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CRIMINAL LAW & PROCEDURE:
Power of Juvenile Court
to Order Restitution as a
Condition of Probation

Honorable Frank X. Yackley
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Dear Mr. Yackley:

This opinion is in response to your inquiry about the power of a court under the Juvenile Court Act (Ill. Rev. Stat. 1975, ch. 37, par. 701-1 et seq.) to require restitution to the victim of a crime as a condition of probation. You point out that restitution is explicitly allowed as a condition of parole or supervision under sections 5-6-3 and 5-6-3.1, respectively, of the Unified Code of Corrections (Ill. Rev. Stat. 1975, ch. 38, par. 1005-6-3; and Ill. Rev.

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Stat. 1976 Supp., ch. 38, par. 1005-6-3.1); but that restitution is not one of the named conditions of probation in section 5-3 of the Juvenile Court Act. (Ill. Rev. Stat. 1976 Supp., ch. 37, par. 705-3.) In my opinion the Juvenile Court Act would allow a requirement of restitution in appropriate cases.

The allowable conditions set forth in section 5-3 of the Juvenile Court Act are quite numerous and broad; e.g. that the minor "(a) not violate any criminal statute of any jurisdiction"; "(c) work or pursue a course of study or vocational training"; "(e) attend or reside in a facility established for the instruction or residence of persons on probation"; "(f) support his dependents, if any"; "(g) refrain from possessing a firearm or other dangerous weapon, or an automobile". (Emphasis added.) The number and breadth of these allowable conditions give the judge a large degree of discretion. While the listing of all these separate allowable conditions might be thought to rule out others on the principle "expressio unius est exclusio alterius," the General Assembly seems to have foreclosed such a narrow reading by adding at

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the end that the minor must "(n) comply with other conditions as may be ordered by the court".

The commentary by the Council on the Diagnosis and Evaluation of Criminal Defendants, set forth after chapter 37, paragraph 705-3 of Illinois Annotated Statutes (Smith-Hurd Supp. 1977), also indicates a liberal reading of the allowable conditions of probation:

"* * * Any of the conditions enumerated in this subdivision, or any other conditions which may be relevant to the rehabilitation of the delinquent minor, can be imposed at the discretion of the court. * * *" (Emphasis added.)

As that commentary suggests, the judge does not have absolute discretion in setting conditions of probation. In a case under the parallel provisions of the Unified Code of Corrections setting allowable conditions for criminal probation (People v. Dunn (1976), 43 Ill. App. 3d 94, 96), the court disapproved a condition that a person convicted of failing to give a turn signal get his hair cut. The court noted that:

"* * * While the section does appear to provide for conditions other than those specifically listed (see section 5-6-3(b)), there must be some connection between the condition and the crime charged. (People v. Brown (1971), 133 Ill. App. 2d 861, 272 N.E.2d 252). * * *"

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In a proper case a requirement of restitution might well further the objectives of the Juvenile Court Act. Those objectives are summarized in section 1-2 of the Act (Ill. Rev. Stat. 1975, ch. 37, par. 701-2) in part as follows:

"(1) The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his own home, as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community; * * *."

Such "guidance" might well include requiring the minor to reimburse the victim or victims of his crime for the loss of property he has caused them, particularly where the minor appears to take lightly the significance of the harm he has done his victims. Where the court reasonably believes that such a requirement, along with other conditions as part of probation, would better serve the interests of the young lawbreaker, and of the society than a period of incarceration, I believe such a condition of probation would be upheld.

Very truly yours,

A T T O R N E Y G E N E R A L