SANTA CLARA COUNTY

Audit Report

RESTITUTION FINES AND COURT-ORDERED RESTITUTION

July 1, 2001, through June 30, 2002

STEVE WESTLY
California State Controller

February 2004

STEVE WESTLY

California State Controller

February 25, 2004

Mr. John V. Guthrie
Auditor-Controller
Santa Clara County
70 West Hedding Street, 2nd Floor
San Jose, CA 95110

Ms. Kiri Torre
Court Executive Officer/Clerk
Santa Clara County Courts
191 North First Street
San Jose, CA 95113

Dear Mr. Guthrie and Ms. Torre:

The State Controller's Office has completed an audit to determine the propriety of court restitution fines reported to the State of California and court-ordered restitution reported to the Victim Compensation and Government Claims Board by Santa Clara County for the period of July 1, 2001, through June 30, 2002.

The audit disclosed that the county did not include a 10% administration fee on restitution fines.

If you have any questions, please contact Jerry McClain, Chief, Special Audits Bureau, at (916) 323-1573.

Sincerely,

Vincent P. Brown

VINCENT P. BROWN
Chief Operating Officer

VPB:jj/ams

cc: Catherine Close, Executive Director
Victim Compensation and
Government Claims Board
Laura Hill, Manager
Revenue Recovery Division
Victim Compensation and
Government Claims Board

Contents

Audit Report

Summary 1

Background 1

Objective, Scope, and Methodology 2

Conclusion 3

Views of Responsible Officials 3

Restricted Use 3

Schedule 1—Random Sample Results 4

Finding and Recommendation 5

Appendix—Transaction Flow for Court-Ordered Restitution 6

Audit Report

Summary

The State Controller's Office (SCO) performed an audit to determine the propriety 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 Santa Clara County for the period of July 1, 2001, through June 30, 2002. The last day of fieldwork was March 26, 2003.

Santa Clara County 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 Finding and Recommendation section may affect the amount of those remittances through enhanced collection efforts or additional fees collected.

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 county are willing to implement a coordinated process among the courts, the District Attorney's Office, and the Probation Department.

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 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, on January 1, 2003, an interagency agreement was made 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 this audit was to determine whether the county and the 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 a field audit of the Santa Clara County Superior Court and collections 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 the county collection entities ensure that financial assistance made 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 objectives, the auditor reviewed the revenue processing systems within the county's Superior Court, District Attorney's Office, Collections Department, and Auditor-Controller's Office.

The auditor performed the following procedures:

- Reviewed the accuracy of distribution reports prepared by the county, which show court revenue distributions to the State, the county, and cities located within the county;

- Gained an understanding of the county's revenue collection and reporting processes by interviewing key personnel and reviewing documents supporting the transaction flow (Appendix);

- Analyzed the restitution accounts reported in the 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 (Schedule 1).

The audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. The SCO did not audit the county's financial statements. The auditor considered the county's management controls only to the extent necessary to plan the audit. 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 county's court revenues, taken as a whole, are free from material misstatement.

Conclusion

Santa Clara County restitution fines in the amount of $2,631,410 remitted to the State through the TC-31 process for fiscal year 2001-02 were determined to be correct. Santa Clara County reported $77,260 in direct reimbursement payments for court-ordered restitution to the Board during the fiscal year.

The Board remitted $276,853 to the county under statutory rebate provisions during the fiscal year. These monies are intended to enhance the collection effort related to restitution fines and orders. The county deposited the rebate into the county's General Fund for probation department activities.

Views of Responsible Officials

The SCO issued a draft audit report on November 6, 2003. No response was received from either the county Auditor-Controller or the courts.

Restricted Use

This report is solely for the information and use of Santa Clara County and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

JEFFREY V. BROWNFIELD
Chief, Division of Audits

Schedule 1—
Random Sample Results
July 1, 2001, through June 30, 2002

A random sample of 50 cases was selected from the Victim Compensation and Government Claims Board's Schedule, VCP Paid Out vs. Restitution Ordered. These cases were analyzed in three ways: (1) destination of offender, (2) claim date, and (3) current collection effort. Each of these areas may have an impact on the accuracy and effectiveness of the court-ordered restitution collection process. From these cases the following percentages were derived:

A. Destination of Offender

State:	
State Correctional Facility	48%
Local:	
Formal Probation	32%
Conditional Sentencing	16%
Juvenile	2%
Not Convicted	2%

B. Claim Dates

Before Sentencing	38%
After Sentencing	60%
No Record	2%

C. Current Collection Effort*

No Further Action to Be Taken	58%
Continuing Effort	28%
Collection Satisfied or in Process (State)	12%
Collection Satisfied or in Process (Local)	2%

* Information provided by county staff.

Finding and Recommendation

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.

Appendix—
Transaction Flow for Court-Ordered Restitution
July 1, 2001, through June 30, 2002

The following narrative describes the court-ordered restitution process for the various entities in Santa Clara County involved in court-ordered restitution.

District Attorney's Office

Claims are first filed by the Victim Compensation and Government Claims Board with this office. It is this office's responsibility to file the claim with the court and have it placed in each offender's court file.

When the claim is filed **prior** to the sentencing date, the claim should be part of the court proceedings. Restitution claims, victim, and amounts should be documented with the Proceedings Sentence/Probation Order.

When the claim is filed **after** the sentencing date, claims are much more difficult to file against the offender. Usually, the offender must be brought back into court. If the offender has been sentenced to a state correctional facility, it is usually not cost-effective to proceed with the claim.

Court

Upon conviction, the court is responsible for disclosing fines and claims filed against the offender. Upon sentencing, the court prepares a court order (i.e., Sentence/Probation Order) and includes a restitution order (i.e., Judgment and Victim Restitution Order). Each court case has a court docket number assigned. A database docket file is maintained for each case.

If the offender is sent to a state correctional facility, the collection responsibility shifts to the State.

If the offender is placed on formal probation, the collection responsibility is under the county and begins with the Probation Department. The Probation Department delegates collection to the county's collections department, the Department of Revenue.

If the offender is placed on conditional sentencing, victim compensation claims are sent directly to the county's Department of Revenue.

Probation Department

Each offender is assigned a probation officer. If the offender's file includes a victim compensation claim, the officer prepares a collection order "buff card." This is sent to the Department of Revenue. There do not appear to be any controls to ensure that the buff cards are received by the Department of Revenue.

Department of Revenue

The department relies on the court, the Probation Department, the District Attorney's Office, and the local Victim Witness Assistance Center to provide the necessary information to proceed with the collection process. Collections and distributions are summarized on a weekly basis. A separate collection and distribution ledger is prepared.

The department takes a proactive role in the collection process. Information is cross-checked by court order, information within the county and court database, and the victim claim order. Whenever there is an inconsistency, the appropriate department is notified. If a defendant fails to pay, the court is notified.

State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874

http://www.sco.ca.gov

S03-VCB-001