

## DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

April 2, 1991



ALL COUNTY INFORMATION NOTICE I-36-91

TO: ALL COUNTY WELFARE DIRECTORS


SUBJECT: COLLATERAL ESTOPPEL

The purpose of this notice is to clarify whether Counties are barred from seeking an amount beyond a court ordered restitution to secure full recovery of an overpayment. Counties have expressed some concern as to whether the full amount of an overpayment can be recovered where the court has ordered a lesser restitution amount.

Penal Code Section 1205.04 provides that restitution as a condition of probation may be full or partial, thereby relieving the criminal court of the necessity of deciding the full amount of the overpayment. Collateral estoppel bars relitigation of an issue decided at a previous proceeding if the issue decided previously is identical to the one that is sought to be relitigated. The criminal proceedings determine the amount of restitution to be paid as a condition of probation, and the administrative hearing is convened to determine the actual amount of overpayment of welfare benefits. Thus, the issue of how much is paid in criminal restitution is not the same as the overpayment issue.

This means that the Counties are not barred from administratively seeking to recover the balance of the total overpayment. Accordingly, appropriate collection methods may be implemented to recover the balance of the overpayment.

If you have any questions or need more information, please contact the Overpayment Recovery Bureau at (916) 322-5387 or ATSS 492-5387.



ROBERT A. HOREL  
Deputy Director