



2013-2014 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

VICTIM RESTITUTION—PROMISES UNFULFILLED

Summary

The 2013-2014 Santa Clara County Civil Grand Jury (Grand Jury) received a citizen complaint stating that court-ordered victim restitution totaling several hundred thousand dollars owed to her and several other victims by the same person remained unpaid. The complainant's share was just over 9% of the total. The court ordered restitution to be paid to the complainant at a rate of over \$1,000 per month for 36 months. However, the first four checks averaged under \$100 per month. The complainant and the other victims finally resorted to hiring joint legal counsel, who investigated and assisted them in getting the full restitution to which they were legally entitled.

The Grand Jury recognizes that some criminals lack the ability to pay restitution. However, the Grand Jury's investigation revealed that various agencies in the system accept too readily a criminal's claimed inability to pay without substantial justification.

The Grand Jury investigated the system whereby victim restitution is assessed, collected from criminals, and disbursed to their victims. Based on its investigation, the Grand Jury concludes that the current victim restitution system in Santa Clara County lacks sufficient cooperation among the various county agencies that administer victim restitution, lacks distinct lines of authority and execution, and lacks sufficient effectiveness to keep the promise first made to victims in 1982, when the voters passed Proposition 8, California's first victims bill of rights. The result is that many victims are not fully compensated for their losses.

The 2003-2004 Santa Clara County Civil Grand Jury also investigated the issue of victim restitution and issued a report on May 25, 2004, which included several findings and recommendations. The current Grand Jury's investigation concludes that in the last ten years little has been done to implement the recommendations of the 2003-2004 Santa Clara County Civil Grand Jury.

This Grand Jury report concentrates on the subject of victim restitution in Santa Clara County owed by adult offenders sentenced to county jail and/or probation. There is a separate state system in place for criminal offenders sentenced to state prison, which is outside the purview of the Grand Jury.

After a thorough review of how the victim restitution system actually functions in Santa Clara County, the Grand Jury concludes that victim restitution remains a promise largely unfulfilled to this day.

Background

Victim Restitution Laws

In 1982, a victims' bill of rights was added to the California Constitution¹ by the vote of the people. It found and declared victim restitution to be a constitutional right. On November 4, 2008, the voters of California passed Proposition 8, the victims' Bill of Rights Act of 2008, known as Marsy's Law, which amended Article 1, Section 28 of the California Constitution. Marsy's Law states in part: "[I]t is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer."²

Restitution is an order made by the Judge as part of the defendant's sentence that requires the defendant to repay the crime victim for losses suffered as a result of the defendant's criminal conduct. Restitution may include, but is not limited to: the replacement or repair cost of stolen or damaged property; funeral expenses; ambulance or hospital bills, counseling and therapy expenses; relocation expenses; and lost wages for time spent assisting the police or prosecution.

Collection of Restitution

If a defendant is sentenced to state prison, the California Department of Corrections and Rehabilitation (CDCR) collects the restitution and the Victims Compensation Fund assures that the victim receives it.³ In state prison,⁴ every inmate has an inmate trust account into which money can be deposited, and into which wages earned in state prison work programs are deposited. In order to help crime victims collect the restitution they are constitutionally due, CDCR deducts a minimum of 20% up to a maximum of 50% from the wages and trust account deposits a prisoner has and transfers that money to the California Victim Compensation and Government Claims Board for direct payment to the victim.

The Criminal Justice Realignment Act of 2011⁵ made significant changes to the sentencing and supervision of persons convicted of felony offenses. Under

¹ California Constitution, Article 1, section 28(b)(13)(A).

² *Ibid.*

³ Penal Code Section 2085.5

⁴ In California, prisons are operated by the state, and jails are operated by the counties.

⁵ Formally known as AB109

Realignment, certain adult felony offenders now serve their time in county jail and are subject to community supervision provided by a designated county agency. The 2011 Realignment bill did not address how counties would implement restitution efforts associated with these inmates.

SB 1210 ("Collection of Criminal Fines and Penalties") was passed in 2012 to address the restitution loophole created by Realignment. SB 1210 amended section 2085.5 of the California Penal Code by providing that a county's board of supervisors may designate an agency to collect court-ordered restitution fines and orders from individuals incarcerated in the county jail, by deducting monies from the county jail equivalent of wages and trust account deposits of a state prisoner and parolees and individuals punished by imprisonment in a county jail pursuant to subdivision (h) of California Penal Code Section 1170.

Unlike the state prison system, however, Santa Clara County jails—the Santa Clara County Main Jail (Main Jail) and the Elmwood Correctional Complex (Elmwood)—do not have paid work programs although inmates have a county Inmate Personal Fund (IPF) account into which funds from the outside can be deposited.⁶

Many convicted criminals are sentenced to a term of probation. In many cases, the criminal has not paid the victim the entire amount of court-ordered victim restitution by the time his/her term of probation has been completed. In such cases, the victim must then proceed to civil court to collect the unpaid victim restitution. This can be done by the use of an Order for Victim Restitution (California Judicial Council Form CR-110) if one is not already completed. Unfortunately, CR-110s are not always issued by the court at sentencing. Some victims do not know the form exists or how to use it. All victims are entitled to a certified copy of the CR-110, but no county department involved with restitution provides one automatically or consistently.

In contrast, with respect to child support payments, the default system is for the court to issue a wage garnishment order automatically in every case. If a parent fails to pay court-ordered support, the wage garnishment order is already available.

In Santa Clara County, several agencies play a part in the process of assessing, collecting, and distributing victim restitution—the Superior Court (Court), the District Attorney's Office (DA), the Probation Department (Probation), and the Department of Revenue (DOR).

METHODOLOGY

As a part of its investigation, the Grand Jury:

⁶ Penal Code 2085.5, Section 3097 15 CA ADC.

- Toured the Santa Clara County Main Jail, the Elmwood Correctional Complex, the Santa Clara County Reentry Resource Center, the offices of Silicon Valley FACES, and the Santa Clara County Department of Revenue;
- Interviewed four victims, one of whom was the complainant, and eleven Santa Clara County employees from the following departments: District Attorney's Office, Probation Department, Department of Revenue; and also interviewed directors of Silicon Valley FACES, and the Director of the Victim Witness Assistance Center;
- Interviewed the Chief Deputy Probation Officer and the Collection Officer Supervisor of San Luis Obispo County;
- Reviewed information and data regarding victim restitution policy and procedures in San Luis Obispo County;
- Reviewed portions of the California Judges Benchguide, "Restitution", published by the California Administrative Office of the Courts;
- Reviewed the 2003-2004 Santa Clara County Civil Grand Jury Report entitled "Inquiring into the Collection of Adult Restitution" and the responses to that report approved by the Santa Clara County Board of Supervisors;
- Reviewed the 2011-2012 Santa Clara County Civil Grand Jury Report entitled "AB109/AB117 Realignment: Is Santa Clara County Ready for Prison Reform?"
- Sent written questions to, reviewed written responses and received data from upper management of the Probation Department, Silicon Valley FACES, the Victim Witness Assistant Center, the Department of Revenue, a Deputy District Attorney, and a District Attorney paralegal;
- Attended presentations by the District Attorney and the County Sheriff, and interviewed the Sheriff briefly;
- Attended two payment monitoring calendars in Superior Court;
- Attended two meetings of the Santa Clara County Victim Restitution Committee;
- Reviewed relevant portions of the California Penal Code and the California Government Code;

- Reviewed various sections of the Probation Department’s and the Department of Revenue’s Policies and Procedures;
- Read the court opinions in People vs. Leiva and People vs. Freidt;
- Read the July 1999 Department of Justice Report entitled “Promising Victim-Related Practices and Strategies in Probation and Parole”; and
- Received and read a follow-up email from the complainant.

DISCUSSION

The Grand Jury learned during its investigation that several agencies in Santa Clara County are involved with the assessment, collection, and distribution of victim restitution. They are: the District Attorney’s Office (DA), the Superior Court, the Probation Department (Probation), the Department of Revenue (DOR), the Victim Restitution Committee (Committee), a non-profit called Silicon Valley FACES, which helps staff the Victim Witness Assistance Center (VWAC), and the Department of Correction (DOC). This report discusses the role each agency plays in the victim restitution process.

A. The Role of the District Attorney

The District Attorney (DA) receives a police report and evaluates the facts set forth in it. When warranted by the facts, the DA files criminal charges against the alleged perpetrator. If the police report indicates that a crime victim has suffered monetary loss,⁷ the victim is entitled to restitution from the defendant⁸ if and when he/she is convicted. The victim’s contact information is contained in the police report. While the DA’s office is preparing the case against the defendant, DA personnel should work with every victim to quantify each victim’s monetary loss.

The DA’s office evaluates each case on the merits, and if no plea bargain can be reached with the defendant, the Deputy District Attorney (DDA) assigned to the case⁹ prepares the case for trial. Whether the defendant pleads guilty or no contest to the charged crime(s), or is convicted after trial, the next phase of the case is a sentencing hearing, at which time the DDA appears and has the opportunity to inform the court of the details of the victim’s loss.

⁷ In most cases, only monetary losses are recoverable as victim restitution. There is no recovery for pain and suffering.

⁸ In this report, a person who owes victim restitution may be referred to as one of the following: defendant or criminal. [this is footnote 6 in original]

⁹ The Santa Clara County District Attorney’s Office uses an assignment system whereby the DDA assigned to a case takes that case to its conclusion, which is usually at the sentencing hearing.

In a perfect world, the DDA assigned to each case would have all the information necessary to establish a victim restitution amount before each and every defendant is sentenced. The Grand Jury does not believe that is realistic, given the volume of cases in the court system. The Grand Jury was told that in many cases the DDA assigned to a particular case has little or no victim information, especially in cases where a defendant pleads guilty or no contest at the initial arraignment.

In cases where the defendant pleads not guilty at arraignment, and a further hearing is scheduled, the DDA has additional time to work with the victim to establish and confirm the victim's monetary loss. The DDA assigned to the case can assist the court and the victim by working with the victim to obtain all pertinent and necessary information regarding the victim's loss before the defendant is sentenced. The Grand Jury's investigation revealed that DDAs do not consistently work with victims to obtain a victim's monetary loss before the defendant is sentenced. After a defendant is sentenced and ordered to pay victim restitution, if he/she does not make regular victim restitution payments, the DA's office can, but rarely does, calendar a Violation of Probation (VOP) hearing.

B. The Role of the Court

When a defendant is convicted, he/she can either be sentenced immediately or at a later time. In either case, if there is an identifiable victim, the court is required by law to order the defendant to pay victim restitution. If sufficient information to identify the victim or the amount of the victim's loss is not available at the time the defendant is sentenced, the court must still order victim restitution, with the amount to be determined later.

In setting a victim restitution amount, the court is guided by Penal Code Section 1202.4 and is aided by the California Judges Benchguide, "Restitution."¹⁰ The order to pay victim restitution is set forth in the court's Minute Order.¹¹ In cases where probation is granted, a copy of the Minute Order is given to the defendant and a copy is transmitted to Probation and/or the Department of Revenue.

A criminal may or may not be sentenced to a term of incarceration, in either county jail or state prison. A criminal sentenced to county jail may also be sentenced to a term of probation; either court probation, which is unsupervised, or formal probation where the criminal may be directly supervised by a probation officer after his/her release from jail. Since the passage of prison Realignment,¹² significantly more criminals are now sentenced to county jail and for a longer period of time than was true prior to Realignment.

¹⁰ Published by The Administrative Office of the Courts in 2008

¹¹ The Minute Order sets forth the conditions of a defendant's sentence.

¹² AB 109, enacted in April 2011, and AB 117, enacted in June 2011.

If probation is granted and the victim suffered a monetary loss, payment of victim restitution is a condition of probation. At the sentencing hearing, the court may sign an Order for Victim Restitution and an Abstract of Judgment.¹³ However, the Grand Jury has learned from multiple sources that the Order for Victim Restitution may not always be provided to the court for signature at the sentencing hearing. In fact, none of the victims interviewed by the Grand Jury recalled getting an Order for Victim Restitution nor had even heard of the Order for Victim Restitution until long after their claim for victim restitution remained unpaid, and they had obtained legal counsel to enforce their right to restitution.

The court retains jurisdiction over the criminal until his/her term of probation is completed. From 2007 until late 2013, payment monitoring calendars¹⁴ were held for both felonies and misdemeanors. Criminals assigned to these calendars reported their victim restitution payments to the court, and were then assigned a new calendar date several months in the future to report again, until they had paid in full. These calendars helped to ensure that criminals were paying victim restitution as ordered. If a criminal who appeared at one of these payment monitoring calendars was behind in his/her victim restitution payments, the court would often “summarily revoke”¹⁵ that criminal’s probation. “Over time a practice evolved on the payment monitoring calendar to keep probation in summarily revoked status indefinitely, or until payment was made in full.”¹⁶ The Grand Jury was told that this practice resulted in the collection of victim restitution that may not otherwise have been collected. In other cases probation would not be revoked, but would be extended to the maximum term allowed by law in order to continue to collect restitution from the criminals.

In April 2013, the California Supreme Court ruled that the practice of indefinite summary revocation of probation violated Penal Code Section 1202.3.¹⁷ That case did not involve victim restitution directly. However, relying in part on the ruling in *People v. Leiva*, the Court of Appeal ruled in the Santa Clara County case of *People v. Freidt* that the trial court could not keep a criminal on summarily revoked probation status indefinitely as a means to collect victim restitution. The courts can do no more than modify and extend probation to the maximum term. If a criminal fails to fully pay victim restitution by the end of his/her maximum term of probation, the trial court lacks authority either to revoke probation and imprison the criminal or to extend probation. Instead, the court must discharge the defendant from probation.

¹³ Effective January 1, 2014, California Judicial Council Form CR-110 - Order for Victim Restitution, CR-111 – Abstract of Judgment – Restitution, CR-112 – Instructions: Order for Victim Restitution and Abstract of Judgment and CR-113 – Instructions: Abstract of Judgment – Restitution. The judge signs the order and the Abstract of Judgment is signed/issued by the clerk.

¹⁴ A calendar is a list of the cases to be heard in a particular courtroom on a given day.

¹⁵ Summary Revocation is accomplished without a formal hearing.

¹⁶ *People v. Freidt* (2013) 222 Cal.App.4th 16

¹⁷ *People v. Leiva* (2013) 56 Cal 4th 498

Once a criminal's probation has been completed or if the victim is not satisfied with what is being collected and disbursed by the DOR, victims can resort to the civil courts to collect any remaining unpaid victim restitution by using the Order for Victim Restitution. However, victims could feel fearful dealing with criminals and/or find the process to be time consuming and confusing. Therefore, many victims will either have to abandon their unpaid victim restitution or hire a lawyer to help them collect it through the civil court system. For instance, an Order for Victim Restitution entitles a victim to ask the civil court to issue a wage garnishment order against the criminal, which is only effective if the criminal has a job and is making enough money to exceed statutory exemptions from wage garnishment. In many cases, the amount of the loss would not justify the expense of hiring a lawyer to collect the victim restitution using the Order for Victim Restitution form. Additionally, once probation has been completed, many criminals move their residence. After the defendant completes probation and is no longer required to maintain a current address with Probation, victims may be hindered in their ability to locate the person who caused them damage. Thus, the promise of restitution will remain unfulfilled.

C. The Role of the Probation Department

Under the best of circumstances, the victim restitution amount is known prior to sentencing. But, in many instances, particularly when a defendant pleads guilty or no contest at initial arraignment and is sentenced immediately, a victim restitution amount has not been recommended by either the DA or Probation.

If a defendant pleads guilty or no contest, or is convicted after trial, and the court intends to sentence the convicted criminal to formal probation, the criminal is required to report to Probation. A probation officer conducts a presentence investigation. Probation procedure requires that the presentence probation officer mail a Statement of Loss Letter to the victim in order to ascertain the amount of the victim's financial loss. If the victim does not respond to the Statement of Loss Letter within 60 days, Probation assumes that no restitution claim is being made. However, the victim can submit a claim later.

If Probation has received the victim's loss information before the presentence report is completed, the presentence probation officer can recommend to the sentencing court a total victim restitution amount and a monthly payment amount to be stated in the Order for Victim Restitution. If victim loss information is not available by the time of sentencing, the DA will request the court to issue a general order¹⁸ for restitution.

The probation officer also creates a Victim Restitution Payment Instructions form and sends it electronically to the Santa Clara County Department of Revenue (DOR). If victim loss information is not available before the presentence report is

¹⁸ A general order states that victim restitution has been ordered with the amount to be determined later.

completed, the monthly payment amount is normally set by the DOR. This will be discussed later in this report.

Probation's Adult Supervision Procedures Manual Section 703.12 states,¹⁹ that the probation officer is required to send victims a copy of the signed Order for Victim Restitution and the Abstract of Judgment forms and a letter informing all victims of their rights regarding victim restitution. A copy of the letter is attached in Appendix A. The Probation Department has yet to revise its procedures since the Order for Victim Restitution and Abstract of Judgment became two separate forms as of January 1, 2014.

The Order for Victim Restitution is equivalent to a civil money judgment, which can be enforced immediately by wage garnishment and by execution on the criminal's assets, such as bank accounts, real property, and personal property. Unlike an ordinary money judgment, the Order for Victim Restitution never expires, and cannot be discharged in bankruptcy. To most victims, enforcement of victim restitution by using the Order for Victim Restitution is so complicated that they must hire a lawyer.

The Grand Jury believes that diligent enforcement of victims' right to restitution within the criminal justice system should be maximized so that victims are not forced to resort to collection in the civil courts using the Order for Victim Restitution.

It should be noted that the process set forth above applies only to those criminals who are sentenced to formal probation. With respect to informal probation, the court still determines the amount of restitution to be paid and the payment is a term of the criminal's probation. But the criminal is directed to report to the Department of Revenue (DOR) to arrange for payment of the court-ordered victim restitution. That process is discussed next in this report.

If the criminal fails to pay victim restitution as ordered by the court, Probation can request a Violation of Probation (VOP) hearing. The criminal is notified by mail of the hearing date, time, and location, and of his/her right to counsel at the hearing. However, the Grand Jury was told that at this point in time, Probation rarely seeks a VOP hearing if the only probation violation is failure to pay victim restitution. At the VOP hearing, it must be proven that the criminal had the ability to pay the victim restitution and willfully failed to do so.

The Grand Jury was told that every person on formal probation who did not violate the terms of his/her probation for one year, other than payment of victim restitution, is transferred to "banked" probation. Figures supplied to the Grand Jury by Probation indicate that over ninety percent of all criminals are "banked." These criminals are not individually monitored by a probation officer. Therefore,

¹⁹ Probation Department Adult Supervision Policies Procedures Subject: Order for Victim Restitution and Abstract of Judgment – CR110

there is no regularly scheduled review for compliance with victim restitution orders for these criminals. The Grand Jury concludes that Probation should ensure criminals in banked caseloads are regularly reviewed for compliance with victim restitution orders.

The Grand Jury believes Probation should follow its policies and procedures²⁰ regarding a criminal's failure to pay court-ordered victim restitution and take a more proactive and more aggressive role in seeing to it that convicted criminals pay victim restitution in full before their term of probation has expired. Without a more proactive role by Probation, the promise of restitution will remain unfulfilled for many victims.

D. The Role of the Department of Revenue

The Department of Revenue (DOR) sends bills and receives and disburses funds on behalf of approximately twenty agencies, including the Santa Clara Valley Medical Center, and the courts, for fines and penalties. With respect to victim restitution, the DOR receives a copy of the court's Minute Order, bills the criminal on a monthly basis, receives payments from the criminal, and pays the funds to the victim.

All criminals who owe victim restitution are required to report to DOR. The DOR establishes a monthly payment amount if one has not been set previously. The DOR procedure to determine the monthly payment that each criminal should pay is simply to divide the total victim restitution amount by the total number of months in the term of probation, less six months. Thereafter, the DOR sends out a monthly bill to the convicted criminal.

DOR does little to enforce collection of victim restitution. DOR sends a series of "collection letters" to criminals who are delinquent on their victim restitution payments. When the Grand Jury asked for copies of these letters, all the Grand Jury received were copies of billing statements to which various late payment notification statements²¹ were added. According to DOR procedures,²² they start sending out this series of late payment notifications added to the billing statements when a criminal becomes thirty days late with victim restitution payments.

DOR generates a 90-121 Day Delinquency Report, which is transmitted to DOR collectors. However, it is DOR procedure²³ not to inform Probation of the

²⁰ Probation Department Adult Supervision Procedures Manual, sections 000.01, 703.11 and 703.12

²¹ See Appendix for copies of these "Letters"

²² The Grand Jury was given a "procedure," Revision, January 23, 2013, which was merely an unsigned "to do list" to be used for formal and court criminals. The DOR refers to the criminal as the "debtor."

²³ *ibid*

delinquency until the criminal has missed three to six consecutive victim restitution payments.

If a criminal's victim restitution payments become delinquent while still on probation, a DOR collector attempts to contact the criminal by telephone. The collector informs the criminal that if his/her account remains delinquent, he/she will either be served with an Order to Show Cause (OSC)²⁴ to appear in court; or, if the criminal is employed, DOR will ask the court to issue a wage garnishment order. The Grand Jury was told that the collectors have no prepared script for these phone calls. The DOR could not inform the Grand Jury of the success rate of these calls because they generate no such statistics. The DOR acknowledged that only 262 OSCs were calendared in 2013, out of the approximately 11,000 victim restitution cases DOR monitors.

DOR managers told the Grand Jury that the DOR rarely sends delinquent accounts to a private collection agency, since such agencies charge a 15% fee for their collection work. There is a fee only if the private agency actually collects victim restitution money. It seems likely to the Grand Jury that many victims would rather have 85% of something collected by a private agency than 100% of nothing collected by the DOR.

DOR's procedure is to send a probation ending report to Probation six months prior to the end date of each criminal's term of probation that sets forth the amount of victim restitution that remains unpaid. DOR also sends the criminal a notice on the monthly billing statement, called the "Probation End Notice." The notice states, "Be advised that if payment in full is not received by cashier, we will notify your probation officer which may result in your probation being revoked and you may be ordered to appear in court." Due to Probation's inability to revoke or extend probation beyond the maximum stated by law, the notice often is nothing more than an idle threat.

If payment in full is not received, DOR merely turns over the account to the Franchise Tax Board (FTB) Tax Intercept Program and takes no further action. The FTB then withholds any state income tax refund due to the criminal and sends the money to DOR.

The DOR was unable to provide any proof to the Grand Jury that the DOR informed victims in writing that they could resort to the civil courts to collect any unpaid victim restitution by using the Order for Victim Restitution.

If the victim does not get paid in full by the end of the criminal's probation, there is rarely a consequence for the criminal who has not paid the victim restitution in full.

²⁴ At the Order to Show Cause hearing, the criminal is required to show cause to the court why his/her probation should not be revoked due to failure to pay VR.

Until recently, when the DOR received a victim restitution payment from a criminal by check, including a cashier's check, DOR did not pay the victim for 30 days after receipt of the criminal's check. Under current banking practice, a check is rarely held for more than ten days. After the Grand Jury questioned this lengthy hold, the Grand Jury was told that the hold period was being reduced to 15 days.

According to the DOR, the percentage of victim restitution collected versus the amount ordered by the court has remained virtually unchanged over the last 13 years, fluctuating between thirty-five percent and forty-five percent per year.²⁵

If a victim restitution check sent to a victim by DOR is returned as undeliverable, those funds are held for three years. The DOR prepares an accounting of these unclaimed victim restitution funds only once every three years. The DOR ascertains all amounts of victim restitution for which the last payment was more than three years back. A list of victims' names that are owed this undeliverable victim restitution is published in the San Jose Post Record, a legal newspaper having limited readership. The DOR also posts the victims' names and the unclaimed dollar amount on the county website under "Hot Items." The DOR sends out a general press release without the list of names.

After this process is completed, all unclaimed Santa Clara County victim restitution funds are escheated²⁶ to Santa Clara County and required to be deposited into either the state Restitution Fund or used for purposes of Santa Clara County victim services. In 2011, \$418,539.00²⁷ was escheated to the County, which is administered by the District Attorney's Office. The District Attorney's Office was unable to verify into which specific account the District Attorney's allocated the unclaimed money. However, the DA's office reported to the Grand Jury that escheated victim restitution funds are used to fund positions within the District Attorney's Office responsible for working with victims and the courts on cases involving restitution.

Lest we forget, there is a human side to this victim restitution process. One victim told the Grand Jury that when she called the DOR to complain about the small amount of victim restitution being paid to her, an employee's response was that she should be thankful that she was getting any check at all, and that there was nothing they could do to help her. Other victims interviewed by the Grand Jury expressed they had experienced similar interactions when dealing with the DOR. The Grand Jury believes victims who are not satisfied with the collection and distribution of restitution by the Department of Revenue do not understand

²⁵ 2001 36%, 2002 35%, 2003 42%, 2004 41%, 2005 41%, 2006 41%, 2007 42%, 2008 44%, 2009 42%, 2010 42%, 2011 45%, 2012 44%, 2013 45%

²⁶ Escheatment is the process whereby funds unclaimed for three years by an individual or business revert to the government.

²⁷ The 2011 escheatment process covered four years instead of three.

they can pursue the civil process with the Order for Victim Restitution and an Abstract of Judgment.

It is the Grand Jury's conclusion that the DOR applies no significant pressure on convicted criminals to enforce victim restitution orders. The Grand Jury believes that the DOR should take a more proactive and aggressive role in seeing to it that victim restitution is collected and paid to victims in a timely manner. The DOR claims it is a collection agency for victim restitution, but in reality, it is just a billing agency for victim restitution.

E. The Role of the Victim Restitution Committee

The 2003-2004 Santa Clara County Civil Grand Jury published a report in May 2004 entitled "Inquiry into the Collection of Adult Restitution." The first recommendation of that report was "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 [*sic*] agencies and 2) improving performance and outcomes in the collection of restitution."

The County agreed with the 2003-2004 Santa Clara County Civil Grand Jury's recommendation and established a standing Victim Restitution Committee, including representatives from the Court, the DA, Probation, the DOR, and the Victim Witness Assistance Center (VWAC). The Revenue Collection Director has been chairing the committee since it was started. The committee previously met quarterly; however, effective in early 2014, the meetings were changed to every four months.

It appears to the Grand Jury that little has been accomplished by this committee since 2007. The meetings begin at noon and last about one hour. During the two meetings attended by members of the Grand Jury, nothing of substance occurred. The agendas are minimal and most of the meeting takes place under "Round Table Discussion"²⁸ when departments provide status reports. Every objective of the committee remained in process, but no quantifiable results were reported and no completion dates appear to have been set. The Grand Jury inquired into accomplishments but the only one stated was the "roundtable discussion" forum.

A common topic discussed in the meetings attended by the Grand Jury was the fact that DOR has restricted access to databases containing victim information, which cannot be freely shared due to confidentiality requirements and system

²⁸ A common expressed opinion is that the "Round Table" part of the agenda was the committee's most important achievement. When given additional time to list other important achievements of the committee during its ten year life, none were stated.

restrictions. Therefore, victims address and phone number changes are not consistently shared with DOR by other agencies.

For the last six or seven years, the Victim Restitution Committee has been ineffective in achieving quantifiable results. Something more is required to fulfill the promise made to victims in 1982.

F. The Role of the Victim Witness Assistance Center

In fifty-three of California's fifty-eight counties, victim witness assistance is provided within the District Attorney's office for each county. Santa Clara, San Mateo, and Contra Costa County have contracts with Silicon Valley FACES, a not-for-profit agency which staffs the VWAC.

Pursuant to its county contract, VWAC does outreach regarding victims' rights, helps victims and witnesses with their involvement in the criminal process, helps some victims to fill out restitution claim forms and to obtain emergency funds, and in some cases attends court hearings with victims and witnesses. VWAC has a negligible role in the overall victim restitution process.

G. The Role of the Department of Correction

Before prison realignment was implemented pursuant to AB109, all persons convicted of felonies for which a term of incarceration was prescribed were sent to state prison, which is known formally as the California Department of Correction and Rehabilitation (CDCR). Pursuant to AB109 all felons convicted of non-violent, non-sex, and non-gang- related crimes are now sent to the county jail of the county in which the felony was committed. Persons incarcerated for misdemeanor violations have been, and still are, sentenced to county jail.

Every inmate in CDCR has an inmate trust account into which money can be deposited by anyone, and into which wages earned in CDCR work programs are also deposited. Pursuant to Penal Code section 2085.5, fifty percent of each deposit into a CDCR inmate's trust account, and wages earned in prison work programs, are automatically deducted from the inmate's trust account to be used for the payment of victim restitution. This results in the collection of a substantial amount of victim restitution at the state level.

There are no paid work programs in the Santa Clara County jails, but each inmate has an Inmate Personal Fund (IPF) account into which funds from the outside can be deposited. Inmates use the funds to purchase things like toothpaste, food, and other small items. Recent legislation²⁹ now allows, but

²⁹ Amendments to Penal Code section 2085.5d allowed the agency designated by the Board of Supervisors to deduct a minimum of 20 percent and up to 50 percent from the county jail equivalent of the wages and trust account deposits of a prisoner and deposit it into the Restitution Fund or pay the victim directly.

does not require, the same automatic deduction procedure employed by CDCR to be implemented in County jails. To date, the DOC has not implemented the deduction. The DOC states it is possible to deduct a percentage of funds from an inmate's IPF account. The distribution of money collected from IPF accounts would require additional resources and joint efforts by the DOC and DOR.

The Grand Jury believes the DOC should implement a system similar to the one employed by the CDCR, whereby fifty percent of deposits into each inmate's IPF account is deducted to apply to victim restitution. Such a system would increase the amount of victim restitution collected and would help fulfill the promise made to victims back in 1982.

After the passage of SB 1210 in 2012, the DOC established a Custodial Alternative Supervision Program (CASP), under which low risk prisoners are released from custody despite having been sentenced to jail. CASP prisoners can work outside of jail, which enables them to contribute toward victim restitution. The DOC provides a list to the DOR of those persons in CASP who are gainfully employed. CASP enables the DOR to collect victim restitution funds from this group of criminals.

CONCLUSIONS

The Grand Jury interviewed many individuals who affirmed their commitment to the constitutionally mandated right to victim restitution. However, many of those same individuals know little about the process beyond their own individual department or agency. After interviews with all responsible departments and agencies, the Grand Jury has concluded there is little coordination among the several departments and agencies responsible for determining and collecting victim restitution. The Grand Jury agrees with a 1999 United States Department of Justice report³⁰ which states: "The goals of victim restitution are: holding the criminal accountable, compensating the victim, and providing some measure of deterrence."

The Grand Jury concludes that the Deputy District Attorneys should be more proactive in their efforts to obtain information from victims regarding their losses before the defendants are sentenced. This would better inform the court regarding the specifics of victim restitution on a case-by-case basis, which could then be included as a part of the convicted criminals' sentences.

The vast majority of convicted criminals are on informal (court) probation or in what is called "banked" probation. None of the convicted criminals on either informal probation or in a banked formal probation are ever directly and personally monitored by a probation officer, unless the criminal violates a term of probation other than failure to pay victim restitution. The Grand Jury concludes

³⁰ "Promising Victim-Related Practices and Strategies in Probation and Parole," July 1999

that the Probation Department should follow procedures and always seek ways to ensure that all criminals pay court-ordered victim restitution in full during their term of probation.

The Department of Revenue has few formal written policies and procedures regarding victim restitution beyond instructing its employees how to enter data into its computer system. Further, the Department of Revenue appears to have established no quantifiable metrics to measure its effectiveness in collecting victim restitution. The DOR has not set measurable goals or objectives to improve the collection rate of victim restitution.

Almost ten years after the Victim Restitution Committee was formed in response to a 2003-2004 Santa Clara County Civil Grand Jury report, it has no reportable accomplishments. The Grand Jury concludes that the County should provide leadership to put this committee on an effective track in order to maximize collection of victim restitution

Due to recent amendments to Penal Code Section 2085.5, the Board of Supervisors has a newfound opportunity to increase the collection of victim restitution. The Grand Jury hopes that the County will implement the same system of deductions from the Inmate Personal Fund accounts to be applied to victim restitution as is done in the state prison system.

FINDINGS AND RECOMMENDATIONS

Finding 1

The District Attorney's Office has an important role in collecting victim loss information prior to the time the defendant is sentenced, but attention to completion of victim loss information is not consistent within the Office.

Recommendation 1

The District Attorney should develop ways to improve the collection of victim loss information prior to the time the defendant is sentenced.

Finding 2

The 2011 escheated victim restitution funds were sent by the Department of Revenue to the District Attorney's Office and were not deposited into a designated victim services account.

Recommendation 2

The District Attorney should deposit escheated victim restitution funds into an account designated for victim services.

Finding 3

The Probation Department does not regularly review victim restitution obligations for criminals who are in banked probation.

Recommendation 3

The County should ensure criminals in banked probation are regularly reviewed by the Department of Probation for victim restitution obligations.

Finding 4

The Probation Department rarely seeks to revoke probation for a criminal whose only probation violation is failure to pay court-ordered victim restitution.

Recommendation 4

The County should direct the Probation Department to aggressively ascertain the criminal's ability to pay and then calendar a violation of probation hearing when a criminal fails to pay court-ordered victim restitution.

Finding 5

The Department of Revenue is primarily a billing agency that rarely enforces collection of victim restitution in the same way as a private sector collection agency.

Recommendation 5

The County should direct the Department of Revenue to develop and implement procedures that reflect the methodology used by private collection agencies in the collection of victim restitution in order to ensure that victim restitution is paid in full.

Finding 6

The Department of Revenue rarely sends delinquent victim restitution accounts to a private collection agency.

Recommendation 6

The County should direct the Department of Revenue increase the use of private collection agencies to increase the amount of victim restitution collected from delinquent criminals.

Finding 7

Victims are not routinely made aware that they can use the Order for Victim Restitution and the Abstract of Judgment to pursue collection of restitution in the civil court, if they are not satisfied with the Department of Revenue's collection and distribution of the restitution funds.

Recommendation 7

The County should direct the Department of Revenue to notify victims, who are not satisfied with the collection and distribution of restitution by the Department of Revenue, that they can pursue collection of restitution in the civil court with the Order for Restitution and the Abstract of Judgment.

Finding 8

A portion of victim restitution funds collected is often not disbursed to victims because the Department of Revenue did not receive the victim's change in contact information even though it was known by other county agencies.

Recommendation 8

The County should explore ways for the various agencies to improve the sharing of victim contact information in order to increase the rate of disbursement of restitution.

Finding 9

The Victim Restitution Committee has been ineffective in realizing its original goal of improving performance and outcomes in the collection of victim restitution.

Recommendation 9a

The County should review the performance and effectiveness of the Victim Restitution Committee.

Recommendation 9b

The County should develop effective methods of improving performance and outcomes in the collection of victim restitution.

Finding 10

The Department of Correction has not implemented a system to deduct a portion of money deposited into an Inmate Personal Fund account of every inmate ordered to pay victim restitution to be applied to victim restitution.

Recommendation 10

The County should direct to the Department of Correction to implement a system to deduct a percent of the money deposited into an Inmate Personal Fund account of every inmate ordered to pay victim restitution.

Appendix Documents Reviewed

2003-2004 Civil Grand Jury Report, "Inquiry into the Collection of Adult Restitution"

2011-2013 Civil Grand Jury Report, "AB109/AB117 Realignment: Is Santa Clara County Ready for Prison Reform"

AB 109 and AB 117

AB 3000

Email from David Howe regarding new CR110

Email from DOR/SPW dated March 17 with attached letters

Government Code 50050

Letter 160 - CCA - 1 day after load to Debtor

Letter 161 -CCA - 30 days past due to Debtor

Letter 21 - Intent to Enforce to Debtor

Letter 30B - MUNI - 30 days past due to Debtor

Letter 40A - APD - 30 days past due to Debtor

Letter 40B - APD - 120 days past due to Debtor

Letter 40P - ADP (Juvenile) - 30 days past due to Debtor

Letter 40RC - APDN (Non-Blended) - 30 days past due to Debtor

Letter 40RM - APDP (Blended) - 30 days past due to Debtor

Letter 41 - End of Probation to Debtor

Letter 50 - Multiple to Debtor

Letter 57

Letter 57PR

Letter CDC

Letter CDC Enclosure

Letter from SCC Probation Dept regarding CR110

Letter Rest-I APD/JPD to Debtor

Letter Rest-I Enclosure pages 1 and 2

Marsy's Law

Penal Code 1 170

Penal Code 2078-2090

Ready for Prison Reform

Restitution Collection

Restitution Loss Information and Preparation

Restitution Process Chart

SB 1210

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 16th day of June, 2014.



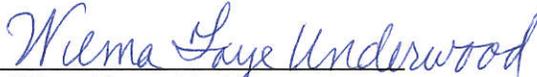
Bob E. Johnson
Foreperson



Michael M. López
Foreperson pro tem



Anita A. Robles
Secretary



Wilma Faye Underwood
Secretary