

# County of Santa Clara

Probation Department - Administration

Juvenile Division  
840 Guadalupe Parkway  
San Jose, California 95110

Adult Division  
2314 N. First Street  
San Jose, California 95131



Laura Garnette  
Chief Probation Officer

August 5, 2014

TO: Gary A. Graves  
Chief Operating Officer

FROM: Laura Garnette  
Chief Probation Officer

A handwritten signature in blue ink, appearing to read "L. Garnette".

SUBJECT: Response to Civil Grand Jury Report: Victim Restitution – Unfilled Promises

**FILED**

SEP 18 2014

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY BRITNEY HUEBEL DEPUTY

The following is a response to the Civil Grand Jury's Findings and Recommendations specific to the Adult Services Division of the Santa Clara County Probation Department and documentation by the Civil Grand Jury regarding the Role of the Probation Department.

***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.”***

An established process for the review of victim restitution for all Probation cases has been in place for many years. The Department of Revenue provides a list of all defendants under Probation supervision who have outstanding balances for fines, fees and victim restitution 16 months prior to expiration. These lists are provided to the assigned deputy probation officers for review. At the 16 month timeline, the assigned deputy probation officer makes a decision based on the defendant's progress and ability to pay to begin the violation process or to modify monthly payments to ensure the debts are satisfied prior to the expiration of probation. Another list is provided by the Department of Revenue of all defendants under supervision who have outstanding balances 6 months prior to expiration. Additionally, deputy probation officers have access to the Department of Revenue database to monitor payment progress at their desktops. This is done routinely in conjunction with requiring defendants to provide proof of payments and check stubs to verify employment and wages.

***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.”***

Regardless of the number of alleged circumstances of violation, if a deputy probation officer can document a willful failure to pay, the matter is calendared for a violation of probation. If a willful failure to pay does not exist and it is determined that the defendant will be unable to satisfy the payment of victim restitution prior to the expiration of probation, the matter is calendared for a hearing to review the defendant’s progress. At this time the Court considers the facts and may modify the Court ordered monthly payment plan and/or extend probation to allow additional time to satisfy the victim restitution while under supervision.

**Role of the Probation Department:**

Page 9 – “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.”

This is not accurate. The decision to transfer a case to the banked caseload is not contingent upon time on probation and/or violations of probation. The decision to transfer a case to the banked caseload depends on several factors, including an individual assessment of risk/needs, progress on probation, progress toward compliance with all Court orders (substance abuse treatment/mental health counseling/ domestic violence program/community service, etc.) and the payment toward financial obligations (fines/fees and victim restitution).

The banked caseload criteria stipulates that only cases with less than \$5,000 in victim restitution are eligible for the banked caseload. Additionally, the defendant must demonstrate a pattern of at least three consecutive payments prior to transfer. These payments must be realistic with respect to the outstanding debt and ability to pay.

Page 9 – “Figures supplied to the Grand Jury by Probation indicate that over ninety percent of all criminals are “banked.”

This is not accurate. Current data reflects a total of 18,051 adult defendants under supervision by the Probation Department, with 1,916 assigned to the banked caseload. This reflects that only 10.6% of our clients are assigned to the banked caseload.

In an effort to successfully monitor victim restitution, the Adult Services Division established a Second Level Bank caseload which supervises defendants who are in compliance with all conditions of supervision and have outstanding financial obligations totaling \$5,000 to \$15,000. These defendants are seen by a deputy probation officer at least once every three months. Currently, 237 offenders are assigned to this caseload.

Additionally, the Adult Services Division has a High Victim Restitution caseload which monitors defendants owing in excess of \$15,000 in victim restitution. These defendants are also seen by the deputy probation officer at least once every three months.