that will be responsible for collections. And I think that  
15 you also raised the point about Mercer and Venango County  
16 not having a probation department. I don't have any problem  
17 with that. I will tell you that in working with the  
18 Governor's office, this is what they had preferred for  
19 obvious reasons. But it would be a problem for me to say  
20 that, you know, probation department if you don't want to  
21 handle it themselves will contract it out, for instance, or  
22 assign some other agency to do it. But I still think that  
23 the intent was to use the probation department as a central  
24 clearing house if you will or a conduit to which the central  
25 clearing house of information on, you know, what's going

1 where, who is paying who. They would have the legal  
2 authority even if you subcontract the work out. The  
3 probation department would still have that legal authority  
4 and responsibility that goes with that authority to track  
5 whatever it is. So I don't have a problem with that  
6 suggestion that it may not have to be the probation  
7 department per se and maybe somebody -- someone they assign  
8 or hire to do a job.

9 MR. CLARK: And I agree with you as long as  
10 that provision is there. It is important that probation  
11 does serve as the clearing house because that information --  
12 that the payment schedule -- the payments being a condition  
13 of probation and parole, is that offender abiding by those  
14 conditions. Probation needs to know that but they don't  
15 need to do the actual collection and they can go into the  
16 various reasons why some don't want to go into handling  
17 money. That's their decision.

18 CHAIRMAN BIRMELIN: I'm going to refer,  
19 frequently probably, this morning to the testimony of the  
20 Erie County Probation Department which I guess is part of  
21 your association.

22 MR. CLARK: Yes.

23 CHAIRMAN BIRMELIN: Some of the comments that  
24 were made there. And the fact that he said yesterday  
25 probation department doesn't like to collect money.

1 MR. CLARK: No, no.

2 CHAIRMAN BIRMELIN: That's just in the nature  
3 of the job I guess, that they are not as opposed to doing it  
4 as people think they are or should be. On page two, missed  
5 a comment on your first paragraph in which you made a  
6 statement that your primary mission is maintaining or  
7 ensuring public safety while assisting the offender to  
8 maintain a crime free life style. I would suggest to you  
9 that part of your mission probably is but you didn't state  
10 it, is to help to rehabilitate.

11 MR. CLARK: Absolutely. I mean my mistake,  
12 that's just an assumption.

13 CHAIRMAN BIRMELIN: Well, I'm sure it was an  
14 oversight. And I believe quite strongly I think many people  
15 have testified yesterday that echoed the sentiments that I  
16 have, that restitution does help a criminal to rehabilitate.

17 MR. CLARK: Absolutely.

18 CHAIRMAN BIRMELIN: When he begins -- he or  
19 she to pay for their crime in dollars out of their pocket,  
20 it sends a message that perhaps is not sent to that person  
21 any other way. And that's just the comment on the side if  
22 you would.

23 MR. CLARK: If I could. I agree totally that  
24 I think it makes that connection between this -- this  
25 criminal justice system that is removed and brings that

1 system into the reality which there is a victim of a crime.

2 CHAIRMAN BIRMELIN: It comes full circle.

3 MR. CLARK: Absolutely.

4 CHAIRMAN BIRMELIN: You commit a crime against  
5 a person, you get caught, you get sent to jail, you do some  
6 time but you never really connect with the person that you  
7 commit the crime against often unless restitution is a part  
8 of that.

9 MR. CLARK: Absolutely.

10 CHAIRMAN BIRMELIN: I believe that's just as  
11 good for the victim to get repaid and believe in the justice  
12 system as it is for the criminal to pay and during the full  
13 circle be included in the matter.

14 MR. CLARK: You're absolutely correct.

15 CHAIRMAN BIRMELIN: If nothing else, to clear  
16 his conscious.

17 MR. CLARK: Correct.

18 CHAIRMAN BIRMELIN: In a day and age where  
19 people don't refer to that very often, I think there are  
20 many people that carry a lot of guilty bags around. They  
21 never made right thoughts or shouldn't have it in their  
22 prayers.

23 On number two on page two, you mentioned that  
24 the requirement has no rational for those who are under the  
25 Pennsylvania Board of Probation and Parole to have the

1 county probation and parole be responsible for restitution.  
2 And I, again, I would come back to you and say that rational  
3 I believe as the administration sees it to be is again to  
4 have one central focus and location and two Boards of  
5 Probation and Parole collect restitution but only one. I  
6 don't know if you perceive that as a statement passing the  
7 buck or --

8 MR. CLARK: Yeah, I think that's safe to  
9 assume.

10 CHAIRMAN BIRMELIN: -- or what. But I think  
11 that's the direction. And I would suggest to you that  
12 probably -- that probably won't be amended in the  
13 legislation. And if it does pass, it will probably stick  
14 with the county, the probation departments.

15 MR. CLARK: I guess then it raises an issue  
16 that if they're not under our authority and we can't enforce  
17 the conditions of probation and parole, the Board --

18 CHAIRMAN BIRMELIN: Well, I think by virtue of  
19 this legislation being enacted, that it would be under  
20 the --

21 MR. CLARK: Well, then for me --

22 CHAIRMAN BIRMELIN: Indeed you will have that  
23 for you to do. That would -- I think that's what  
24 legislature says. You may be supervising overall.

25 MR. CLARK: You were supervising others in our

1 collection. I guess for me it raises a broader issue. Do  
2 we need a State Board of Probation and Parole? If we are  
3 providing all of these services and they are supervising  
4 20,000 people, but they elect what they want to do and what  
5 they don't want to do, why don't we just transfer the total  
6 responsibility to the counties and let us do that. I think  
7 our collection rates would be better than the State.

8 CHAIRMAN BIRMELIN: Others had raised that  
9 point.

10 MR. CLARK: That's for another hearing.

11 CHAIRMAN BIRMELIN: Yeah, and then you also  
12 bring up in this subsection two, and I think that as a  
13 recurring -- recurring theme in your testimony is cost.

14 MR. CLARK: Yes.

15 CHAIRMAN BIRMELIN: How are we going to do  
16 this if we can't pay for it. And again, I'm going to  
17 reference Erie County and as was said yesterday in the  
18 testimony of Mr. Legler, they charge each defendant \$10 a  
19 month as collection fee. He said that solves their problem  
20 for paying for what they are doing. Why can't we do it?

21 MR. CLARK: That potential is there. I raised  
22 the issue, and I think Mr. Frankel raised the issue this  
23 morning, is that I think currently there are 18 different  
24 obligations placed offenders, court cost, fees, restitution,  
25 there is emergency medical costs. We just keep adding and



1 adding and adding. And at some point in time, I believe we  
2 will reach a limit and while we have that ability to say we  
3 are going to tack on the administrative fee in addition to  
4 all these other things. I just raise the concern that might  
5 not, in fact, happen in every case.

6 CHAIRMAN BIRMELIN: Well, and even Mr. Legler  
7 would have been the first to tell you that there are some  
8 people that they have to write off basically.

9 MR. CLARK: Sure.

10 CHAIRMAN BIRMELIN: And he didn't give us any  
11 numbers but I got the impression that the vast majority of  
12 their defendants would pay -- they pay on time and some pay  
13 ahead of time.

14 MR. CLARK: Sure.

15 CHAIRMAN BIRMELIN: He didn't quote  
16 statistics, so I can't speak to the exact numbers but he  
17 said the problem you bring up in your subsection two, you  
18 also bring up in your subsection four, not having any  
19 resources. He feels that by that \$10 permanent collection  
20 fee which is apart from everything else, nothing to do with  
21 your fees, nothing to do with the restitution. If you owe  
22 us money, we are going to charge you \$10 a month and then  
23 you're going to be collecting the restitution. And it's my  
24 understanding from other people who were here yesterday and  
25 don't need to collect restitution.

1 MR. CLARK: It does. But again, I raise the  
2 issue that that might be fine for Erie County. Whether  
3 that's fine for Philadelphia County that might have a larger  
4 percentage of offenders that aren't employed and Allegheny  
5 County or some other parts of the western -- high  
6 unemployment rates. That I just caution that's to say well  
7 Erie County does it, it's good for the rest of the State.

8 CHAIRMAN BIRMELIN: I'm saying that this is an  
9 example. I'm not saying that this is an -- has to be a rule  
10 for the rest of the State. But we do know that in Erie  
11 County they went from hardly collecting anything to doing a  
12 much much better job when they put their minds to it. And  
13 don't we think that this legislation will hold as well.

14 In the very last paragraph on page two where  
15 you ask us to exclude the supervision fees, from the 50  
16 percent set aside requirement, I'm not sure what you're  
17 saying here. Are you saying that the 50 percent set aside  
18 is that which has the 50 percent of the moneys collected go  
19 to.

20 MR. CLARK: Right.

21 CHAIRMAN BIRMELIN: Are you saying that that  
22 50 percent should come only after you've collected your cost  
23 of collecting them?

24 MR. CLARK: Well, the Act -- I forget the Act.  
25 The Supervision Fee Collection Act of 1991, be excluded from

1 a 50 percent set aside and I say that because, again, it is  
2 a resource issue that as the Commonwealth has decreased its  
3 support of adult probation and parole, it's forced many  
4 counties to really generate their own income through the  
5 supervision fees. If we say to the -- with this legislation  
6 that 50 percent of all the moneys collected will go to  
7 restitution, that's reducing the potential pot for the  
8 supervision fees. The point that I'm trying to make is that  
9 if we reduce that pool of supervision fees, the potential is  
10 reduced -- not potential, the reality is we'll reduce the  
11 amount of money available to operate probation and parole  
12 departments, which would influence our ability to collect  
13 these funds. I think --

14 CHAIRMAN BIRMELIN: Your scenario is correct,  
15 as you still only collect what you're saying at the same  
16 time at the same rate of pay a number of people --

17 MR. CLARK: In terms of restitution, in terms  
18 of supervision.

19 CHAIRMAN BIRMELIN: So it isn't a total wash.  
20 So that if you were more aggressive and had our tools with  
21 which to collect -- and by the way, I don't think you  
22 addressed the wage as an issue.

23 MR. CLARK: No.

24 CHAIRMAN BIRMELIN: Assuming you had more  
25 tools that you waged taxes and other things, and quite

1 frankly, had a change of heart or change of will as to what  
2 place the collection of restitution would have. And either  
3 your or your contracted out, collective hearts, I suspect  
4 that you would see a raise in collections and it would be --  
5 it is a hypothetical I know.

6 MR. CLARK: In response, it is a hearts over  
7 heads matter. I think our hearts in probation, generally  
8 speaking, are in the right place. We fully believe in  
9 restitution as part of the sanction. But the heads, the  
10 rational sign know that we don't have resource to do these  
11 things, so it is a conflict. While we want to do it, I  
12 mean, it is nice that -- you know, our hearts want to do the  
13 right things, but because we don't have the resources, we  
14 can't do the right things and I think that's a dilemma. It  
15 is a real dilemma for professionals out there in the field.

16 We don't decide how and in what order things  
17 are collected on the county level. That's not our  
18 responsibility. But again I just want to make sure that we  
19 reiterate the issue of the supervision fees and how  
20 important they are to maintain the resources necessary. I  
21 mean, given those figures of -- our supervision to operating  
22 budget per county adult probation is about \$65 million. 16  
23 million of that comes from the Commonwealth. The rest is  
24 all county dollars.

25 We compare that with the operating budgets of

1 all these other offices of the criminal justice system.  
2 Again, we supervise 157,000 people. The Board of Probation  
3 and Parole supervises probably now under 20,000 and operates  
4 at about an \$80 million budget.

5 The Department of Corrections, the biggest pig  
6 at the trough if you will, has a billion dollar budget for  
7 36,000 people.

8 While I know the costs are different so we  
9 can't relate it. The reality is, we provide those  
10 supervision services for about \$300 per offender per year.  
11 I can't do the math on the top of my head for the Board, but  
12 it's significantly more than we do. So while we continue to  
13 say, if you do the right thing and we want to do the right  
14 thing but it goes back to that point if the Board of  
15 Probation and Parole because the Governor's office  
16 recommends that they don't do that collection, but they have  
17 more resources than we do. To me that makes absolute --  
18 well on one level it is offensive, but it makes actually no  
19 sense. If they are better equipped, resources wise, to do  
20 these things, why shouldn't they do that? And again, I  
21 raise those issues.

22 CHAIRMAN BIRMELIN: I would go back to you and  
23 say that the solution to give you the ability to do it.  
24 Give you the resources you need to do it.

25 MR. CLARK: Absolutely. Resources and the

1 ability.

2 CHAIRMAN BIRMELIN: Within attachments or  
3 whatever, we give you the power that it is going to take to  
4 do the job and do the job right.

5 MR. CLARK: Right.

6 CHAIRMAN BIRMELIN: So, I guess we agree  
7 that --

8 MR. CLARK: I'd be remiss if I didn't, you  
9 know, I'm not -- every time I testify, I have to testify as  
10 to the -- I think the Commonwealth is getting incredible  
11 bang for its buck in terms of what it provides county adult  
12 probation and parole and what it receives back. I'd be  
13 remiss if I didn't continue to publicize that.

14 CHAIRMAN BIRMELIN: My concern is that the  
15 taxpayer does not have to pay for any more than we have to  
16 and the defendant should pay.

17 MR. CLARK: Again, you're absolutely correct.

18 CHAIRMAN BIRMELIN: And here what he is doing  
19 for me is I find out that it is working and I find out that  
20 it's the defendants paying for it and working, tells me this  
21 is the way to go. In the next page, page three, of  
22 paragraph number one, you talk about the Department of  
23 Corrections not knowing what they have in-house.

24 MR. CLARK: In terms of information.

25 CHAIRMAN BIRMELIN: Yeah, I'm going to share

1 that with Secretary Horne. I see him next and ask him, you  
2 know, to what extent that statement is offensive to him  
3 maybe. But I do know that he says that oftentimes when they  
4 do receive them in Camp Hill, they don't have information.

5 MR. CLARK: I'm not disagreeing, I go on later  
6 to say that -- try to explain the reasons why. But again --

7 CHAIRMAN BIRMELIN: -- information sharing a  
8 big problem, and a defendant that's, you know, one of the  
9 reasons why we put this in this legislation is because it is  
10 mandated would happen and you don't have -- and my question  
11 would be to you, a couple questions would be. You talk  
12 about the justice network and it all sounds well and good,  
13 but how far are we from this becoming a reality?

14 MR. CLARK: To my understanding and I believe  
15 you should really address that question to the Pennsylvania  
16 State Police, which is the lead organization in the JNET  
17 project and the Commission on Crime and Delinquency, it is  
18 my understanding that that project will start seeing results  
19 early 1998. They are well along in the planning stage and I  
20 know this administration is committed for that project to  
21 take place. So it is exciting, and I mean I think it will  
22 solve a lot of the issues that we are trying to get here.

23 CHAIRMAN BIRMELIN: I was going to ask you,  
24 does it solve a portion of this legislation that says that a  
25 hard copy of information must accompany the inmate?

1 MR. CLARK: It could, but there is a reference  
2 in that and I don't know which page that talks about the  
3 fines and the restitution part, the certified copy must  
4 accompany it. I question whether we need that if we have  
5 the capacity to electronically transfer.

6 CHAIRMAN BIRMELIN: I assume you don't have  
7 but maybe I shouldn't assume. Last question I have for you,  
8 on the bottom of page four, you said the Department of  
9 Corrections is electronically connected by the 47 jails  
10 which provides statistical and other offender information on  
11 a daily basis.

12 MR. CLARK: Well, there is 64 -- I believe  
13 there is 64 county jails.

14 CHAIRMAN BIRMELIN: Of 67 counties.

15 MR. CLARK: Not all have jails.

16 CHAIRMAN BIRMELIN: These are 47 counties?

17 MR. CLARK: Yes.

18 CHAIRMAN BIRMELIN: So, Department of  
19 Corrections has -- only if that county jail has complete  
20 information, the Department could pull it out.

21 MR. CLARK: Again, I think you need to talk to  
22 the Department of Corrections on what they are pulling down.  
23 But the point I'm trying to make is if they are  
24 electronically connected to these case management systems  
25 within the jail, and again assuming as you earlier stated



1 that the jail could see all that information. I don't think  
2 it's a stretch for them to go into that county system and  
3 pull the information they need. They do this download of  
4 information. So, why can't they go in and gather more  
5 information. There are probably some technical issues and  
6 there might be some other issues, but the pipe line, if you  
7 will, is there to do that and it will soon be there in the  
8 Board of Probation and Parole in terms of presentence  
9 investigation information. The pipeline will be there for  
10 them to gather the information.

11 On the other hand, they will say no, you have  
12 to give us this. It's like well, wait a minute, you already  
13 have this pipe line in place. Let's fine tune that to make  
14 sure that you're receiving the information. Again, basing  
15 the question that county jail might not have all the  
16 information that the Department of Corrections needs. And  
17 that's -- that can't be solved by this electronic  
18 connection. It is a bigger issue.

19 CHAIRMAN BIRMELIN: I have no further  
20 questions. I will turn it over to our other members. Mr.  
21 Reber, did you have any questions?

22 REPRESENTATIVE REBER: I have a number, Mr.  
23 Chairman, but very particularly you covered most of them.  
24 Just one question, Mr. Clark, do you have any idea how many  
25 people that are under the jurisdiction of your agencies,

1 are, in essence, paying some form of support orders?

2 MR. CLARK: Not off the top of my head, but I  
3 think we could furnish that information to you.

4 REPRESENTATIVE REBER: Do you have -- I mean  
5 if you were going to give a ballpark figure, do you have --

6 MR. CLARK: And I'm not prepared to. But I  
7 will try to get that information.

8 REPRESENTATIVE REBER: Thank you. Thank you,  
9 Mr. Chairman.

10 CHAIRMAN BIRMELIN: Representative  
11 Caltagirone?

12 REPRESENTATIVE CALTAGIRONE: No questions.

13 CHAIRMAN BIRMELIN: Thank you very much. We  
14 appreciate your time you spent with us and I would suggest  
15 to you, Mr. Clark, that as this legislation mover through  
16 the legislative process, hopefully, that you will keep in  
17 touch with me and I'm the prime sponsor of the Bills, with  
18 your suggestions as to what we need to fine tune this to the  
19 Committee and the House floor process, I'd be amenable to  
20 any suggestions you have. I'm not saying I would endorse  
21 them all. I'd certainly want to hear from you because we  
22 want to improve this what we consider to be a problem of  
23 restitution and not being paid very often or very much.

24 And the victims of Pennsylvania get left out  
25 in the cold in what appears to be a democratic maze that

1 often times pays the victims last in priority. So with that  
2 in mind, that's why the Bill's being introduced. How we get  
3 to that point to me is not as important as getting that  
4 point.

5 MR. CLARK: Again, we are in total agreement.

6 CHAIRMAN BIRMELIN: I know a lot of people  
7 said that yesterday and today, yeah, we agree. You get all  
8 the butts. As you know, the legislative process is one of  
9 fine tuning and adjusting and et cetera until we get to the  
10 final product. So, I would welcome your input in this  
11 matter as the weeks go on.

12 MR. CLARK: We will be going forward. Thank  
13 you. Thank you for your time.

14 CHAIRMAN BIRMELIN: Our next scheduled  
15 testifier was Laurie Reilly-Snell, Executive Director  
16 Dauphin County Victim/Witness Assistant Program. She is not  
17 going to be with us today but it is my understanding that  
18 Michael Carrucoli --

19 MR. CARRUCOLI: That is right.

20 CHAIRMAN BIRMELIN: -- who is Juvenile System  
21 Coordinator of the Dauphin County Victim/Witness Assistance  
22 Program is going to give her testimony instead. Mr.  
23 Carrucoli, welcome.

24 MR. CARRUCOLI: I can probably ask or answer  
25 some --

1 CHAIRMAN BIRMELIN: I'm sorry.

2 MR. CARRUCOLI: I can probably answer some  
3 general questions at the end, but if there is anything real  
4 specific, you want to direct it to my director.

5 CHAIRMAN BIRMELIN: We will try not to pin you  
6 down.

7 MR. CARRUCOLI: Thank you. Good morning. As  
8 indicated, my name Michael Carrucoli and I am presenting the  
9 testimony of Laurie Reilly-Snell who's the Executive  
10 Director of the Dauphin County Victim/Witness Assistance  
11 Program. She has held the position in the community-based  
12 private, non-profit agency for 12 years. Thank you for  
13 affording us the opportunity to speak to you today about the  
14 issue of restitution for crime victims.

15 The Dauphin County Victim/Witness Assistance  
16 Program has seen many changes in the rights and services  
17 provided to crime victims over the years. When the program  
18 began providing services to clients, we typically closed the  
19 case after the sentencing phase. Our thinking was naive.  
20 What we have learned is that often closing a case at that  
21 point is too soon. Frequently, the impact of the crime  
22 settles in once the system is completed. Prior to that,  
23 victims must worry about court dates, subpoenas, testifying,  
24 filing claim forms, keeping their families and work  
25 together, and financial responsibilities. Often, there is

1 not time to allow many side effects of the crime to get in  
2 the way of "doing business". Victims trust that the system  
3 will do what is necessary, the right thing and what is in  
4 the their best interest.

5           When a victim receives a letter from a  
6 prosecutor's office requesting information about the losses  
7 they have incurred, they innocently assume that if they fill  
8 out and return the restitution claim, a Judge then orders  
9 the restitution, and someday they will receive their money.  
10 There is a logical reason to attempt to financially restore  
11 a crime victim, at least in the mind of the victim, and  
12 probably in the minds of those who designed the system. In  
13 the following case scenario, I will outline a powerful  
14 message about the lack of respect to financially restore a  
15 number of crime victims, and the lack of accountability of  
16 not only the offender but the system as well.

17           Please note in July of 1990, Angela was  
18 sentenced to one to 12 months in the Dauphin County Prison  
19 as a result of pleading guilty to 23 counts of forgery.  
20 Angela owed a total of \$3340.80 in court costs, fines and  
21 restitution. To date, she has paid \$1121.50. Her parole  
22 has been revoked five times. The last time she appeared in  
23 court for these charges was on May 30th, 1996. At that  
24 time, she was revoked and sentenced ten months and 11 days,  
25 as she was in the previous time she appeared before the

1 court. The supervision fee was waived in 1995, six years  
2 after being sentenced to a maximum one year sentence, this  
3 offender was still being supervised.

4 In September, 1990, Veronica, who was Angela's  
5 co-defendant, who has a criminal record was sentence to one  
6 and a half to three years in a state correctional  
7 institution for 45 counts of forgery. Veronica owes \$12,732  
8 to Dauphin County and to her victims. To date, she has paid  
9 nothing. She was released from prison on April 22, 1992 and  
10 sent to a drug and alcohol treatment facility. In November,  
11 1992, I spoke with Veronica's parole agent. He indicated  
12 that Veronica would be "maxing out" on her sentence in  
13 January, 1993. I addressed the issue of restitution at that  
14 time. Since Veronica only had two months to be supervised,  
15 it was not likely the money she owed would be paid back. I  
16 asked him if he would revoke her parole, issue a warrant or  
17 something. He said he could not. I clarified with him that  
18 it was not a matter of could not, but would not. In  
19 January, 1993, I again spoke to the same parole agent who  
20 indicated that Veronica absconded sometime in November and  
21 he was instructed to pick her up only if she incurred new  
22 charges. If Veronica was not picked up, her case would be  
23 closed on January 22nd, 1993. It was.

24 Restitution is a major factor in the majority  
25 of our cases. In the preceding case, the victims did what

1 was expected of them. The system, however, did not hold  
2 Veronica the least bit accountable to the victims. She  
3 failed in her financial responsibilities and obligations.  
4 Would I walk away from a \$12,732 debt if no one expected me  
5 to pay? It is certainly something to consider.

6 In Dauphin County it appears that we are  
7 asking victims to choose between punishment (jail time) or  
8 financial restoration. If the defendant is sentenced to a  
9 county sentence in Dauphin County there is a much better  
10 chance of recovering their monetary loss. However, it does  
11 not seem fair to ask a victim to agree to a lesser sentence  
12 in exchange for money. We do it. We do it because we know  
13 the reality of the priority and focus of State supervised  
14 offenders.

15 Odd as it may seem, our caseworkers encourage  
16 family members who have lost a loved one to a murder, to  
17 send in a restitution claim for funeral expenses.  
18 Typically, the response from the players in the system is  
19 the defendant is going away for a long, long time, what is  
20 the point of getting restitution ordered? When it is a life  
21 sentence, there is the same, but slightly stronger response.  
22 There are two important reasons to order restitution.  
23 First, the system, especially the court, is acknowledging to  
24 the victim that there is a loss and the offender should be  
25 responsible for it. Secondly, I highly suspect, that at

1 some point in time, that offender may work in the prison,  
2 for cents, albeit, and/or someone will assure that there is  
3 commissary money or other financial resources made available  
4 to the offender, however slight. Restitution is also a  
5 symbol for crime victims. \$50 a year may be better than not  
6 acknowledging the responsibility.

7           In reviewing the draft legislation before us,  
8 I am encouraged about a number of items. First, it makes  
9 the concept of restitution for victims a priority in the  
10 system. It provides continued and consistent awareness to  
11 all components that restitution is an issue. Based on my  
12 home county's ability to collect court costs, fines,  
13 restitution and supervision fees, placing the burden of  
14 collection in the hands of the county is workable provided  
15 that the counties are given the resources to do so. The  
16 mere fact that Erie County is so successful in its  
17 collection abilities could provide incentive. Any  
18 collection fee imposed on offenders to collect such money,  
19 should certainly be a focus in order to develop programs and  
20 processes to do so. However, I am aware that we continually  
21 add financial obligations to those who do not have financial  
22 resources. I am certainly for accountability, but please  
23 realize that I want restitution to be a reality.

24           Another important aspect of this legislation  
25 is the reiteration of consistently providing all pieces of



1 the system with updated information. In the past in our  
2 county, it was not at all unusual for our Fines and Costs  
3 Departments to not receive copies of restitution orders.  
4 Certainly, amended orders were just as problematic, if not  
5 more so. Just this month while conducting a case review, I  
6 compared the restitution amount ordered on the county  
7 computer system to the copy of the court order we had in the  
8 office file. There was approximately an \$18,000 difference.  
9 Imagine being on parole for approximately four years when  
10 the Victim/Witness staff person notifies your parole officer  
11 that the restitution information was apparently never passed  
12 to the appropriate departments and you now that have much to  
13 pay off. The continued sharing of information must be a  
14 priority.

15 Restitution is such a priority for our  
16 clients, that we have taken grant funding to provide for a  
17 part-time staff member who monitors cases which are open for  
18 restitution purposes solely. Although there is only a  
19 part-time position, it provides approximately 130 clients  
20 with regular updates on the payment status of their case,  
21 the employment status of the offender, and most importantly  
22 acts as a liaison between the probation and parole offices  
23 (county and state) and the clients we serve. This  
24 caseworker provides revocation hearing dates as well as an  
25 explanation of what goes on and a follow-up of what

1 happened. Contacts have even been made to offenders with  
2 the hopes of convincing them that the repayment of the  
3 restitution is critical. Much to our surprise, some  
4 offenders have said no one talked to me about this.

5           When a crime victim wants to purchase a car or  
6 a home or take out a personal loan, and they cannot  
7 because their credit has been destroyed because of a crime,  
8 that is injustice. When a medical provider will not do the  
9 plastic surgery without payment in full, and the victim must  
10 walk around with a four inch facial scar, that is injustice.  
11 When a woman loses her job across the river because she does  
12 not have a car to transport her and the bus does not run  
13 late enough to return her home, that is injustice. When an  
14 inmate can purchase magazines and cable and other treasures  
15 while incarcerated, but never acknowledge the financial  
16 obligation to their victim, something is not right.

17           This legislation provides for very basic  
18 necessities. The sharing of information, the continuity of  
19 keeping system components updated, the focus of prioritizing  
20 restitution, and the repayment by the offender by whatever  
21 means are available to the probation departments and/or the  
22 Department of Corrections (when prisoners have money coming  
23 in). My hope is that you will support the movement of this  
24 legislation for all the right reasons, but most importantly,  
25 to acknowledge to crime victims that the system can be

1 trusted to hold offenders accountable and to be accountable  
2 itself. Thank you.

3 CHAIRMAN BIRMELIN: Thank you. Mr. Walko, do  
4 you have any questions?

5 MR. WALKO: Thank you, Mr. Chairman. I did  
6 have a brief question about something you said late in your  
7 testimony concerning crime victims and their credit being  
8 destroyed because of the crime.

9 MR. CARRUCOLI: Okay.

10 MR. WALKO: Would you give me some examples  
11 perhaps?

12 MR. CARRUCOLI: An example would be just  
13 credit card fraud. Sometimes it takes countless years to  
14 restore someone's credit.

15 MR. WALKO: I was wondering if there were laws  
16 to prevent a credit company or should there be from changing  
17 the credit rating as a result of a crime?

18 MR. CARRUCOLI: I mean I know there are laws  
19 probably in place for that. But the situation is when  
20 things go askew with your credit, even if it legally  
21 shouldn't happen, the credit bureau gets a hold of things  
22 and it is just a mess, it is a morass to try to rectify  
23 everything and to have everything back in order. And it  
24 does sometimes take years to get through the red tape to,  
25 you know, properly get everything back in order.

1 MR. WALKO: Perhaps we should look at some  
2 ways to clear up that red tape. Thank you, Mr. Chairman.

3 CHAIRMAN BIRMELIN: Representative  
4 Caltagirone?

5 REPRESENTATIVE CALTAGIRONE: No questions.

6 CHAIRMAN BIRMELIN: Representative Mayernick?

7 MR. MAYERNICK: No questions at this time.

8 CHAIRMAN BIRMELIN: We want to thank you, Mr.  
9 Carrucoli, and I know that you were a fill in, but you did  
10 quite well. Thank you. We appreciate that. Thank you for  
11 your testimony.

12 MR. CARRUCOLI: Thank you.

13 CHAIRMAN BIRMELIN: Is Mr. Bergstrom here? We  
14 have scheduled as our last testifier Mr. Mark Bergstrom,  
15 Associate Director of Pennsylvania Commission on Sentencing.  
16 He is not here at the moment. We will wait a few minutes.  
17 He wasn't scheduled until 11:00 o'clock, so we will give him  
18 until then to come. And if anybody sees a stranger coming  
19 in that looks like Mark Bergstrom, let me know and I'll see  
20 if I can get him to testify, but we will take a brief recess  
21 right now.

22 (Recess.)

23 CHAIRMAN BIRMELIN: We are going to pick up  
24 with our hearing. We have one testifier left, and Mr. Mark  
25 Bergstrom is the Associate Director of the Pennsylvania

1 Commission on Sentencing. And he has just arrived. He is  
2 our last testifier for this morning.

3 I guess I really can't blame him for not being  
4 here ten minutes early. He's probably used to testifying at  
5 Public Hearing Committee Meetings where he was probably an  
6 hour or two later than normally scheduled. So, Mr.  
7 Bergstrom, we welcome you. We ask you to present testimony  
8 when you're prepared to do so.

9 MR. BERGSTROM: Thank you, Mr. Chairman. And  
10 I'm glad to be here on time. It was a cloudy trip down from  
11 State College. Good morning to you and to the members of  
12 the Subcommittee on Crime and Corrections. Thank you for  
13 providing this opportunity to comment on the proposed  
14 legislation regarding restitution before you today. The  
15 Commission on Sentencing strongly supports this proposal and  
16 any efforts to increase the amount of restitution collected  
17 for victims of crime and to improve information flow within  
18 the Commonwealth's criminal justice system.

19 Throughout this decade, the General Assembly  
20 has taken a number of steps to increase the visibility of  
21 victim issues and to improve the criminal justice systems  
22 responsiveness to those issues. Victim restitution is one  
23 such issue. Beginning in 1990 with the enactment of the  
24 County Intermediate Punishment Legislation, the General  
25 Assembly encouraged the development and expansion of

1 community-based programs that focus on holding offenders  
2 accountable for their crimes while they remain in their  
3 communities. A number of these programs focus on areas such  
4 as mediation, community service and restitution, providing  
5 direct reparations to victims of crime. During the 1995  
6 special session on crime, the General Assembly passed  
7 legislation which requires courts to order restitution in  
8 full regardless of the offender's ability to pay. And now,  
9 with this legislation, the General Assembly is moving  
10 towards providing a more systematic manner in which  
11 restitution is collected.

12           The Commission on Sentencing, as an agency of  
13 the General Assembly, has attempted to follow this lead  
14 throughout the decade. The Fourth Edition of the Sentencing  
15 Guidelines, which were promulgated in 1994, sought to  
16 incorporate the use of county intermediate punishments into  
17 the guidelines. As part of this process, the Commission  
18 identified a number of community-based programs, including  
19 restitution programs, as restorative sanctions, those  
20 programs among others things have a goal of returning the  
21 victim to pre-offense status. The counties which have  
22 implemented restitution or collection programs have  
23 documented significant increases in the amount of  
24 restitution and other financial obligations collected.  
25 During the recent revisions to the Sentencing Guidelines,

1 which took effect June 13th of this year, the Commission  
2 retained this restorative sanction provision and continues  
3 to encourage counties to develop and implement programs as  
4 part of the county intermediate punishment plan.

5           Turning to the first set of proposals before  
6 you today, those relating to the Judicial Code Title 42, the  
7 Commission is generally supportive of the amendments under  
8 consideration, and believe the changes will result in an  
9 increase in the amount of restitution collected. Under  
10 section 8127 of that legislation, the amendment would permit  
11 a wage attachment for purposes of collecting restitution as  
12 well as fines, costs and other judgements. Wage attachments  
13 have been very useful tools for collecting support and we  
14 would anticipate a similar benefit if it is extended to  
15 restitution and other economic sanctions.

16           Section 9728 standardizes collection practices  
17 through out The Commonwealth by designating the county  
18 probation department as the agency responsible for  
19 collecting restitution and all other court ordered financial  
20 obligations. This section also authorizes a correctional  
21 facility to deduct restitution and other court ordered  
22 financial obligations from an inmate's personal accounts and  
23 transmit those moneys to the probation department. The  
24 Commission supports the move to standardize operations, to  
25 identify an office or agency as responsible for the overall

1 management of restitution and court ordered financial  
2 obligations, and the move to permit deduction from inmate's  
3 accounts. However, as we have seen with other practices at  
4 the county level, it may be more appropriate to give the  
5 court the flexibility of designating the specific office or  
6 agency in the county that's responsibilities for management  
7 of these collections, instead of mandating the  
8 responsibility to the probation department.

9           Regarding the payment of restitution to  
10 victims, the proposed legislation would require that no less  
11 than 50 percent of the moneys collected be used to pay  
12 restitution, as opposed to other financial obligations,  
13 until restitution is paid in full. Some courts have  
14 established Local Rules which exceed this standard, rules or  
15 practices which require all restitution to be paid in full  
16 prior to the payment of any other financial obligation.  
17 While these policies raise the prominence of restitution and  
18 appropriately attempt to make victims whole as expedient --  
19 in an expedient manner, the increase in moneys attributed to  
20 restitution at the same time reduce the moneys available for  
21 fines, costs and supervision fees. Due to the increased  
22 reliance in recent years on the use of these moneys for the  
23 day-to-day operations of the probation departments and other  
24 related expenses, careful consideration must be given to the  
25 overall impact of any change in the order of distribution of



1 payments. This concern is all the greater if the proposed  
2 legislation requires the probation department to take on  
3 additional responsibilities.

4           Section 9764 requires that the information be  
5 made -- that information be made available to correctional  
6 institutions in addition to the commitment order. Thus  
7 improving the quality of information which follows an  
8 offender through the system. While one would hope that in  
9 the not too distant future an electronic transfer of such  
10 information would be available, at the current time it seems  
11 only appropriate that any agency responsible for custody or  
12 supervision of an offender should have access to all  
13 relevant and necessary information about that offender.  
14 While the listing of documents included under this section  
15 seems appropriate, the Commission would encourage the  
16 committee to add the completed Guideline Sentence Form to  
17 the listing. Courts are required to complete a Guideline  
18 Sentence Form for every felony and misdemeanor conviction  
19 which results in a sentence. A copy of the current  
20 Guideline Form is attached to the last page of the handout.  
21 Presently, when a completed guideline sentence form is  
22 included in an inmate's record, the Pennsylvania Department  
23 of Corrections considers the information from the form when  
24 classifying the inmate. The Pennsylvania Board of Probation  
25 and Parole also considers the information from the form in

1 determining release eligibility. During the past several  
2 years, the Commission has been working with these two  
3 agencies to improve the utility of the sentence -- of the  
4 Guideline Sentence Form for these purposes. The information  
5 found on the form may be of equal help for the  
6 classification and parole decisions at county levels and  
7 from county correctional facilities.

8           The second set of proposals before you, which  
9 deal with the Crimes Code and Title 18, seem to build on the  
10 legislation enacted during the special session which  
11 required restitution to be ordered regardless of the  
12 offender's ability to pay. We support that legislation --  
13 we did support that legislation and we support this  
14 amendment. This amendment requires the district attorney to  
15 solicit information regarding restitution from the victim  
16 prior to sentencing and before any modification of a  
17 restitution order. The Commission recommends that the  
18 county agency be responsible for collecting restitution also  
19 be contacted by the district attorney before any  
20 recommendation is presented to the court.

21           The legislation discussed today, if enacted,  
22 should improve the processing and collection of restitution  
23 orders as well as enhance the flow of information within the  
24 criminal justice system. However, perhaps more impactful in  
25 increasing the compliance of restitution orders and other

1 financial obligations would be the development and expansion  
2 of restitution and collection programs, programs which  
3 assist offenders in obtaining and maintaining employment, or  
4 that employ collection agents to focus exclusively on  
5 obtaining payments -- regular payments from offenders.  
6 Support of these types of program, in addition to the  
7 legislation proposed today, is strongly recommended and  
8 encouraged.

9 Thank you again for this opportunity and I  
10 welcome any questions you have.

11 CHAIRMAN BIRMELIN: Thank you, Mr. Bergstrom.  
12 I do have a couple of questions that the testimony has  
13 raised in my mind anyway. On the second page of your  
14 testimony on the last full paragraph you talk about the  
15 flexibility designating the office or agency in the county  
16 and opposed to mandating the department. I think that's a  
17 suggestion that we have taken to heart and others have  
18 suggested as well. I would point out that there are two  
19 counties that don't even have a probation department,  
20 Venango and Mercer, so it would be impossible for them to do  
21 it.

22 MR. BERGSTROM: That's exactly.

23 CHAIRMAN BIRMELIN: So, I think that's an area  
24 that an amendment may be appropriate to -- I guess my  
25 concern is to make sure that the probation department is

1 still is a legal entity and authority in this and they  
2 delegate that to someone else and private contractor and I  
3 think that is already done in one county at least. That  
4 suggestion is one that I think others have made note of and  
5 probably one that you will seriously consider.

6 On the following page you requested that the  
7 documents that must be accompanying a prisoner would include  
8 the completed Guidance Sentence Form. This listing, I would  
9 suggest that that is also sounds certainly to be a good  
10 suggestion.

11 MR. BERGSTROM: At this point, occasionally or  
12 maybe more than occasionally, the form is included with the  
13 commitment packet.

14 CHAIRMAN BIRMELIN: Occasionally it is?

15 MR. BERGSTROM: It is included occasionally.  
16 So, at times when that form is available to the Department  
17 of Corrections, if it is included with a PSI or other  
18 information that's given to the department, that the  
19 Department then does use that form to help to classify the  
20 offender. And if that form is in the file at the time of  
21 parole -- at the time the Parole Board comes in to review  
22 the case, that's information that's also used. So sort of  
23 in a happenstance kind of way, it is available now and it is  
24 used.

25 In our meetings with the Department and with

1 the Board of the last couple of years, we have tried to  
2 develop our form so that it gives them more information that  
3 they can use and we provided information on how our form  
4 works and I think this would just blend in with what you're  
5 trying to do, I believe, which is to provide information so  
6 it follows the offender. So the same information used at  
7 the time of sentencing is considered at the time of  
8 classification and at the time of release decision.

9 CHAIRMAN BIRMELIN: Well, it seems to make  
10 good sense to me.

11 MR. BERGSTROM: Sure.

12 CHAIRMAN BIRMELIN: I don't have any problem  
13 with it. One point I would like to ask you as sort of an  
14 adjunct to that is our last testifier said that the -- the  
15 State correctional system has access to 47 jails currently  
16 in Pennsylvania. Would those 47 jails have this Guideline  
17 Sentence Form included in that profile on that prisoner?

18 MR. BERGSTROM: Generally, not.

19 CHAIRMAN BIRMELIN: Why not?

20 MR. BERGSTROM: We have -- well, it is a good  
21 question. Two years or three years ago when we developed  
22 the 1994 form, the Guideline Form for that addition to the  
23 guidelines, we tried to develop it in such a way that it  
24 could also be used as a commitment form. So the same form  
25 used to commit an offender to any facility would also be

1 used for sentencing.

2                   What we found at the local level was that each  
3 county jail had sort of a different procedures or different  
4 commitment forms, so it was difficult to come up with a  
5 standardized form that would be used at the county level.  
6 So our focus is more on coming up with a standardized form  
7 to be used at the State level.

8                   We have developed our new guide line form in  
9 such a way that if the State did have some type of new  
10 commitment form, it could be used have as an attachment to  
11 the Guideline Form. And we have had some discussions with  
12 DOC and with the Pennsylvania Commission on Crime and  
13 Delinquency about that. Sort of coordinate that kind of  
14 commitment order form.

15                   We would hope that we could also sort of blend  
16 that over include counties in that as well. But at this  
17 point that's not a standard practice. Counties may have the  
18 information if a copy of the form is given to the county  
19 jail. But there is no mandate to do that. So it's, again,  
20 sort of hit or miss at the county level.

21                   CHAIRMAN BIRMELIN: So if we were to require  
22 that the sheriff had that information accompanying a  
23 prisoner, he'd have to go back in the court and say hey, I  
24 want a copy of this form?

25                   MR. BERGSTROM: Yeah, and that always sort of

1 raises a difficult issue, and that is if the form has not  
2 been completed, I guess you don't want a form standing in  
3 the way of someone being committed to an institution. As we  
4 read this legislation, our sense was the form would be  
5 another piece of information that would be considered just  
6 as the PSI and other things like that are considered. So,  
7 to the degree that there would be at least an encouragement  
8 to include the form in the packet, we think that's great.  
9 If it is, in fact, mandated the only concern we have is if  
10 the form isn't available will that in any way impede someone  
11 being placed in the jail or in the correctional facility.  
12 And that's the only concern we point out because we can see  
13 that occurring that there would be a delay and the form  
14 being completed and thereby have this offender you're trying  
15 get into jail and you can't get in. So that's the only --

16 CHAIRMAN BIRMELIN: The inclination would  
17 mandate that form being there be included in the list of  
18 both things I think.

19 MR. BERGSTROM: Okay, and I know when I was  
20 reading through the legislation, the area regarding the  
21 pre-sentence investigation is one that sort of stuck out  
22 because at this point, clearly not every offender going to  
23 an institution has pre-sentencing completed and I guess our  
24 view was to the degree that that type of information was  
25 being handled, similar handling might occur with the

1 guideline form.

2 CHAIRMAN BIRMELIN: The last question I have  
3 for you, concerns page three the statement in which you said  
4 the Commission recommends that the county agency responsible  
5 for collecting restitution also be contacted by the district  
6 attorney before any recommendation is presented to the  
7 court. Why? Why did you make that recommendation?

8 MR. BERGSTROM: Well, I guess when we were  
9 looking at the first piece of legislation, the Title 42  
10 legislation, the focus there seemed to be to have an agency  
11 as sort of a point agency in the county to deal with the  
12 restitution issues. And in that legislation, I believe, the  
13 probation department is designated as that agency. What we  
14 are saying is in Title 18 section when you're talking about  
15 determining the level of restitution or modifying an order  
16 of restitution, it seems the district attorney should base  
17 that information, at least on part, on all of the  
18 information developed at the county level by that point of  
19 contact. So, I think our view is if someone is not paying  
20 restitution, the probation office or whatever agency that is  
21 responsible for coordinating that should have an idea of why  
22 that's happening, why someone is not paying restitution.  
23 And that it should be at least the part of the consideration  
24 the DA takes into account when moving forward to modify an  
25 order.



1 CHAIRMAN BIRMELIN: One would expect that a DA  
2 doing their homework would do that anyway.

3 MR. BERGSTROM: Right. I think we'd also  
4 expect and I think in most cases the DA's also try to get  
5 the input from the victim when they are doing restitution  
6 things. And I guess what we are saying is since there was a  
7 specific revision in the -- in that amendment to include the  
8 victim information we thought would be equally important to  
9 include the information regarding the status of collections,  
10 et cetera, for that benefit.

11 CHAIRMAN BIRMELIN: I have no further  
12 questions. Representative Walko?

13 MR. WALKO: Thank you, Mr. Chairman. You note  
14 in the end of your testimony that perhaps more impactful in  
15 increasing compliance with restitution orders would be the  
16 development and expansion of programs, among other things,  
17 of programs which assist offenders in obtaining and  
18 maintaining employment. I was just wondering if you could  
19 share with us the best program of which you are aware that  
20 does that. And also do you have any new ideas for programs  
21 or improvements to the programs that exist?

22 CHAIRMAN BIRMELIN: Sure. I'm aware of a few  
23 programs that focus on those areas. I know Erie County and  
24 Mercer County are two counties that I think have done a lot  
25 of work in trying to at least collect restitution and other

1 kinds of costs.

2                   In some cases, they contract it out or they  
3 hire probation staff that is specifically charged with  
4 restitution collection and nothing else. So that that --  
5 instead of a probation officer dealing with the caseload and  
6 worrying about drug testing and curfew and any number of  
7 other conditions, and in addition to that restitution,  
8 having an officer or an agency responsible for maintaining  
9 the collection of restitution and costs. So, I think in  
10 both cases -- as I said I believe both Mercer and Erie are  
11 two counties that I can think of off of the top of my head  
12 which I believe have done a pretty good job on dealing with  
13 those issues.

14                   On assigned employment, employment assistance  
15 and that, I'm not sure, I guess, I'm not aware of as many  
16 formalized programs. I know within Allegheny County and  
17 other counties there are projects that try to encourage or  
18 assist offenders in obtaining and maintaining employment and  
19 then collecting restitution based on that. Really, if you  
20 look at the juvenile side of the system, I think you'll see  
21 a lot more work in that area. Linkages between the job  
22 training partnership act is one and restitution where you  
23 encourage the -- the development of skills in that for  
24 juveniles and at the same time try to collect some of the  
25 moneys to pay back restitution.

1 I know PennDOT has worked with the Juvenile  
2 Court Judges Commission with their Litter Debate Program  
3 where they basically pay offenders to clean litter off roads  
4 and the idea is that some of that money is then used for  
5 restitution.

6 So, I don't know off the top of my head all of  
7 the adult programs that deal with it, but I think those  
8 models are effective models. Models that have worked well  
9 and probably in conjunction with this legislation would help  
10 to advance or increase the levels of restitution collected.

11 MR. WALKO: Thank you. Thank you, Mr.  
12 Chairman.

13 CHAIRMAN BIRMELIN: Representative  
14 Caltagirone?

15 REPRESENTATIVE CALTAGIRONE: Yes, in Berks  
16 County, we have counsel recovery that was contracted by the  
17 local courts, Gene Troutman, and they have been doing an  
18 excellent job, they have really stayed on top of that. And  
19 they had collected I guess several million dollars in just  
20 the last few years that was owed and due. And of course, a  
21 portion of that goes to the county and some goes to the  
22 state.

23 MR. BERGSTROM: Sure.

24 REPRESENTATIVE CALTAGIRONE: But I'm not sure  
25 it's going along with the victim. What's been your response

1 to that? I'm sure that the Commission has looked at that  
2 and whether or not the privates have had a better collection  
3 rate than the putting a burden on the county or any of the  
4 county offices.

5 MR. BERGSTROM: I'm not sure if it is so much  
6 an issue of who does it, it is that it is done that seems to  
7 be the key thing. I think a county probation office can  
8 hire an officer to do that collection or to focus on some of  
9 that responsibility and do perhaps as good a job as private  
10 sector. Clearly in some counties, they have contracted it  
11 out and part of the moneys collection -- a portion of moneys  
12 collected pay for the contracted services, so there are some  
13 models that I think work fairly well both in Pennsylvania  
14 and outside of Pennsylvania.

15 I think the real focus I would say is having  
16 someone give prominence to that issue. Having an officer or  
17 an agency responsible for sticking with that offender and  
18 requiring the payments and calling up just like you know any  
19 other billing company would do to say where's our payment  
20 this month? So I think those are the kind of issues that  
21 are important and it is I guess I'm not sure that it matters  
22 as much who does it, just so it is done.

23 REPRESENTATIVE CALTAGIRONE: Well, I'm given  
24 to understand they had their service fee on top of whatever  
25 their collecting so it is not taken out of what is owed.

1 The service fee is added to that, and then service wise I  
2 think they really do stay on top of it.

3 MR. BERGSTROM: Right.

4 REPRESENTATIVE CALTAGIRONE: We have heard  
5 testimony in the last two days now of the potential problem  
6 and could afford to some department some agencies as to  
7 whether or not they have a wherewithal whether or not they  
8 are any additional manpower extra money to do this and I'm  
9 thinking, well if that's going to be the problem, then just  
10 contract it out, let the private sector handle it. You're  
11 not going to have that problem then with either manpower or  
12 extra paperwork. Just let somebody in the outside do that  
13 and that reviews the local government the body of that  
14 responsible. As long as they're collecting and staying  
15 after it and somebody stays on top of it from a courthouse  
16 that are really impressive at trying to collect that money  
17 that's owed.

18 MR. BERGSTROM: I think it can be structured  
19 in a lot of ways and I think even with any county government  
20 structure or probation office if those kind of allowances  
21 were permitted, I think they could equally do a good job.  
22 It is not to argue against contracting now because I think  
23 that works well too. It is just that I think you have to  
24 make sure that you're at least sensitive to -- whoever is  
25 doing it, has to be paid somehow and if it is contracting

1 out and some kind of surplus or fee attached to that, or it  
2 is by some other means, it just has to be addressed in order  
3 to have the resources there to do the job. So I guess  
4 that's the key part of it.

5                   REPRESENTATIVE CALTAGIRONE: Has any thought  
6 been given or has any communication taken place I know of  
7 the last 11 or 12 years since I've been chairman of this  
8 committee right in this very room we have had meetings with  
9 the AOPC the Supreme Court Justice and other members of the  
10 court, even with President Judges from counties, we have had  
11 meetings here in this room. And one of things I at times  
12 would remind them of that in addition to the judicial  
13 responsibility as president judges, they have administrative  
14 responsibilities. One of those responsibilities I felt was  
15 the collection of fines, fees, costs and restitution. Many  
16 of them felt that they were not in the business of being  
17 collection agencies or that that was their responsibility.  
18 They adjudicated justice. And that was it. I disagreed  
19 respectfully with them over the years, that that is not the  
20 beginning and end of criminal justice system or when people  
21 get involved in the criminal justice system that they, in  
22 fact, are the administrators in each their counties and they  
23 have an obligation to try to help and aid in the collection  
24 of those funds. How has that sifted out with your group and  
25 the relationship? Either they will receive or the courts

1 trying to get that message across to these president judges.

2 MR. BERGSTROM: Let me try to answer it this  
3 way. I think that at the county level there is an interest  
4 in sensitivity and a willingness from the county to try to  
5 collect restitution. I think judges and people in probation  
6 offices and throughout the court system see that as a  
7 responsibility that should act on trying to collect  
8 restitution, trying to collect other costs. So, I think  
9 that they are aware of that and sensitive to that.

10 One of the concerns -- one of the competing  
11 concerns that I pointed out was when you throw a number of  
12 different financial obligations at an offender that has a  
13 limited income or has no income, and then you're asking that  
14 agency or that court to get money for supervision fees to  
15 support the probation services and for fines and costs and  
16 restitution and then you're looking at some kind of order of  
17 those. I know in some counties where courts -- excuse me,  
18 have had a real sense of trying to pay back money to victims  
19 restitution to victims, they have in fact set a Local Rule  
20 in which restitution must be paid first in full before  
21 anything else is paid. Well, in those counties what you'll  
22 see is then of course there is not any money going towards  
23 fines and costs and supervision fees and so there are  
24 consequences to that. In those counties they have decided  
25 it is a worthwhile trade off, that's the right thing to do.

1           In other counties, they would fear having to  
2 layoff offenders -- if layoff offenders -- layoff the staff  
3 if they didn't have resources from supervision fees and  
4 other things like that. So all I'm saying is -- all the  
5 Commission is saying is, the offender has sort of a fixed  
6 amount of money. We want to make sure we get as much money  
7 as we can from the offender. Keep the offender working to  
8 keep making money to payoff all these obligations, but  
9 clearly I think we all have to take sort of a broad view in  
10 saying how do we want to collect that money? How are we  
11 going to get it and who are we going to give the money to  
12 and in what rank order are we going to do that? And I guess  
13 those are all the issues that President Judges and courts  
14 deal with trying to struggle who we are going to pay off and  
15 how are we going to keep people employed to try to do that.

16           REPRESENTATIVE CALTAGIRONE: Well, as I  
17 pointed out yesterday, especially at the local county level,  
18 there is a new limited amount of people that are being  
19 convicted of DUI offenses. And of course in many of those  
20 cases, they do in fact have the ability to pay because they  
21 are working and they have jobs and incomes.

22           MR. BERGSTROM: You're right.

23           REPRESENTATIVE CALTAGIRONE: Albeit they have  
24 I'm sure a limited amount of extra money to put aside for a  
25 situation that they get involved in and the DUI. But I



1 would think and if what was said yesterday and is accurate I  
2 have no reason to think that it isn't possible many of those  
3 people do in fact have the wherewithal to make restitution  
4 and to victims when victims are involved in the situations  
5 or at least come up with the court costs and fees whatever  
6 else would be involved.

7 MR. BERGSTROM: Sure. DUI's are a big  
8 population and probably as compared to the norm the typical  
9 offender, DUI's probably make more money and owe less  
10 restitution than most other offenders. So, I think we could  
11 look at DUI offenders and say that's sort of a category  
12 that's different than any other offenders. I think if  
13 you're looking at property offenders, drug offenders, even  
14 violent offenders, I think you'll find as compared to DUI  
15 offenders they'd be less likely to be employed if they are  
16 employed it might be at a lesser level and they generally  
17 have restitution and maybe large enough of restitution to  
18 pay. And it's when you're looking at those offenders, that  
19 I think some of these issues come into play because they  
20 take a lot of time and effort to keep them employed and then  
21 to get money back from them for restitution costs, et  
22 cetera.

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

25 CHAIRMAN BIRMELIN: Thank you, Mr. Bergstrom

1 for your testimony, we appreciate your insights and some of  
2 the suggestions you've made some have been reiterated, but  
3 we take them into account as well for the final product  
4 here. Thank you for coming.

5 MR. BERGSTROM: Thank you for your time.

6 CHAIRMAN BIRMELIN: No further witnesses are  
7 scheduled today. So as of now, we will call this meeting  
8 adjourned.

9 (Whereupon, at 11:30 a.m., the hearing was  
10 adjourned.)

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C E R T I F I C A T E

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