

2003-2004 SANTA CLARA COUNTY CIVIL GRAND JURY

INQUIRY INTO THE COLLECTION OF ADULT RESTITUTION

Summary

The Santa Clara County Civil Grand Jury (Grand Jury) inquired into the county's process for collecting adult criminal restitution. The Grand Jury examined the roles of the Office of the District Attorney (DA), the Probation Department (Probation), the Department of Revenue (Revenue), and the Victim Witness Assistance Center (VWAC), an agency little known outside criminal justice circles. These agencies expend considerable effort in collecting restitution, but the effort is not well coordinated and a sizable percentage of money is never collected. The Grand Jury offers four findings and four recommendations.

Background

The Grand Jury interviewed the DA Restitution Specialist and a supervising Assistant DA, Probation officers and a Probation Manager, a Revenue Fiscal Officer and a Revenue Information Systems Manager, and the Director of VWAC. They explained what restitution is, how it is collected, and the role played by the VWAC.

Restitution

Restitution (giving back to the victim what was taken away; an attempt to make the victim whole) has a two-fold purpose: to hold criminals responsible for their actions and to compensate victims for their loss. The first of two types, restitution fines, go directly to the State Restitution Fund (Fund). All persons convicted of crimes and traffic offenses pay fines ranging from \$100 to \$1,000 for a misdemeanor conviction to \$200 to \$10,000 for a felony conviction, with drunk-driving fines a large portion of the total. The Fund provides payments to qualified victims if their claims have not been paid by the criminal, insurance policies, benefit programs, or lawsuits. The second type, the restitution order, goes directly to the victim (or to the Fund if the victim has already been compensated by the Fund) for an amount based on the victim's loss. Criminals generally pay court-mandated rehabilitation program fees first, restitution fines second, and restitution orders last.

A judge is required by law to order restitution as part of the sentence in a criminal case. The judge takes into account the seriousness of the offense, economic gain from the crime, and the harm to the victim. The DA, Probation, and VWAC provide the judge with information and

evidence regarding the victim's losses. Probation supplies information regarding the criminal's ability to pay, such as education and employment history. Both the DA and Probation can make recommendations regarding the appropriate level of restitution. A minimum amount is ordered, regardless of ability to pay. The judge then uses his discretion to set any final amount above the minimum. Restitution orders range from a few hundred dollars to several hundred thousand dollars, but typically range from \$500 to \$5,000. Restitution fines and orders cannot be postponed, but might be reduced or waived upon appeal if the court finds extraordinary and compelling reasons. Payment of restitution is always a condition of satisfying probation, cannot be removed through bankruptcy, and has no statute of limitation and so follows a criminal for life.

DA

The Restitution Specialist, a senior paralegal under the supervision of an assistant DA, handles about 5,000 restitution cases per year to make sure that victims get restitution orders. The Specialist works with victims to determine claims, performs a debtor's examination to determine the criminal's financial assets, refers victims to resources that explain the best ways to go about collecting restitution, and helps victims get started in collecting restitution by providing the name and court docket number of the criminal's case. The Specialist is notified of claims to the Fund and keeps the state updated on Fund payments to the victim.

Not all victims know they are legally entitled to restitution and others are reluctant to participate in a legal process. Sometimes victims simply cannot be located. At the time of sentencing, it is therefore common for the required information to be incomplete so a General Restitution Order is processed, with the exact restitution amount to be determined later. Sometimes the necessary information never becomes available. Other times, it eventually filters in and the agencies involved must cooperate to make sure that the information gets back to court to have the proper amount of restitution recorded. A complete order is then sent to the victim, the criminal, the DA, Probation, and VWAC.

Probation

The probation officer receives the restitution order from the court and determines a monthly payment plan for the criminal. By law, a restitution account must be set up within 30 days. Follow-up face-to-face probation meetings occur as often as once or twice a month or as infrequently as once every three months. During these visits, although restitution is only one of eight Probation goals, it is the probation officer's job to remind the criminal to make regular payments of restitution to Revenue, which sends them on to the victim. Revenue posts information to Probation about the criminal's payments and outstanding balance. Probation earns a 10% rebate from the state on the restitution it helps to collect.

The typical probationary period is three years. If the court-mandated restitution is a considerable amount of money, the judge can give the criminal up to seven years of probation to complete payment. If after seven years the criminal has successfully complied with all the conditions of

probation - except full payment of restitution - probation is generally terminated, although it can legally be extended for three more years. About 35 criminals have their probation terminated each day in the county. About two-thirds of these still owe restitution.

Revenue

Revenue receives a Victim Restitution Referral Form from Probation within 90 days of the beginning of probation. The form indicates how much reimbursement is owed to the Fund and how much direct restitution is owed to the victim. For criminals on informal probation under the jurisdiction of the court, the department receives this information from the DA or VWAC. Letters are sent to remind criminals that they must pay restitution on a regular monthly basis. The Department of Revenue keeps the restitution account open until fulfilled, or for ten years after probation has been terminated. No payment reminder letters are sent after probation has been terminated.

The department can place liens on houses, seek payments from probate upon the death of the criminal, and garnish wages; however, these measures are rarely taken. The State Franchise Tax Board is helping the county collect on a cumulative account of \$50-\$75 million in outstanding restitution; about \$5 million is collected yearly by intercepting tax refunds. Typically, Revenue confines its activities to issuing reminder letters three times a month, sending notices threatening legal action if no payment is received, collecting and disbursing monies, and maintaining accounts. Ninety-day delinquency reports are sent to both Probation and the DA. Revenue has suffered recent staffing cutbacks of about 13%.

A fiscal officer in Revenue estimated that over the last three fiscal years, the department collected, on behalf of victims, about \$3.3 million from restitution orders each year, while \$7 million in new orders were added to the outstanding accounts annually. Records for the last five fiscal years show, after adjustments, about \$33 million in outstanding restitution charges and a recovery rate of about 40%. The Director of VWAC estimates that during the last fiscal year, the county dispensed about \$5 million from the Fund to pay for victim losses and only \$80,000 was collected back from the criminals in the county to reimburse the Fund for the money it distributes to victims. For the amount it helps to collect, Revenue receives a 10% administration fee from the state for restitution money and an additional 10% rebate on restitution fines.

Revenue cannot actually pay the victim until it gets authorization from Probation (or from the court for those criminals on informal probation). Sometimes authorization does not arrive in a timely fashion. Other times the victim cannot be located and no payment is made, leaving roughly \$100,000 in open, unclaimed department accounts on an ongoing basis.

Revenue has contracted in the past with private collection agencies to collect debts owed to county institutions like Valley Medical Center, but has never contracted out restitution collection. Under a contract, the collection agency earns a negotiated percentage of what it collects based on such factors as the age of the outstanding account and the date of last activity on the account.

The California Department of Corrections (CDC) has the responsibility to collect restitution while a criminal is in a state prison. It can collect, on behalf of the victim and with the victim's signed permission, 30% of the inmate's wages made while working at low-paying prison jobs. The Fund collects \$6 to \$7 million this way, amounting to about 4% to 5% of the \$140-\$150 million paid each year statewide to victims for their losses. Upon release from prison, the state's parole officers are supposed to ensure timely payments of restitution. However, neither parole officers nor county officials have programs to collect restitution from these parolees. Instead, they pay restitution only on a voluntary basis, at a rate that is only 10% of the little they paid while in prison. The CDC is permitted to enlist the services of collection agencies to collect restitution on behalf of victims.

Victim Witness Assistance Center (VWAC)

In 1977, VWAC was established by the National Conference of Christians and Jews as part of a demonstration project as the first private victim assistance center in California, to see how well a nonprofit group working independently of the DA could handle the job of helping victims. It has an annual contract with the DA, which provides a conduit for state and federal funds to VWAC. Although assisting victims is not a mandated program, every county in the state now has such a center, with 70% operating out of the local district attorney's office and the remainder either operating out of probation departments or as independent, private nonprofits like VWAC.

Any county resident who is either injured or threatened with injury as a direct result of a crime is eligible to go to VWAC and apply for compensation from the Fund. VWAC has processed claims for Californians who were victims of terrorist incidents that took place as far away as Moscow. Also non-residents who are victims of crimes committed in the county are eligible, as are derivative victims such as relatives, housemates, or those paying for the expenses of deceased victims. The police, the DA, and Probation are all required to inform victims about VWAC, which must serve all qualified victims, even if the criminal is never identified, caught, or convicted.

The process of collecting restitution is difficult to navigate under the best of circumstances; for a victim who is distressed, fearful, or unfamiliar with the myriad forms required by different agencies it is a daunting task. Victims often want to put the criminal event behind them and do not want to deal with it anymore. Many are often unaware of their rights to compensation. Some might view the application process as too complex and time consuming. Others need translation services. VWAC is set up to help people in all these circumstances.

VWAC focuses on the needs of the qualified victim and its services are offered free of charge. Its primary job is to assist victims in the preparation and presentation of their claims for payment to the Victim Compensation and Government Claims Board which disburses money from the Fund. VWAC also provides emergency funds, crisis counseling, field visits, and translation services. VWAC will, if necessary, orient the victim to the criminal justice system, assist during the proceedings, and monitor the progress of the victim's case, although the VWAC advocates lack legal standing in court. Victim advocates help victims fill out all the necessary forms to apply for compensation for a variety of losses, including un-reimbursed medical expenses, inpatient and

outpatient mental health treatment, loss of income and/or support, funeral expenses, job retraining, home security installations, moving/relocation expenses, crime scene cleanup in homicide cases, and home/vehicle renovation for victims permanently disabled as a result of the crime. The Fund does not pay for injuries resulting from auto, aircraft and boat accidents, property loss or damage, trial expenses, or pain and suffering claims. Claims are paid only if the victim or the derivative victim's losses are not fully covered by insurance, Worker's Compensation, Medi-Cal, a civil lawsuit, or other benefits. Applications for compensation must be filed within one year of the crime and must be accompanied by detailed, written proof of losses and expenses. The maximum claim per victim is \$70,000 and the average claim is about \$3,000 in Santa Clara County.

During the first six months of 2003, VWAC assisted more than 4,400 people with crisis intervention, 4,200 with resource and referral services, and about 5,500 with follow-up services. Almost 4,000 individuals received help from VWAC in obtaining restitution from criminals. The office processed more than 3,400 claims for compensation for losses. The majority served during those six months were victims of property, assault, or domestic violence crimes.

If the criminal is not willing or able to pay full restitution to the victim, the victim has the right to pursue payment of restitution on his own or with the help of a private attorney. A victim or his attorney can obtain a writ of execution from the court and then proceed to garnish wages, attach bank accounts, freeze assets like cars and houses, and place liens on property and business assets through the County Recorder's Office, the County Tax Assessor, and the Office of the Secretary of State. The victim may also take a portion of other sources of income the criminal receives, notify credit bureaus of restitution debt, use private debt collection services (typically for a fee of about 25%-50% of the judgment), or any other legal means of collection.

Funding for Victim Assistance Programs

The VWAC receives about \$640,000 from the State Victim Witness Assistance Fund and \$1 million from the State Penalty Fund to run its office and provide services. Additional monies to support VWAC services come in through grants and contributions. VWAC receives annually about \$100,000 from the state and almost \$10,000 from the City of San Jose in emergency funds which it can distribute to victims in immediate need.

Although recent budget cuts (about 13%) have caused VWAC to drop one and one half positions, it has contracts with several county agencies that pay for additional victim advocates. The Santa Clara County Social Services Agency supports an advocate. The DA supports a Spouse Abuse Prosecution Advocate and a Restitution Specialist advocate. The City of San Jose employs a police department advocate for victims. Moreover, restitution monies never claimed by victims (about \$100,000 annually) allow VWAC to hire two advocates.

The state formula for distributing these administrative monies to county VWACs may be flawed, to the disadvantage of the county. The crime index formula, adopted fourteen years ago, looks at the county crime rate first and the victim population served second, when distributing funds to counties. When measuring crime, the index weights certain crimes more than others, without

taking into account the effect of the crime on the victim's need for services. For example, burglary, robbery and vehicle thefts carry weight in the crime index, whereas child abuse is not considered. Although the state penal code requires as a condition for funding that counties assist all victims, statistics show that many of the assistance centers in the state do not serve all victims, yet continue to receive funding based on their high crime rates. The resulting distribution of funds does not provide the county with a share proportionate to the number of victims it serves.

Discussion

A significant portion of restitution is never collected either by the victim or by the county on behalf of the victim. Probation, having the closest contact with criminals, might be expected to have the most leverage in getting criminals to pay their restitution in full. Several probation officers felt that, given the resources at their disposal and the nature of the population they worked with, they were doing a good job of collecting restitution and, other than educating victims about their rights, had no suggestions for improving the process.

Lack of coordination among agencies plagues the restitution collection process every step of the way, reflected in incomplete restitution orders, uninformed victims, data black holes for victims and criminals, and information bottlenecks.

Some additional factors hindering better collection of restitution are:

- A criminal with the means to pay full restitution, the motivation to get rid of debt, and the desire to start over with a clean slate is very rare. More commonly, criminals are either unable to pay, lack the inclination to pay their restitution on a regular basis, or both.
- Repeat criminal offenders, with multiple restitution orders on their records to multiple victims, are even more likely to fall behind in their restitution payments.
- Sometimes the necessary paperwork from the court, state offices, Revenue, or the DA never arrives, is late, or is incomplete.
- Some victims fail to inform the DA and Probation about their losses, despite multiple requests.
- Average Probation caseloads ranged from 150 criminals per officer up to as many as 300, with about half of the cases involving intensive monitoring.
- Victims often do not have the means to pursue other available legal channels.
- Reinstating probation for all those with outstanding restitution debts and re-incarcerating the worst offenders is cost prohibitive.
- Monetary incentives for government to collect restitution on behalf of victims are relatively small.

Finally, there are few real consequences for not paying restitution. While probation can theoretically be revoked, it rarely is. A criminal who knows how the system works has little incentive to pay in full.

Given these constraints and shrinking resources, the county agencies collect what they can. They avoid taking measures to collect restitution that might deter the criminal from obtaining employment and staying employed. An individual with few prospects might decide instead to work off the books, thus eluding paying even a portion of his earnings. Moreover, agencies certainly do not want to drive the criminal to commit another crime to pay off restitution debt. There is a fine line between holding criminals accountable for their deeds and driving them to despair or defiance—neither of which is conducive to regular payments.

Of the three county agencies, the DA was most willing to acknowledge that the restitution system needed to incorporate some real consequences for nonpayment. To motivate those criminals nearing the end of probation to pay restitution, the DA has recently crafted a letter demanding immediate restitution payment in full. Using a Probation database, the Restitution Specialist plans to mail the letter to those criminals most likely to pay. The letter warns of revocation or extension of probation and even incarceration for willful failure to pay. The DA has an incentive to see that these demand letters produce results since it receives 10% of the amount collected.

The approach of the Santa Clara County Department of Child Support Services (under the jurisdiction of the DA), which relies on court-ordered deductions from wages, liens, license revocation, and benefit and tax refund intercepts, is a possible model for restitution collection. Child support people will seek contempt citations and file criminal complaints when payment is willfully refused by those who can pay.

Conclusions

The goals of restitution—holding the criminal accountable, compensating the victim, and providing a measure of deterrence—are defeated if the consequences of not paying are minimal. The restitution process involves at least five organizations (the courts, DA, Probation, Revenue, and VWAC) that must work together in order to increase the current low collection rates. With the number of players involved and no lead agency, there are bound to be problems with communication, coordination, and thoroughness. While these problems are now compounded by limited and shrinking resources, it is important to note that collection rates (about 40%) were not substantially higher in the past. Collecting restitution is not easy. The criminal justice system is not filled with contrite criminals opening their wallets to deserving victims. But a difficult task is made more difficult when the task is divided and there is no real accountability for poor performance.

Finding I

Many county agencies are involved in setting and collecting restitution, yet none has oversight authority over the process.

Recommendation I

The Board of Supervisors should appoint a lead agency to reorganize the restitution collection process so that it is more transparent and understandable to victims. The lead agency should be responsible for: 1) increasing communication and coordination between agencies and 2) improving performance and outcomes in the collection of restitution.

Finding II

Statistics for the last five years show a county restitution collection rate of about 40% of the dollars owed.

Recommendation II

Revenue should, with victim permission, engage the services of a professional collection agency to collect outstanding restitution, adopt some practices of the no-nonsense child support payment system, such as wage assignments, liens, license revocations, benefit intercepts, and contempt citations, place restitution debt on a criminal's credit report, and consider using uniformed sheriff deputies as debt collectors if criminal payments have ceased.

Finding III

State prison parolees are, in practice, outside the restitution collection system.

Recommendation III

The DA should request to be notified when state prisoners are released on parole to the county so that efforts can be made to collect restitution.

Finding IV

The state formula for disbursing monies to victim assistance centers is based on rates of a few selected crimes, primarily those that are filed with DAs. The number of victims served is not the major factor in the formula.

Recommendation IV

County agencies involved with victim restitution should lobby state authorities to alter the formula so that it distributes money more equitably on the basis of victims served.

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 25th day of May 2004.

Richard H. Woodward
Foreperson

References

Documents

California Penal Code, "Article 2: Local Assistance Centers for Victims and Witnesses, Section 1385-1385.10.

California State Board of Control, Pamphlet: "How to Enforce Your Restitution Order as a Civil Judgment."

County of Santa Clara Department of Revenue, FAX re: Victim Restitution Recovery, 5 Years, February 17, 2004.

County of Santa Clara, Department of Child Support Services, website: scvmed.org/channel/

Department of Probation, "Projected Revenue FY 03."

Department of Probation: Booklet: *Restitution in Probation*.

Department of Probation: Description of Responsibilities, "Deputy Probation Officer I, II and III."

Judicial Council of California, Pamphlet: "Crime Victims' Compensation."

Office of the District Attorney, DRAFT "Notice of Failure to Pay."

San Jose Mercury News, "Counties Rated on Use of Funds for Crime Victims," March 9, 2004.

Victim Compensation and Government Claims Board, Pamphlet: "General Information, Victim Compensation Program."

Victim Compensation Board, Chart and Diagram: "Adult Restitution."

Victim Witness Assistance Center, "Informational Pamphlet."

Victim Witness Assistance Center, "Summary of Victim Witness Assistance Center Contracts for FY 03-04;" "Dollar Amount of Compensation Awarded in Each County;" "Dollar Amount of Compensation Awards Processed in Each Verification Center;" "Statement of Loss Questionnaire."

Victim Witness Assistance Center, Diagram: "Revenue Generated by the Criminal Justice System."

Victim Witness Assistance Center: "Victim Compensation Quick Reference Guide."

Interviews

Director of Victim Witness Assistance Center, September 3, 2003, September 23, 2003.

Department of Probation, October 31, 2003, December 15, 2003.

Department of Revenue, November 4, 2003.

Office of the District Attorney, January 30, 2004, February 4, 2004.

Numerous telephone discussions with all of the above offices.