

County of Santa Clara

Finance Agency

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Emily Harrison
Director of Finance

DATE: August 6, 2014

TO: Gary Graves, Chief Operating Office

FROM: Susan Ping Wong, Director, Department of Revenue
Emily Harrison, Director of Finance

SUBJECT: Department of Revenue's Response to the Civil Grand Jury: Victim
Restitution – Unfilled Promises

Finding 1

The Office of the District Attorney 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.

DOR Response – Finding 1

DEFER to the Office of District Attorney with regard to assessment of their procedures and practices for collection of victim information prior to sentencing of the defendant.

Finding 2

The 2011 escheated victim restitution funds were sent by DOR 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.

DOR Response – Finding 2

DEFER to the Office of District Attorney with regard to management of their internal departmental accounts.

DOR Note: DOR deposited 2011 escheated victim restitution funds to GLA 4422950, State-SCC Victim/Wit, in SAP, the County's accounting system. This account was also used for the 2014 escheatment. It is our understanding that it holds funds designated for victim services.

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Ken Yeager, S. Joseph Simitian
County Executive: Jeffrey V. Smith

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.

DOR Response – Finding 3

DEFER to the Probation Department with regard to their procedures and practices for reviewing the status of debtor accounts related to victim information.

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.

DOR Response – Finding 4

DEFER to the Probation Department with regard to their procedures and practices for revoking probation, conducting financial investigations, invoking VOP (Violation of Probation), and calendaring court hearings.

Finding 5

DOR 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 DOR 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.

DOR Response – Finding 5

AGREE WITH CLARIFICATION

DOR provides much more than billing services for the County, and its primary role is to be the County's central collections office for County agencies and departments, as well as other public entities and victims of crime.

The office provides professional collection services using collection enforcement techniques comparable to those used in the private sector, and tailored to the type of debt being collected.

For example, collection activities for court ordered debt will vary somewhat compared to collection activities for hospital debt, debt with subrogation, or non-medical departmental debt. Variations include differences in statute limitations, court order authority, and/or availability of programs for indigency status. Collection of victim restitution has special requirements distinct from other justice collections, and private sector collection of this type of debt is rare.

DOR provides collection pursuit and debt management that includes debtor contact and interviewing, financial evaluation, negotiation of payment schedules, interpretation and explanation of forms, statements, correspondence, documents, legal documents and the possible legal penalties for non-payment; as well as skip tracing; investigation and research regarding account discrepancies, complaints and payment disputes; coordination with client departments to facilitate processes (court hearings, driver's license suspension, bench warrants, referral for civil assessment, financial aid and insurance eligibility); appearance / testimony in court; account adjustments and compromises and legal enforcement (such as wage garnishments, property liens, reimbursement agreements, suits, order of examination, and bankruptcy and probate processing).

Most of these activities are utilized for victim restitution accounts. However, it is correct that some collection practices used by the private sector are not employed by the County. Examples of these are home field collections and confiscation, forced sales of personal property, till tap/ till keep actions (If the debtor is a business with a cash register, the sheriff can go to the address of the business and take enough money out of the cash register to pay the judgment debt and the sheriff's fee, or remain in the judgment debtor's business establishment and take all the funds that come in until the judgment is paid), and debtor contact during late evening.

DOR is interested in exploring some collection measures commonly used in the private sector but that have not been traditionally used by the County, specifically, bank levies and negative credit reporting. Both methods have potential significant downsides: Bank levies can have harsh and undesirable consequences which might jeopardize a debtor's basic food and housing funds, and negative credit reporting for court ordered debt has been controversial, with variant conflicting legal interpretations. DOR will re-look at the feasibility of adding these collection tools to its service model, and will request legal counsel to review and investigate legal implications for doing so.

Note that DOR is certified by the State as a Comprehensive Collections Program (CCP) to collect and enforce court ordered debt pursuant to Penal Code 1463.007. This certification reflects the standards and best practices required by the Administrative Office of the Courts (AOC) under which a county may recover collection costs. CCPs must use at least 10 of 17 identified collection program components to qualify for this certification. DOR employs 15 of these components (not used: credit reporting and driver's license suspension initiation; the Court provides the latter service).

Finding 6

DOR rarely sends delinquent victim restitution accounts to a private collection agency.

Recommendation 6

The County should direct DOR increase the use of private collection agencies to increase the

amount of victim restitution collected from delinquent criminals.

DOR Response – Finding 6

AGREE

DOR does not send VR accounts to outside (private or public) collections with the exception of the Tax Intercept Program (TIP) of FTB (Franchise Tax Board), where there is minimal cost (\$1.49 per account in FY14). The victim is not charged collection fees, so any cost must be absorbed by the County (the County does not have authority to diminish the amount to be paid to the victim).

In early 2014, a proposal was considered to refer recalcitrant delinquent victim restitution accounts to the FTB Court Ordered Debt (COD) Program and absorb related 15% collection fees. This proposal was not accepted by the County Executive, in recognition of the existing collection services provided by the County, as well as victims' statutory rights to further pursue payment through the civil court system.

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 DOR's collection and distribution of the restitution funds.

Recommendation 7

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

DOR Response – Finding 7

AGREE WITH CLARIFICATION

The Order for Victim Restitution and Abstract of Judgment are commonly provided to the victim by one or more offices during the course of the victim restitution process, i.e., 1) by the District Attorney's Office before sentencing, 2) by the Court at the sentencing hearing, and 3) by the Probation Department during term of probation. However, these are not created for every case, and for such times, or when all three offices have not provided these documents, it is possible for some victims to miss receipt of this information. Accordingly, DOR does not object to adding a 4th pass to inform the victim(s), and can add to its procedures an advisory to victims referencing these documents and the importance of the information they provide. We will add this information to our standard letters to victims when the account is referred to DOR, and again at the end of the probationary term.

Finding 8

A portion of victim restitution funds collected is often not disbursed to victims because the DOR 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.

DOR Response – Finding 8

AGREE

The sharing of victim contact information among the various agencies has improved significantly over the last several years. However, we are always looking for more and better ways to find missing contact information, as well as to update and correct the data base on file.

The Victim Restitution Application (VRA) module in CJIC (County Justice Information System), a project of the Victim Restitution Committee, was developed by the ISD-CJIC Team with this primary goal. The VRA module has moved the County’s victim restitution program a very long way in supplying important information that is shared among key departments. VR information can be reviewed over the full course of the restitution process, is much quicker than the older paper transfers, is tied to key criminal justice case elements, and is supported in by the County’s infrastructural CJIC-IT service. Nonetheless, the module has not reached its full potential.

In spring of 2014, the Victim Restitution Committee determined to convene a subcommittee to work on finding ways to improve this valuable centralized information source. This project will be launched in the fall of 2014.

Also, DOR meets regularly with the Probation Department and the Superior Court in single department venues, as well as at the Countywide Victim Restitution Committee meetings in order to review issues, data and processes; discuss best ways to maximize collections; and work on special projects such as training or new legislation. Exploring ways to improve interdepartmental collaboration, including the sharing victim contact information, will continue to be a high priority at these meetings.

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 outcomes in the collection of victim restitution.

DOR Response – Finding 9

DISAGREE.

The County's Victim Restitution Committee was established in 2004 to ensure a "concerted, collaborative and focused effort among public entities involved in the criminal restitution process to increase communication and coordination, and thereby improve performance and outcomes of the collection of restitution." Attendees represent the DOR, County Counsel, District Attorney's Office, Public Defender's Office, Adult Probation, Juvenile Probation, Superior Court, Victim Witness Assistance Center, Sheriff's Office, and Information Systems Department - CJIC. Over the years, numerous guests have joined us, e.g., victims, Parole Board representatives, and members of 2 Grand Jury groups.

In the 3 years prior to the committee's creation, DOR's average annual collection rate for formal probation VR accounts was 38%. Since 2004, this rate has increased to 45% in FY13. The increase from 38% to 45% is significant, considering this debtor population. Many have a low education level, decreasing the likelihood of their finding employment compatible with obligations to meet their responsibilities to victims. In addition, the fact that these individuals have criminal records negatively impacts their ability to find employment substantive enough to compensate victims with restitution. A great many of these debtors live lives of great upheaval: drug abuse, frequent address changes, frequent changes in relationships with companions, high incidence of serious medical needs for both themselves and family members, child support payment responsibilities to multiple households, etc. They are also likely to have few assets or income sources.

The activities, initiatives and projects of the VR Committee have served to improve performance and outcomes of the collection of restitution in Santa Clara County, through its efforts and projects, as well as from the ongoing rich communication, collaboration and coordination among departments who manage VR services for the County. An excellent example of this is the development and Implementation of the California Judicial Council Forms, CR110 for adults and JV790 for juveniles, which were modified to better meet the County's specific needs. This change replaced the previously used civil judgment, which was limited to ten years. Conversely, the CR110 and JV790 are not time limited and afford victims greater legal remedy.

There are also many important ongoing collateral VR activities that are continually followed and supported by the VR Committee, frequently with individual departmental sponsorship or participation, such as the reinvigoration of Juvenile Probation Department (JPD) Victim Services, and the enhancement of outreach to victims attending court. Victims are now provided with a Probation staff advocate, who assists them through the court process and aids them in seeking victim restitution orders at the time of disposition. A victim waiting room was created, which was decorated with fundraised monies and donations from the community. Weekly groups for offending minors continue throughout the county (to include classes offered at the Ranch) which promote victim empathy. Much of the above is overseen by a Juvenile Probation Officer, who is the Victim Services Coordinator.

Attachment 1 summarizes VR Committee activities, showing accomplishments and associated departmental VR efforts.

There is always room for improvement and reinforcement of the committee's mission. Several

past projects should be continuously reviewed for possible improvements or change to coincide with new programs and legislation, and/or altered policy or conditions. The committee will also reach out to other key VR participants to invite their participation and involvement, e.g., Parole Board, Administrative Office of the Courts (AOC), California Revenue Officers Association (CROA) and CA Victim Compensation and Government Claims Board (VCGCB).

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 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.

DOR Response – Finding 10

DEFER to the Office of the Sheriff with regard to their management of Inmate Personal Fund accounts.

Attachment 1: Victim Restitution Committee Activities List

Committee Sponsored Accomplishments

- 1) VRA (Victim Restitution Application) module – cross-departmental shared victim information.
- 2) CR110/JV790. Development and Implementation of California Judicial Council Forms for use in Santa Clara County, providing victims greater legal remedy to collect restitution.
- 3) Adult Victim Restitution Court. Specific victim restitution calendars established with designated victim restitution Probation court officer assigned.
- 4) Education programs. Training series provided for victims, defendants, and staff from stakeholder departments.
- 5) Sustained and active Santa Clara County VR forum for communication, coordination and collaboration.

Collateral Activities – VR Committee Support and Participation

- 1) DOR-Probation monthly process review meetings.
- 2) DOR-Probation initiation of VOP process at 18 month juncture of 3-year probation term.
- 3) DOR-Probation Buff Card automation (VR referral mechanism).
- 4) Juvenile Victim Restitution Subcommittee – revamp of document and work flow processes.
- 5) Improved inter-departmental protocols for victim skip tracing and VR Order to Show Cause (OSC) referrals.
- 6) Use of Form 1707 to transmit victim restitution information to central prison sites.
- 7) Designated Juvenile Probation Officer (JPO) assigned to high victim restitution cases for closer supervision.
- 8) Informal Juvenile and Traffic Court. Assignment of victim restitution at the time of disposition when appropriate, with DOR enlisted to handle its collection efforts.
- 9) Victim Services Program (JPD) reinvigorated and outreach to victims attending court enhanced.
- 10) VR statewide trainings at conferences and workshops.
- 11) Informational booth and/or participation at community events, e.g., Victim Restitution Day at Cesar Chavez Plaza, annual Unsung Heroes event.
- 12) Informational subject expert panel participation at special County training events, e.g., Q&A for Inmates at Elmwood, Probation Workshop Luncheon.
- 13) Traffic Amnesty 2011 (included VR provisions),
- 14) Discussion and collaboration for new required processes - AB109 (State Realignment Initiative) and Penal Code section 1203.9 (Probationary In and Out of County Referrals).
- 15) Task Force for Implementation of New Standing Court Order and Victim Restitution Policy Change for Payment Distribution.