VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

Audit Report

RESTITUTION FINES AND COURT-ORDERED RESTITUTION

July 1, 2001, through June 30, 2002

STEVE WESTLY
California State Controller

February 2004

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California State Controller

February 25, 2004

Ms. Catherine Close
Executive Director
Victim Compensation and Government Claims Board
630 K Street, 5th Floor
Sacramento, CA 95814

Dear Ms. Close:

I am pleased to present the results of the State Controller's Office (SCO) audits of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board (Board) by six selected counties for the period of July 1, 2001, through June 30, 2002.

Our audits found the audited counties' remittances to the State Treasurer for restitution fines and warrants paid to the Board were correct. However, this report notes specific problem areas relative to the individual counties.

The audits were performed pursuant to an interagency agreement between the SCO and the Board to provide reasonable assurance as to the accuracy and effective administration of restitution fines and court-ordered restitution related to the Victim Compensation Program.

The audits included the counties of Alameda, Los Angeles, Napa, Santa Clara, Ventura, and the City and County of San Francisco. During the audits, we noted the following items that represent areas where improvement could be achieved as it relates to the Victim Compensation Program:

1. The audits disclosed that four of the six counties (Alameda, Napa, Los Angeles, and Ventura) had improperly distributed a 10% rebate from the State to departments within the counties. In accordance with *Government Code* Section 139963(f), counties are required to distribute the rebate to all local agencies that are responsible for collecting restitution.

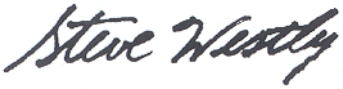
   I recommend that the Board consider holding the rebate revenues in a trust account until each county provides a plan for how the rebate revenues will be used to enhance restitution collection activities. Because *Government Code* Section 13963(f) requires the State to pay a rebate to the county probation department or county agency responsible for collection of funds owed to the Restitution Fund under *Government Code* Section 13967, the Board should consider proposing legislation to impel these counties to provide action plans.

2. The audits also show that five of the six counties did not collect or improperly accounted for a 10% administration fee. *Penal Code* Section 1202.4 allows an administration fee to be levied up to 10% of the amount ordered to be paid. The fee can be imposed at the board of supervisors' discretion. The fees are to be deposited into the county general fund for use and benefit of the county. The counties are permitted to collect the fee to offset administration costs associated with collecting restitution fines.

   I recommend that the Board consider proposing legislation to require the county boards of supervisors to collect the 10% administration fee prior to being eligible to receive the restitution rebate.

The information in this report is provided to assist the Board in future policy decisions.

Sincerely,



STEVE WESTLY
California State Controller

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Audit Report

Summary

This report presents the results of six audits of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board (Board) completed by the State Controller's Office (SCO) for the period of July 1, 2001, through June 30, 2002. The following counties were audited: Alameda, Los Angeles, Napa, Santa Clara, Ventura, and the City and County of San Francisco. The purpose of the audits is to provide reasonable assurance as to the accuracy and effective administration of restitution fines and court-ordered restitution related to the Victim Compensation Program.

Except for the findings and recommendations noted in these reports, all audited counties' remittances to the State Treasurer for restitution fines and warrants paid to the Board for restitution court orders were correct. The points discussed in the Findings and Recommendations section may affect the amount of those remittances through enhanced collection efforts or additional fees collected. The SCO noted items that represent areas where improvement could be achieved in the Victim Compensation Program. These items are discussed in the Areas for Improvement section of this report.

In addition, the reimbursement of court-ordered restitution is hindered due to various reasons. For example, pursuing the reimbursement for claims that are remitted after the sentencing date may not be cost-effective due to the additional court costs involved, unless the courts and the counties are willing to implement a coordinated process among the courts, the district attorney's offices, and the probation departments.

Background

State statutes govern the distribution of court revenues, which include restitution fines and court-ordered restitution. Whenever the State is entitled to a portion of such money, the court is required by *Government Code* Section 68101 to deposit the State's portion of court revenues with the county treasurer as soon as practical and to provide the county auditor with a monthly record of collections. This section further requires that the county auditor transmit the fund and a record of the money collected to the State Treasurer at least once a month.

Government Code Section 68103 requires that the State Controller determine whether or not all court collections remitted to the State Treasurer are complete. *Government Code* Section 68104 authorizes the State Controller to examine records maintained by any court. Furthermore, *Government Code* Section 12410 provides the State Controller with general audit authority to ensure that state funds are properly safeguarded.

The Board was concerned with the accurate and effective administration of restitution fines and court-ordered restitution with respect to the Victim Compensation Program. Consequently, in January 2003, an interagency agreement was executed between the SCO and the Board to conduct six field audits of county and court collection systems as they relate to restitution fines and court-ordered restitution.

Objective, Scope, and Methodology

In accordance with the terms of the agreement, the objective of these audits was to determine whether the counties and courts completely and accurately remitted restitution fines and Board court-ordered restitution in a timely manner to the State Treasurer for the period of July 1, 2001, through June 30, 2002.

Pursuant to the interagency agreement, the SCO conducted field audits of the county superior courts and collection entities to assess whether:

- The courts have properly ordered restitution fines and orders in accordance with *Penal Code* Section 1202.4; and
- The policies and procedures established by the courts and county collection entities ensure that financial assistance disbursed by the Board in accordance with *Government Code* Sections 13959 through 13969 was properly collected and reimbursed to the Restitution Fund.

In order to meet the objective, for each county, the auditor reviewed the revenue processing systems within the county's superior court, district attorney's office, and auditor's office.

The auditors performed the following procedures:

- Reviewed the accuracy of distribution reports prepared by each county, which show court revenue distributions to the State, the county, and cities located within the county;
- Gained an understanding of each county's revenue collection and reporting processes by interviewing key personnel and reviewing documents supporting the transaction flow;
- Analyzed the restitution accounts reported in each county's monthly cash statement for unusual variations and omissions;
- Performed tests to identify any incorrect distributions and expanded any test that revealed errors to determine the extent of any incorrect distributions; and
- Selected 50 cases from the Board's restitution schedule of accounts receivable to determine the timeliness and status of repayments.

The audits were conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. The SCO did not audit the counties' financial statements. The auditor considered the counties' management controls only to the extent necessary to plan the audits. This report relates to an examination of court-ordered restitution and restitution fines remitted and payable to the State of California. Therefore, the SCO does not express an opinion as to whether the counties' court revenues, taken as a whole, are free from material misstatement.

Areas of Improvement

1. The audits disclosed that four of the six counties (Alameda, Napa, Los Angeles, and Ventura) had improperly distributed a 10% rebate from the State to the counties. In accordance with *Government Code* Section 139963(f), counties are required to distribute the rebate to all local agencies that are responsible for collecting restitution.

   The SCO believes that the Board should consider holding the rebate revenues in a trust account until the county provides a plan for how the rebate revenues will be used to enhance restitution collection activities. Because *Government Code* Section 13963(f) requires the State to pay a rebate to the county probation department or county agency responsible for collection of funds owed to the Restitution Fund under *Government Code* Section 13967, the Board should consider proposing legislation to impel the county to provide the action plan.

2. The audits also show that five of the six counties did not collect or improperly accounted for a 10% administration fee. *Penal Code* Section 1202.4 allows an administration fee to be levied up to 10% of the state restitution collected. The fee can be imposed at the boards of supervisors' discretion. The fees are to be deposited into the county general fund for use and benefit of the counties. The counties are permitted to collect the fee to offset administration costs associated with collecting restitution fines.

   The SCO believes that the Board should consider proposing legislation to require the county boards of supervisors to collect the 10% administration fee prior to being eligible to receive the restitution rebate.

Conclusion

The audits determined that the remittances by the counties to the State Treasurer for restitution fines and warrants paid to the Victim Compensation and Government Claims Board are correct. The summary findings and recommendations in this report are submitted to assist in initiating changes that will help improve the collection activities related to the Victim Compensation Program.

Summary of Findings and Recommendations

Introduction

Except for the findings and recommendations cited in this report, the audit reports issued for the individual counties found that court restitution fines reported to the State Treasurer and warrants paid to the Victim Compensation and Government Claims Board were correct. However, problem areas were identified, which are described below. Recommendations to resolve the problems are included with the individual county findings (see Findings of Individual County Audits).

10% restitution rebate not applied to collection activity

Government Code Section 13963(f) requries the State to pay a rebate to the county probation department or the county agency responsible for collection of funds owed to the Restitution Fund under *Government Code* Section 13967. In addition, the rebate shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The rebates shall not be used to supplant county funding.

The SCO noted a finding in this area for four counties.

10% administration fee not included in state restitution fines

Effective January 2000, *Penal Code* Section 1202.4(1) allows an administration fee to be levied up to 10% of the state restitution fines ordered to be paid. The fee can be imposed at the board of supervisors' discretion. The fees are to be deposited into the county general fund for the use and benefit of the county.

The SCO noted a finding in this area for four counties. In addition, the superior courts in two cities within one of the counties did not include the fee.

Collections not maintained by county collections department

A complete reconciliation of collection records to deposits is required by Section 3.31 of the State Controller's *Manual of Accounting and Audit Guidelines for Trial Courts.* Additionally, *Government Code* Section 68101 requires, "Each officer authorized to receive fees pursuant to this title shall keep in accordance with the guidelines of the Controller, a monthly record of all fees or compensation of fines of whatever nature, kind, or description, collected or chargeable."

The SCO noted a finding in this area for one county.

Court collection detail not reported at entry level

Government Code Section 71380 states, "The State Controller shall establish, supervise, and as necessary revise a uniform accounting system, including a system of audit, to the end that all fines, penalties, forfeitures, and fees assessed by courts, and their collection and appropriate disbursement, shall be properly and uniformly accounted for." In addition, *Government Code* Section 68101 requires "any judge imposing or collecting such fines or forfeitures shall keep a record of them. . . ."

Court-ordered restitution not collected and distributed within the court's accounting system

The SCO noted a finding in this area for one county.

The *California Constitution,* Article I, Section 28, entitles victims to restitution from wrongdoers for financial losses suffered as a result of criminal acts. As stated in Subsection (b):

> Restitution. It 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 restitution from the persons convicted of the crimes for losses they suffer.
>
> Restitution shall be ordered from the convicted persons in every case regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.

The SCO noted this finding area in one county.

Restitution revenues not collected

Government Code Section 13963(f) requires the State to pay a rebate to the county probation department or county agency responsible for collection of funds owed to the Restitution Fund under *Government Code* Section 13967. In addition, the rebate shall be considered an incentive for collection efforts and shall be used for furthering collection efforts.

In addition, the *California Constitution,* Article I, Section 28, entitles victims to restitution from wrongdoers for financial losses suffered as a result of criminal acts: "Restitution shall be ordered from the convicted persons in every case regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary."

In addition, *Penal Code* Section 1203.1(d) effective October 2002, provides a priority of order for time payment, collections, and victim's restitution is to be collected first.

The SCO noted this finding area in one county.

Findings of Individual County Audits

Introduction

The findings and recommendations included below are presented as they were stated in the individual county audits. Unless otherwise indicated, the counties agreed with the findings and recommendations.

The findings and recommendations listed below are solely for the information and use of the Victims Compensation and Government Claims Board and the SCO, and are not intended to be and should not be used by anyone other than those specified parties. This restriction is not intended to limit distribution of this report or the respective audit reports, which are a matter of public record.

Alameda County

FINDING 1—Restitution 10% rebate not applied to collection activity

Alameda County did not distribute $115,439 of the statutory restitution rebate revenues to the Probation Department or other county agencies responsible for the collection enhancement of restitution fines and orders. The revenue has been posted to the Central Collection Division's fund for general collection activities when the operating cost is offset by the department's comprehensive collection program. The error occurred because the county misinterpreted *Government Code* Section 13963(f) to include general collection activity. Failure to make the required distribution of the statutory rebate has not provided the intended collection enhancement under the statute.

Government Code Section 13963(f) requires the State to pay a rebate to the county Probation Department or the county agency responsible for collection of restitution fines and orders owed to the Restitution Fund under Section 13967. Additionally, the rebate shall be considered an incentive for collection efforts and shall be used for furthering the collection efforts. The rebates shall not be used to supplant county funding.

Recommendation

The county should allocate the 10% rebate revenues to the Probation Department, District Attorney's Office, or other county agencies responsible for collection of court-ordered victim restitution on behalf of the Victim Compensation and Government Claims Board.

In addition, the county should institute procedures to ensure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

County's Response

> Alameda County Central Collections, is the only County agency within Alameda County responsible for collections. The Probation Department and District Attorney's Office are not equipped nor do they have the desire to perform collection work.
>
> Approximately two years ago, at the recommendation of the Victim Compensation and Government Claims Board, Central Collections began receiving the 10% rebate revenues for the collection of restitution fines and orders. The Board determined that Central Collections was the only agency in Alameda County performing the function of collection for restitution fines and orders. Confirmation can be obtained by speaking directly to the Board.
>
> The funds received by Central Collections have been used for the enhancement of collection of restitution fines and orders. Using the funds from the 10% rebate program allowed Central Collections to have staff present in restitution court in Alameda County to facilitate the collection of restitution fines and orders. The program was established with the concurrence and support of the Restitution Committee in Alameda County.
>
> *Government Code* Section 13963(f) requires the State to pay a rebate to the county Probation Department or the county agency responsible for collection of restitution fines and orders owed to the Restitution Fund under Section 13967. Since Central Collections is the only agency responsible for the collection of restitution fines and orders the 10% rebate should continue to be directed to Central Collections.

SCO's Comment

Government Code Section 13963(f) states, "The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967. . . ." Collection is defined as the act or process of collecting. The collection process for state victim compensation begins with the initial filing of a claim by the victim. The District Attorney's Office is a key element in initiating the county's collection process. Because the office is responsible for filing victim restitution claims with the court. If the claims are not filed in a timely manner, they may not be included in the court order. Consequently, the collection process can go no further.

FINDING 2—Administration fees not charged

Alameda County did not include a 10% administration fee on the restitution fines collected. The county added an administration fee only to the restitution orders paid by the defendants. The fee was not implemented because the board of supervisors has not adopted a resolution that will add the administration fee.

Penal Code Section 1202.4(l) provides that the board of supervisors may impose a fee to cover the actual administrative cost of collecting the restitution fines, not to exceed 10% of the amount ordered to be paid. Additionally, *Penal Code* Section 1203.1(l) provides that the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution orders, not to exceed 10% of the total amount

ordered to be paid. These fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to establish the administration fee causes county resources to be understated and may lessen the enhancement effort to collect state restitution fines.

Recommendation

The county should take steps, after a board resolution, to levy the 10% administration fee for the collection of state restitution fines.

County's Response

> The County concurs with the recommendation and will seek a board resolution to levy the 10% administration fee for the collection of restitution fines in accordance with *Penal Code* Section 1202.4(l).
>
> As a point of clarification, the County has established a policy by board resolution for adding an administrative fee to restitution orders as cited in *Penal Code* Section 1203.1(l). Central Collections has been adding the administrative fee on restitution orders for several years.

Los Angeles County

FINDING 1—
10% restitution rebate not applied to restitution collection activity

The Los Angeles County Auditor-Controller's Office did not distribute $775,009 of state restitution rebate revenues to the Probation Department or other county agencies responsible for the collection enhancement of restitution fines and court orders deposited during fiscal year (FY) 2001-02. Of the revenues received, $775,009 has been placed in the county General Fund for general collection activity of court revenues and $281,882 has been posted to the Probation Department for general collection activity. The county interpreted *Government Code* Section 13963(f) to include general collection activites. Failure to make the required distribution of the rebate has not provided for the collection enhancement intended under the statute.

Government Code Section 13963(f) requires the State to pay a rebate to the county probation department or the county agency responsible for collection of funds owed to the Restitution Fund under Section 13967. In addition, the rebate shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The rebates shall not be used to supplant county funding.

Recommendation

The Auditor-Controller's Office should take steps to allocate the rebate revenues to the Probation Department and the District Attorney's Office, or other county agencies responsible for collection of state restitution fines and court-ordered restitution owed to the Board.

In addition, the county should institute procedures to ensure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

County's Response

> The County intends to work with the Court to develop a restitution collection augmentation program to utilize and allocate these funds in the future.

FINDING 2—10% accountability of Probation Department fine collections not maintained by the county Treasurer and Tax Collector

The Los Angeles County Treasurer and Tax Collector (TTC) collects and distributes probation fine revenues for the Probation Department. However, the TTC does not maintain a complete and adequate audit trail of probation collection records. Daily detail distribution account reports are not provided for the distribution of each cash receipt at entry. Separate daily reports do not identify probation fine accounts either in detail or in grand total. Therefore, the accuracy of the final report provided at month-end for probation revenues could not be verified, including the daily deposit totals for restitution fines.

A complete reconciliation of collection records to deposits is required by Section 3.31 of the State Controller's *Manual of Accounting and Audit Guidelines for Trial Courts*. Additionally, *Government Code* Section 68101 states, "Each officer authorized to receive fees pursuant to this title shall keep in accordance with the guidelines of the Controller, a monthly record of all fees or compensation of fines of whatever nature, kind, or description, collected or chargeable."

A complete and adequate audit trail helps ensure that transactions are recorded accurately. Court personnel indicated that they were not aware of the accountability requirement.

Recommendation

The TTC should implement procedures to improve the output records to adequately provide a complete audit trail starting at the entry level (cash receipts) and ending at the final month-end report.

County's Response

> The reference to the "county Collections Department" should be revised to read "Treasurer and Tax Collector" (TTC), which is the County department that is responsible for the collection activity referenced in the audit report. The TTC disagrees with the auditor's observations that led to this recommendation. TTC has provided extensive comments in response to the various issues raised and we are enclosing a copy of their memo to support the County's conclusion that this finding is not applicable.

Treasurer and Tax Collector's Memo of December 4, 2003

Per your request, we have reviewed the draft State Controller's Audit Report entitled Restitution Fines and Court-Ordered Restitution and have the following comments regarding Finding #2. The finding cites several perceived weaknesses in the Treasurer and Tax Collector's record-keeping and reconciliation procedures in reference to restitution collections. The circumstances cited in most cases, are inaccurate and others are not relevant. Following is our response to the points made in their finding:

- The Report states that the ". . . Collection Department does not maintain a complete and adequate audit trail of probation collections records."

  This is not accurate. We receive collections for probationers and other types of accounts referred to Treasurer and Tax Collector (TTC) on a daily basis. These receipts are reported on a deposit permit and posted to the CARS system, which we share with the Probation Department. We reconcile the deposit permits, which represent the monies collected and posted to our trust, to the amounts posted to CARS. Reports are readily available which detail each days' collections.

- The Report states that a "Daily detail distribution account reports are not provided for the distribution of each cash receipt at entry. Separate daily reports do not identify probation fine accounts either in detail or in grand total."

  This comment is correct, however a daily distribution report is unnecessary. The distributions and remittances to the Probation Department and then to the State are only done on a monthly basis, therefore only a monthly summary is needed, which we produce and reconcile to the daily collections. The distribution to the probation fine categories and victims is done on a transaction-by-transaction basis by the CARS system. If the distribution of any individual collection is desired, it is readily available on our CARS system by accessing the probationers' account.

- The Report states that ". . .the accuracy of the final report provided at month-end for probation revenues could not be verified, including the daily deposit totals for restitution fines."

  This comment is not correct. The accuracy of the month-end reports can be verified through the reconciliation of the daily reports. At month-end we verify that the month-end summary reports balance to their daily counterparts and then summarize the collections by client code (referring department and/or probation office). We also produce a summary collection report by facility code (probation fine categories) which is also reconciled to the month-end collection report above. Further, the restitution fines are not separately deposited on a daily basis. All collections by probation fine categories are determined at month-end and then transferred. Government Code Section 68101, cited by the auditors, does not require a separate daily accounting, only a monthly record.

- The Report states that "A complete reconciliation of collection records to deposits is required . . .".

  We maintain a complete reconciliation of collection records through the following procedures:

> As stated above, we receive collections for probationers and other types of accounts referred to Treasurer and Tax Collector (TTC) on a daily basis. These receipts are reported on a deposit permit and posted to the CARS system, which we share with the Probation Department. The distribution to the probation fine categories and victims is done on a transaction-by-transaction basis by the CARS system. If the distribution of any individual collection is desired, it is readily available on our CARS system by accessing the probationers' account.
>
> At month-end we verify that the month-end summary reports are in balance to their daily counterparts and then summarize the collections by client code (referring department and/or probation office). We also produce a summary collection report by facility code (probation fine categories) which is reconciled to the month-end collection report above. We do not produce a daily distribution report, as it is not needed to perform the duties that the Probation Department has requested of the TTC. The distributions and remittances to the Probation Department and then to the State are only done on a monthly basis, therefore only the monthly summary described above is needed. This process was explained and the offer of producing daily distribution reports for a current time-period was made to the auditor.

> The auditors have recommended that we ". . .implement procedures to improve the output records to adequately provide a complete audit trail. . ." As discussed above, we already have a sufficient audit trail to reconcile and report the funds collected on a monthly basis as required by the State Controller's Manual. We therefore, do not contemplate any changes to our system, at this time. . . .

SCO's Comment

"County Collections Department" was changed to "County Treasurer and Tax Collector" (TTC).

Verification of account totals on a daily basis is a necessary key component of the audit trail. The finding remains as stated because the daily account totals could not be verified.

FINDING 3—10% administration charge not included in state restitution fines

The superior courts in Pasadena and Long Beach did not include a 10% administration fee for state restitution fines collected.

Penal Code Section 1202.4 allows an administration fee to be levied up to 10% of the state restitution collected. The fee can be imposed at the board of supervisors' discretion. The fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to establish the administration fee causes county resources to be understated and may lessen the enhancement effort to collect state restitution fines.

Recommendation

The county should take steps, after a board resolution, to levy the 10% administration fee for the collection of state restitution fines.

County's Response

> The County intends, with the assistance of County Counsel, to work with the Superior Court to consider the feasibility of imposing this administration fee. If appropriate, the County intends to prepare a resolution for consideration and approval by the Board of Supervisors.

FINDING 4—Court-ordered restitution not collected and distributed within the courts' accounting system

The superior courts in Pasadena and Long Beach do not maintain an accounting record for court-ordered victim restitution. Victim restitution is paid directly to the victims from the offender. The county Probation Department collects court-ordered restitution from those placed on formal probation. Defendants placed on summary probation pay their fines at the court.

The *California Constitution,* Article I, Section 28, entitles victims to restitution from wrongdoers for financial losses suffered as a result of criminal acts. As stated in Subsection (b):

> Restitution. It 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 restitution from the persons convicted of the crimes for losses they suffer.
>
> Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.

In addition, effective October 2002, *Penal Code* Section 1203.1d requires a priority of order for time payment collections. Victim restitution is to be collected first.

Failure to establish an accounting of court-ordered restitution fails to provide for the priority set in statute for victim restitution. If the accounting system for the collection and distribution of victim restitution is not maintained by the court, it cannot be easily verified that restitution has first been paid in full.

Recommendation

The superior courts in Long Beach and Pasadena should take steps to coordinate the collection of victim restitution with the prosecuting agencies to ensure that all victim restitution has been fully collected prior to the court collecting surcharges, fines, penalties, and fees.

Superior Court's Response

> The Court disagrees with this recommendation. The Court is not responsible for the administration of collecting and distributing victim's restitution with the prosecuting agencies. When a judicial officer specifically orders victim restitution fines paid to the Court, the Court distributes the payment as required by Section 1203.1(d) of the Penal Code. However, the Court does not participate in the efforts prosecuting agencies may undertake to collect restitution from defendants and pass it on directly to victims. This is a matter involving prosecution agency, defendant, and victim.

Auditor's Comments

The collection prioritization responsibility under *Penal Code* Section 1203.1d is not omitted when the court provides collection activity.

The court should not receive payments from each case until payment obligations to victim restitution have been fully satisfied.

Napa County

FINDING 1—10% restitution rebate not applied to collection activity

The Napa County Auditor-Controller's Office did not distribute the state restitution rebate revenues to the Probation Department or other county agency responsible for the collection. The revenues have been placed in a miscellaneous departmental trust fund. The fund balance as of June 2002 is $160,025. The error occurred because the county is still reviewing various options for allocating the rebate revenue. Failure to make the required distribution has not provided the intended collection enhancement meant for the rebate.

Government Code Section 13963(f) requires the State to pay a rebate to the county probation department or the county agency responsible for collection of funds owed to the Restitution Fund under Section 13967. In addition, the rebate shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The rebates shall not be used to supplant county funding.

Recommendation

The Auditor-Controller's Office should take steps to allocate the rebate revenues to the Probation Department or other county agencies responsible for collection of funds owed to the Restitution Fund.

In addition, the county should institute procedures to ensure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

Auditor-Controller's Response

During the fiscal year ended June 30, 2002, $6,750 was transferred to the Probation Department to offset costs of enhancing collections. During the fiscal year ended June 30, 2003, $8,013 was transferred to Central Services to offset costs of enhancing collections.

On July 1, 2002, the responsibility of the Trust was turned over in its entirety to the County Executive Office staff. CEO staff within the Napa County Executive Office is responsible for determining the County agency that should receive funds from the 10% Rebate Trust (Trust).

County Executive Office Response

The County Executive Office will take the necessary steps to insure that the allocation of the 10% rebate revenues is distributed to all County agencies responsible for collection of Court Ordered Restitution and state restitution fines. The General Fund supports these agencies and funds will be allocated proportionaltely.

FINDING 2—County 10% administration fee not distributed to the county General Fund

The Probation Department levied a 10% administration fee on court-ordered restitution during fiscal year (FY) 2001-02. The fee was included in the restitution claims reimbursed to the Board. The fee should have remained with the county. The error occurred because county personnel were not aware of the distribution requirement of the 10% administrative fees.

Penal Code Section 1203.1(l) allows an administration fee of up to 10% of the total amount to be paid. The fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to make the required distribution has caused reimbursement claims to the Board to be overstated and the county General Fund to be understated. Measuring the fiscal effect did not appear to be cost-effective or material.

Recommendation

The Probation Department should take steps to allocate the 10% administration fee to the county General Fund.

While the amount of overremittance for one year did not appear to be material, the overremittance for all years in which the error occurred may be material. The county should consider the advisability of seeking a rebate from the Board for the overremittance for all fiscal years in which the error occurred.

Auditor-Controller's Response

The Auditor-Controller's Office was not informed by the Probation Department or any other County agencies that this calculation and transfer needed to occur before the monthly remittance to the Board occurred.

> The Auditor-Controller's office will work with the Probation Department to determine the amount of the rebate that will be requested from the Board.

Probation Department's Response

> As mentioned, the Probation Department will work with staff of the Auditor-Controller's office to determine the amount of the rebate requested from the Board.

FINDING 3—Court collection detail not reported at entry level

The Napa County Court did not maintain a complete record of cash distributions in accordance with *Government Code* Section 68101. Daily cash collections are summarized by account; however, the distribution detail for each revenue account at the case level is not summarized. The cash receipt detail is incomplete. Daily deposit totals for restitution fines cannot be readily verified. This occurred because the accounting system was not updated to generate a detailed record of each cash distribution.

Government Code Section 71380 states, "The State Controller shall establish, supervise, and as necessary revise a uniform accounting system, including a system of audit, to the end that all fines, penalties, forfeitures, and fees assessed by courts, and their collection and appropriate disbursement, shall be properly and uniformly accounted for." In addition, *Government Code* Section 68101 states that "any judge imposing or collecting such fines or forfeitures shall keep a record of them. . . ."

Failure to record the distribution at the cash receipt level prohibits the verification of such revenues at the source level. State restitution fines may have inappropriate distributions; however, due to this error, they cannot be readily identified.

Recommendation

The court should modify its accounting system to provide a complete detail record of revenue account distributions at the cash receipt level.

Court Executive Officer's Response

> [T]he court is developing an accounting report that will summarize each account distribution at the receipt level. It should be fully operational within the next 90 days.

City and County of San Francisco

FINDING 1—Restitution revenues not collected

The Adult Probation Department collected restitution fines but not restitution orders on behalf of the Board from July 1, 2001, through June 30, 2002. In addition, the District Attorney's Office and the Adult Probation Department are lacking in structure, resources, training, and accountability. Furthermore, it appears that the county has failed to use the state restitution rebate revenues to enhance the restitution fines and orders collection efforts.

The SCO auditor's interview with the staff failed to produce any supporting documentation, statistics, policies, and procedures concerning the collection of restitution fines and orders. It is apparent that the Adult Probation Department lacks the structure and resources to have a substantial impact on consistent collections of restitution fines and orders on behalf of the Board.

The District Attorney's Office staff indicates that the combined efforts of the departments in ordering, recording, and collecting restitution fines and orders are lacking in structure, resources, training, and accountability because they lack sufficient staff and resources to effectively process both restitution fines and orders on behalf of the Board.

Government Code Section 13963(f) requires the State to pay a rebate to the county probation department or county agency responsible for collection of funds owed to the Restitution Fund under *Government Code* Section 13967. In addition, the rebate shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The county failed to distribute the state restitution rebate revenues to the Adult Probation Department and the District Attorney's Office to procure sufficient staff and resources to accomplish the intended collection enhancement meant for the rebate.

The *State Constitution*, Article I, Section 28, allows victims to receive restitution from wrongdoers for financial losses suffered as a result of criminal acts. "Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary."

In addition, *Penal Code* Section 1203.1(d), effective October 2002, provides a priority of order for time payment collections, and victim's restitution is to be collected first.

Failure to order, record, and collect restitution orders on behalf of the Board causes the fund to be understated. Consequently, the victim compensation program would become underfunded. The total amount paid out to victims by the Board as of July 2003 for San Francisco is $1,670,000. During fiscal year 2001-02, the city and county did not collect and distribute any restitution orders to the Board.

Recommendation

The Superior Court, the Adult Probation Department, the District Attorney's Office, and the Board should develop collaborative efforts to aggressively approach the collection of restitution fines and orders on behalf of the Board. The collection efforts must be consistent throughout the offender's term of probation and enforcement of willful failure to pay cases should prevent an offender's probation from being terminated. Additionally, constant education and training is required for the Courts, the Adult Probation Department, and the District Attorney's Office.

The county should take steps to allocate the rebate revenues to the Adult Probation Department and the District Attorney's Office for collection of funds owed to the Restitution Fund.

In addition, the county should institute procedures to ensure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

Adult Probation Department's Response

> The department contacts victims through notification letters before sentencing of defendants. The letter provides details of the sentencing proceedings as well as the rights of victims to receive restitution. In many cases, responses to these letters are not returned to the department. For the responses received, many victims are not able to provide documentations for claiming expenses/pecuniary losses incurred as a direct result of the crime. Thus, restitution orders are not made.
>
> The department recognizes the need to work for the needs of victims with other partners of the criminal justice system. Victims need to have a direct, meaningful voice in identifying the harms done by an offender and in identifying what should be done to address those harms. Victims should be able to move forward with their lives feeling their needs have been heard, respected, and significantly responded to and thus moving toward healing and closure

FINDING 2—Administration fees not charged

The City and County of San Francisco did not include a 10% administration fee on the restitution fines collected. The agency added an administration fee only on the restitution orders paid by the defendants. The fee was not implemented because the board of supervisors has not adopted a resolution to add the administration fee.

According to *Penal Code* Section 1202.4(I), the board of supervisors may impose a fee to cover the actual administrative cost of collecting the restitution fines, not to exceed 10% of the amount ordered to be paid. Additionally, *Penal Code* Section 1203.1(I) states that the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution orders, not to exceed 10% of the total amount ordered to be paid. These fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to establish the administration fee causes county resources to be understated and may lessen the enhancement effort to collect state restitution fines.

Recommendation

The city and county should take steps, after a board resolution, to levy the 10% administration fee for the collection of state restitution fines.

Adult Probation Department's Response

The department collected a 10% administrative fee on all felony cases ordered through the Superior Courts. When defendants are charged with law violations, the Adult Probation Department conducts criminal investigations and provides a report, which is known as the presentencing report, to guides the courts in its decisions on sentencing offenders. This report describes the circumstances surrounding felony offenses and provides a summary of any prior history. Through this process, the department is able to ensure that administrative fees are properly included in the court orders.

For non-felony or misdemeanor cases, presentencing reports are not required. As such, details of these cases are not provided to the department until the court orders are submitted for pursuing collections. Due to the limited quantity of cases received, the department does believe it is cost-effective to pursue claim because of the additional court steps required.

Santa Clara County

FINDING—
10% administration charge not included in state restitution fines

The Santa Clara County Department of Revenue did not include a 10% administration fee for state restitution fines collected.

Penal Code Section 1202.4 allows an administration fee to be levied up to 10% of the state restitution collected. The fee can be imposed at the board of supervisors' discretion. The fees are to be deposited into the county's General Fund for the use and benefit of the county.

Failure to establish the administration fee causes county resources to be understated and may lessen the enhancement effort to collect state restitution fines.

Recommendation

The Department of Revenue should take steps, after a board resolution, to levy the 10% administration fee for the collection of state restitution fines.

Ventura County

FINDING 1—
10% restitution rebate not applied to collection activity

The Ventura County Auditor-Controller's Office did not distribute $126,726 of state restitution rebate revenues to the Probation Department or other county agencies responsible for the collection enhancement of restitution fines and court orders deposited during fiscal year (FY) 2001-02. Of the revenues received, $63,727 has been posted to the Superior Court's Operating Fund for general collection activity of court revenues. The county interpreted *Government Code* Section 13963(f) to include general collection activites. Failure to make the required distribution of the rebate has not provided for the collection enhancement intended under the statute.

Government Code Section 13963(f) requries the State to pay a rebate to the county probation department or the county agency responsible for collection of funds owed to the Restitution Fund under Section 13967. In addition, the rebate shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The rebates shall not be used to supplant county funding.

Recommendation

The Auditor-Controller's Office should take steps to allocate the rebate revenues to the Probation Department and the District Attorney's Office, or other county agencies responsible for collection of state restitution fines and court-ordered restitution owed to the Board.

In addition, the county should institute procedures to ensure that the funds are used to supplement the funding of current collection efforts and are not used to supplant existing funding sources. If the county does not intend to use the funds for the purpose for which they were received, the county should contact the Board and discuss returning the funds.

County's Response

We disagree with this finding. Only the Collections Division of Superior Court is responsible for the actual collection of funds. Collection activity does not and cannot occur prior to the establishment of an account receivable. The District Attorney facilitates that establishment, but these activities do not include actual recovery of funds. Since the District Attorney is not responsible for the collection of funds, the rebate cannot be distributed to that agency.

Since collection activities are performed by the Court, the County has no control over how the Court's resources are deployed. However, a review of total restitution dollars recovered over the last six years, shown below, clearly demonstrates that the Court does indeed dedicate resources to the pursuit of these accounts.

FY 1997-98	798,056
FY 1998-99	838,386
FY 1999-00	1,027,744
FY 2000-01	1,017,391
FY 2001-02	1,032,310
FY 2002-03	1,232,978

The County compensates the Court for their collection services in the amount of 20% on the gross receipts. The above restitution collections comprise approximately 6% of the total collections. By comparison, the rebate revenues fund only 2% of the County's cost for the Court's services. This clearly indicates that the rebates are not being used to supplant County funding.

Since the collection function is completely under the control of the Court, and the County pays for these services, the rebate revenue is being used for the intended purpose.

SCO's Comment

Government Code Section 13963(f) states, "The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967. . . ." Collection is defined as the act or process of collecting. The collection process for state victim compensation begins with the initial filing of a claim by the victim. The District Attorney's Office is a key element in initiating the county's collection process, because the office is responsible for filing victim restitution claims to the court. If the claims are not filed in a timely manner, they may not be included in the court order. Consequently, the collection process can go no further.

FINDING 2—10% administration fee not included in state restitution fines

Ventura County Courts did not include a 10% administration fee for state restitution fines collected.

Effective January 2000, *Penal Code* Section 1202.4(1) allows an administration fee to be levied, not to exceed 10% of the state restitution fines collected. The fee can be imposed at the board of supervisors' discretion. The fees are to be deposited into the county General Fund for the use and benefit of the county.

Failure to establish the administration fee causes county resources to be understated and may lessen the enhancement effort to collect state restitution fines.

Recommendation

The county should take steps, after a board resolution, to levy the 10% administration fee for the collection of state restitution fines.

County's Response

> We agree with this finding. However, the probability of county revenues increasing due to the imposition of the PC 1202.4(l) fee is highly uncertain. Pursuant to AB-3000, the distribution of this fee is classified under Priority 4, hence would be included in the last moneys collected. More than likely, it would only result in a shift of the distribution of Priority 4 revenues, diminishing the recovery of probation fees. Currently the County does impose a fee under PC 1203.1(l) which b is intended to cover administrative cost of collecting restitution. Imposing the PC 1202.4(l) fee to cover the administrative cost of collecting restitution fines could be considered duplicative, since these activities are conducted simultaneously and the costs are virtually indistinguishable.

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