

Orange County Probation Department

Restitution Payments

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OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Orange County Probation Department

Audit Objective

Determine whether the Orange County (County) Probation Department (Department) officials enforced restitution orders, notified the court when a probationer violated the court order and disbursed victim restitution payments promptly and appropriately.

Key Findings

Department officials did not always properly enforce restitution orders, notify the court when a probationer violated the court order or disburse victim restitution payments promptly and appropriately. As a result, some victims may never receive the payments to which they are entitled.

- Officials did not always make reasonable efforts to locate victims promptly.
- 19 of the 29 restitution orders reviewed had uncollected payments totaling \$19,319.
- Restitution payments totaling \$3,440 were collected but not paid to 18 victims and none of the outstanding checks totaling \$72,431 were properly followed up on as required.

In addition, officials did not maintain an accurate list of unsatisfied restitution orders, make undisbursed restitution payments or maintain sufficient undisbursed restitution records.

Key Recommendations

- Establish adequate policies and procedures for enforcing and monitoring restitution obligations.
- Provide meaningful oversight.
- Enforce and monitor restitution according to court orders and Department policies and procedures.

County officials disagreed with some of our findings and recommendations. Appendix B includes our comments on issues raised in the County's response letter.

Background

The County is located in eastern New York, in the Mid-Hudson Region. The County is governed by the County Legislature (Legislature), which is composed of 21 elected Legislators.

The County Executive is the Chief Executive Officer and is responsible for oversight of County operations. The Commissioner of Finance is the Chief Fiscal Officer and manages the County's financial affairs.

The Probation Director (Director) oversees and manages the Department.

Restitution Quick Facts

For the Audit Period:

Collections	\$830,189
Disbursements	\$874,272
Orders with Probation Supervision	369

Audit Period

January 1, 2018 – June 30, 2019. We extended our scope back to 2015 to determine the last time the Department made undisbursed restitution payments.

Collecting, Enforcing and Disbursing Restitution

Restitution is compensation ordered to be paid to a victim as a result of a defendant's criminal offense that resulted in the victim sustaining losses and/or damages. Courts may require probationers to pay restitution: at the time of the sentencing, in periodic installments or in a lump sum by the end of the probation term. Restitution may include, but is not limited to, reimbursement for medical bills, counseling expenses, loss of earnings and the replacement of stolen or damaged property. It is ordered by the court at the time of sentencing. Further, only a court can modify the restitution terms.

Department officials should ensure the collection and enforcement of restitution is in accordance with State laws, rules and regulations, Department policies and procedures, court-issued restitution orders and any applicable guidelines set forth by the Office of Probation and Correctional Alternatives. The timely collection and enforcement of court-ordered restitution from probationers helps ensure that victims receive the compensation to which they are entitled.

The Director is responsible for managing the Department's day-to-day operations and developing policies and procedures for collecting, safeguarding, disbursing and enforcing restitution, which includes reporting to the court when probationers fail to make court-ordered restitution payments.

How Should the Collection of Restitution Be Enforced?

Probation departments must have a system that details the use of incentives and sanctions to encourage probationers to comply with the court's restitution order. A probationer's failure to comply with a restitution order must be reported to the court prior to probation supervision ending, allowing the court time to determine how to proceed. Therefore, probation department staff should maintain adequate records of probationers' total current and past due restitution and actions the department took to enforce restitution orders.

The Department's Policy Manual (Manual) requires a probation officer to notify the probationer via warning letters if they are non-compliant with the court's restitution order and instruct them to comply. If payment is still not received, the probation officer must notify the court. The Manual does not define timeframes for issuing warning letters or notifications to the court.

Officials Did Not Adequately Enforce Restitution Collections

The Department had 369 restitution orders (cases) with probation supervision during our audit period. We reviewed 29 cases totaling \$214,724 to determine whether the Department adequately enforced the collection of restitution. During our audit period, Department officials should have collected \$56,607 from probationers for these cases, including \$13,602 in prior period arrears (restitution payments outstanding at the commencement of our audit period).

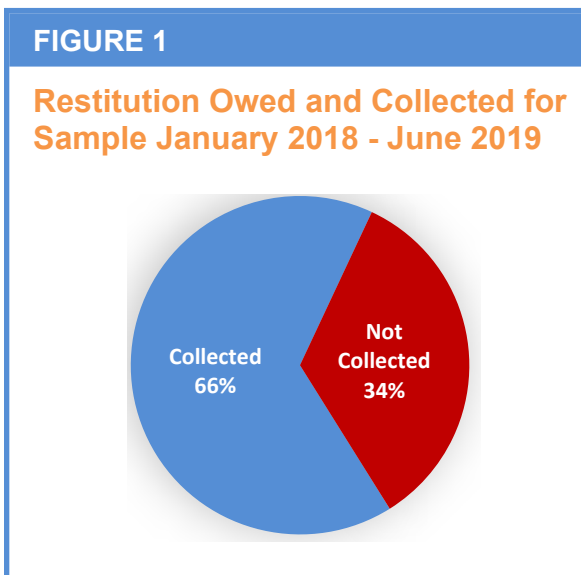
However, \$37,288 was collected while \$19,319 remained outstanding (Figure 1). Specifically, 19 cases were in arrears \$19,319 and the required payments for the remaining 10 cases were in compliance with restitution order terms. For the 29 cases in our sample, two required full payment at the end of the probation term and 27 required monthly payments. While the two cases that required full payment were in compliance with the orders because payment for one was not due and payment was made in full for the other, we found the Department did not adequately enforce the cases that required monthly payments.

We reviewed the last payment made by each probationer during our audit period to determine if the Department appropriately issued warning letters and/or court notifications when payments were not made timely. The Probation Supervisor told us that the Department's unwritten policy is to issue warning letters to probationers 30 and 60 days past the required payment date and to send notification to the court 90 days past the required payment date. In accordance with the Department's unwritten policy, warning letters and/or court notifications were required for 15 of the 27 cases with monthly payments because the probationers did not comply with their restitution orders. Overall, 21 warning letters and four court notifications were required. Of the 25 required letters or notifications:

- 4 (16 percent) were issued timely,
- 1(4 percent) was made late, and
- 20 (80 percent) were not issued at all.

For the one late notification, the probationer should have made a payment in March 2014. However, the court was notified of nonpayment in October 2018. The Department did not issue late notifications to four probationers who were in arrears at the end of the audit period because they were not yet over 30 days late.

Probation officers often took informal actions to encourage probationers to pay their financial obligations. For the 15 cases in arrears that required written notification during our test, in all instances probation officers documented having



conversations with probationers regarding their overdue restitution payments (an average of six conversations per case).

While the Director and the Probation Supervisor told us the probation officers were responsible for sending warning letters and notifying the court when a probationer violates the court's restitution order, warning letters and court notifications often were not sent. In addition, because there was no monitoring or oversight by probation supervisors or the Director, nor specific written guidance, to ensure that warning letters and court notifications were issued according to the Department's unwritten guidelines, probation officers' actions were often inconsistent.

How Should Restitution Payments Be Processed?

The Department should disburse collected restitution to victims promptly. Further, Department officials should make reasonable efforts to locate victims that no longer reside at the address on record in a timely manner. The Department's Policy Manual specifies that restitution checks will be disbursed twice per month.

Officials Did Not Always Disburse Restitution Payments or Make Reasonable Efforts to Locate Victims Promptly

To determine whether payments were made to victims in accordance with the Manual, for our sample of 29 cases, we reviewed the last restitution payment made by the probationer and determined when it was disbursed to the victim. During our audit period, the last collections received for 25 of the 29 orders totaled \$8,460, with no collections received for the remaining four orders. The Principal Clerk made 24 payments totaling \$8,365 to the victims according to the Manual's terms. However, although the remaining payment was initially processed promptly, it was returned due to an incorrect address. Although the Manual is not clear on who is responsible to search for victims' locations, the Principal Clerk was notified of a correct address for the victim 14 months after the Department's initial receipt of restitution. She sent a verification letter, and when that was returned, she sent the payment to the victim.

We also reviewed the May 2019 bank reconciliation to determine if there was idle victim money and whether reasonable efforts were taken to disburse the money. The Department did not appropriately follow up on 402 outstanding checks totaling \$72,431 that were over a year old and did not issue checks to 18 victims for which the Department collected restitution payments totaling \$3,440. Overall, although a significant amount of time had elapsed, the Department made minimal to no attempts to locate victims who were no longer at the address on record. We reviewed the following:

The Department did not appropriately follow up on 402 outstanding checks totaling \$72,431 that were over a year old....

Outstanding Checks – Ten of the 402 outstanding checks, totaling \$23,896, were between one and almost four years old. We reviewed the Department’s records to learn what efforts were made to locate the victims and issue new checks for the payments. We found:

- The Principal Clerk performed search efforts for seven checks totaling \$14,461.
 - For six checks totaling \$12,842, the Principal Clerk began efforts to locate a valid address for the victims on average 681 days after the initial check was issued.
 - For one check for \$1,619, the Principal Clerk obtained the victim’s address from another department employee, but did not document how long this occurred after the initial check was issued.
 - After performing the searches, four new checks totaling \$9,932 were issued, on average of 801 days after the initial checks were issued.
 - Three checks totaling \$4,529 were not replaced after searches were performed.
- For three checks totaling \$9,435 that averaged 830 days old, no actions were taken to locate the victims, nor were new checks issued.

Unprocessed Payments – Five of the 18 probationers’ payments, totaling \$1,207, had been unprocessed for 571 to 2,249 days. Records indicate that inquiry letters were sent to potential updated addresses for all five of the related victims during 2016. However, there was no documentation of the results. If the updated addresses were confirmed to be correct, then the Principal Clerk should have issued the victims’ payments. Conversely, if the Department could not locate the victims after using reasonable efforts, because the payments were already unclaimed for at least one year, it should have transferred the money to the undisbursed restitution account, as required. By not maintaining adequate records of the outcome of the inquiry letters, searches for the victims’ addresses will have to be performed again.

While the Manual indicates that the New York State Department of Motor Vehicles (DMV) records can be used to locate victims, the Manual does not provide guidance for the timeframes when efforts should occur and what actions should be taken to locate victims. Further, the Manual states the probation officers are able to access DMV records from their office desktop and have the responsibility for running required DMV abstracts. In addition, PSI Officers and Supervision Officers are responsible for entering information obtained during the course of their respective investigations and supervisions into the Department’s electronic probation program, including certain information pertaining to victims. We found that the Principal Clerk is performing DMV searches with respect to victim location

efforts. She told us that when she has time, she uses a software program which searches, among other databases, the United States Postal Service and DMV to try to find current addresses for the victims and she documents these efforts in a spreadsheet. If she finds an updated address, she sends a confirmation letter to determine if the intended victim is at the address. If an affirmative confirmation letter is returned, she sends the payment to the victim.

Although the Director reviews the monthly bank reconciliations which lists the outstanding checks and hold payments, he told us he was unaware that there were unprocessed payments and outstanding checks as old as 1,609 days. Because there was inadequate monitoring and oversight by Department officials and the Manual does not provide sufficient guidance, some victims are not receiving payments to which they are entitled or are experiencing significant delays.

How Should Undisbursed Restitution Payments Be Administered?

Undisbursed restitution payments (undisbursed restitution) is defined in law as those payments that were remitted by a defendant but not paid to the intended victim and remain unclaimed for a year, and the location of the intended victim cannot be found after using reasonable efforts. A list of unsatisfied restitution orders must be maintained in order to determine which victim's restitution order has gone unsatisfied for the longest period of time to make payments from undisbursed restitution. Unsatisfied restitution orders are defined to mean that the last scheduled payment is at least 60 calendar days overdue. If undisbursed restitution payments have gone unclaimed for a period of one year and the victim cannot be located after using reasonable efforts, the undisbursed restitution should be paid to the victims with the oldest unsatisfied restitution orders.

Written procedures must be established for how undisbursed restitution payments will be disbursed, and should include timeframes for actions, identify the individuals responsible for each of the various steps, the types and the number of victim searches that should be conducted prior to transferring unclaimed money (e.g., unprocessed and outstanding checks) to the undisbursed restitution account and the records to be maintained. Money may be disbursed based upon month or year of the unsatisfied order, and a local director shall provide for a mechanism whereby victims receive a proportion or fixed amount of undisbursed restitution.

Because there was inadequate monitoring and oversight by Department officials and the Manual does not provide sufficient guidance, some victims are not receiving payments to which they are entitled or are experiencing significant delays.

Officials Did Not Maintain an Accurate List of Unsatisfied Restitution Orders

The Principal Clerk maintains a manual list of unsatisfied restitution orders and adds victims to the list when she becomes aware that the probationer responsible for making the restitution payments is deceased or absconded¹ and cannot be located. Further, the Director also explained that his understanding of the law was that victims should only be added to the list when the original probationer is unable to pay due to death. Therefore, the Principal Clerk only added five victims to the list since 2016. There is no legal basis to exclude restitution orders with outstanding payments over 60 days old from this list whose probationers are not deceased or have not absconded. For example, at a minimum the victims who correlated to the four probationers (from our restitution payment test above) who were at least 90 days overdue should have been added.

In addition, despite not being referenced in the Manual, the Principal Clerk also told us victims are removed after 20 years, when the civil judgments have expired. While expiration of the 20-year statute of limitations would discharge a defendant's obligation to pay their victim's civil money judgment, it does not appear that the same statute of limitations would automatically discharge the Department's separate legal obligation to pay undisbursed restitution to victims. As a result, there does not appear to be any legal requirement that the Department remove victims' names from the list after 20 years.

Because the Department excluded some unsatisfied restitution orders from the list, and potentially removed others unnecessarily, some victims may never receive the payments to which they are entitled.

Officials Did Not Distribute Undisbursed Restitution Payments

We reviewed Department records to determine the amount of undisbursed restitution the Department had available to pay victims with unsatisfied restitution orders. The Department's May 2019 reconciliation identified \$12,473 as undisbursed restitution. However, as previously discussed, we identified \$72,431 for 402 returned or uncashed victim checks outstanding more than a year, and \$3,440 for 18 unprocessed payments over a year old. Therefore, the Department potentially has \$88,344 of undisbursed restitution payments that should be used to satisfy unsatisfied restitution orders.

The Probation Supervisor told us that they have not made any payments from undisbursed restitution since September 2015 because the County Attorney's Office previously advised the Department that the oldest unsatisfied restitution

[T]he
Department
potentially
has
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undisbursed
restitution
payments....

¹ Leaving a jurisdiction secretly or suddenly to avoid service of process, arrest or prosecution

order must be paid-in-full before the next oldest order can be paid. The law allows victims or their beneficiaries to receive a proportion or fixed amount of undisbursed money based upon month or year of the unsatisfied order. However, the Department does not have a written policy directing how undisbursed restitution payments should be distributed. Instead, the Director told us that he did not establish written procedures for paying the undisbursed restitution intentionally so that the Department might have leeway in how it handles making payments from this money. Consequently, the Department allowed significant undistributed restitution funds to remain idle which potentially could have been paid to satisfy victims, some of whom have been waiting decades to receive their court-ordered restitution.

Currently, the unsatisfied restitution order list indicates that the oldest unpaid order dates back nearly 20 years with \$720,185 outstanding. The Department's potential undisbursed restitution totals about 12 percent of the order. In addition, the Department told us that it was waiting for the 20-year period to expire to remove the order from its list, in accordance with the Department's unwritten practice. As a result, it is unlikely that the victim with the oldest restitution order will be paid from these funds the Department is holding.

Officials Did Not Maintain Sufficient Undisbursed Restitution Records

The Principal Clerk maintains an inherited tracking sheet from the previous clerk that comprises the undistributed restitution balance. However, the tracking sheet does not include the dates that the probationers made the payments or the dates the checks were originally disbursed. The Probation Supervisor told us that he does not review the tracking sheet because there is not enough money to pay the oldest unsatisfied order. As a result, Department officials are unaware of how long the funds have been idle.

What Do We Recommend?

The Director should:

1. Develop written policies and procedures for collecting, enforcing and disbursing restitution that convey management's expectations to ensure the program is operating effectively, including:
 - Establishing timeframes for sending late payment and court notifications,
 - Developing steps to be taken with outstanding checks and held payments,
 - Maintaining complete records,
 - Maintaining a complete list of unsatisfied restitution orders,

-
- Establishing procedures for handling undisbursed restitution money, and
 - Identifying the individuals responsible for each of the various steps.
2. Enforce and monitor restitution according to the court order, and the Department's policies and procedures including sending written notifications to probationers and the court when probationers do not make required restitution payments.
 3. Make reasonable efforts to locate victims, document actions taken and the results, issue payments to the victims who can be located, and transfer unclaimed money to the undisbursed restitution account when appropriate.
 4. Contact the New York State Office of Probation and Correctional Alternatives for guidance in establishing a complete list of unsatisfied restitution orders and making undisbursed restitution payments for these orders, then update the unsatisfied restitution order list.
 5. Make payments from the undisbursed restitution account to the crime victims whose restitution orders have remained unsatisfied for the longest amount of time.
 6. Provide meaningful oversight to ensure the program is operating effectively, which should include actions such as critical reviews of bank reconciliations and unsatisfied restitution order records.
 7. Ensure the undisbursed restitution tracking sheet includes dates for when payments were received from probationers and when checks were sent to victims.

Appendix A: Response From County Officials



ORANGE COUNTY PROBATION DEPARTMENT

Steven M. Neuhaus
County Executive

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Timothy A. Davidian
Probation Director

June 18, 2021

Julie Lancaster, Chief Examiner
Statewide Audit
State Office Building, Suite 1702
44 Hawley Street
Binghamton, NY 13901-4417

RE: Report of Examination S9-20-1
Orange County Probation Department
Restitution Payments

Dear Ms. Lancaster:

Please let this letter serve as Orange County's response to the preliminary draft findings and our Corrective Action Plan. I am filing this response on behalf of Orange County Executive Steven M. Neuhaus, whose office has reviewed and concurs with this response and the Corrective Action Plan.

I have had the opportunity to review the draft findings and participate in the exit discussion with your office on June 9, 2021. I thank the Office of the State Comptroller (OSC) for your review of our restitution operations, the findings and recommendations.

In reviewing the Audit Period (January 1, 2018 – June 30, 2019) the report indicates that restitution payments totaling \$ 3,440 were collected but not paid to 18 victims. During the Audit Period, over \$874,000 was disbursed in over 3,680 payments by the Orange County Probation Department. The Department makes every effort to disburse restitution in a timely and efficient manner. In reviewing these figures, less than .5% of payments and associated victims were not paid.

With respect to collecting, enforcing and disbursing restitution. Generally speaking, while restitution is payable during the course of probation supervision, often the payment schedule extends past the end of term of supervision and in some cases the individual is not even on Probation. I share this as a point of information as the focus of the audit was on active supervision cases with restitution. The audit findings indicate that the Department failed to comply with unwritten policy that required warning letters regarding non-compliance in 84% of the reviewed cases. While staff did not meet the unwritten policy, the audit does note and I confirm that in all the cases that required written notifications, all cases had an average of 6 documented efforts to bring the probationer into compliance. The work was being done but not in the manner of the unwritten policy. The statement that there was "no monitoring or oversight by probation supervisors or the Director" is viewed as inaccurate as there were documented efforts and those efforts were made, though not with the unwritten policy.

See
Note 1
Page 13

Regarding following up on outstanding checks, there was an unacceptable delay. This would have been resolved earlier had the Department had a critical review of the monthly bank reconciliation.

Monthly bank reconciliation was viewed primarily as balancing a checkbook; the focus was money in equaling money out and money remaining in the account.

The areas of the audit that addressed Undisbursed Restitution (IUR) Payments while accurate, lack the context that resulted in the negative review of the area. Over thirty years ago, the Probation Department was advised by our assigned Assistant County Attorney that IUR payments needed to be made to the oldest victims first and the victim needed to be paid in full. Operating on that premise, which appears to comply with all applicable sections of law and regulation, the Department was not as expeditious in moving funds to IUR or placing victims in IUR. The oldest victim in IUR was owed in excess of \$720,000, since the Department did not have \$720,000 to pay the victim in full and move further down the list, there was a delay in moving monies and victims to IUR. I would also note that while your office points out that the law allows proportional or partial payments, there is no requirement to do so.

See
Note 2
Page 13

Addressing the issue of the expiration of judgments, the Department has a difference of opinion as to when and if the orders expire. The Department has been advised by two Assistant County Attorneys and both sitting County and Local Court Judges that the Orders expire and are unenforceable after 20 years; the lifetime of a civil judgment. This policy was also suggested by the Department's former Assistant County Attorney. While I agree that Restitution Orders are part of a criminal sentence, they are placed on the Judgment Rolls in a manner similar to a civil judgment. Additionally, while the Criminal Procedure Law (CPL) allows for the enforcement of Restitution Orders, it allows for reduced penalties and sanctions. The potential sanctions are much greater when the individual is under supervision. A number of local judges have advised us that following the end of a term of probation any failure to pay restitution is treated as a civil contempt. Lastly, a number of our judges have indicated that the Judicial Resource Center has indicated to them that they have no jurisdiction over restitution after the end of supervision; a point which I contend is in violation of the applicable sections of CPL. I asked during our exit discussion that we be provided the legal basis for the position that "there does not appear to be any legal directive" for the removal of orders after 20 years. I appreciate the revision of the section following the exit discussion to "there does not appear to be any legal requirement that the Department remove victims' names from the list after 20 years." While there does not appear to be any legal requirement to remove victims after 20 years, there also does not appear to be a prohibition to removing victims after 20 years. I continue to believe that based upon our local legal guidance and judicial discussions on the matter that our position is appropriate. It may be helpful for a discussion to occur between OSC and the Office of Court Administration to resolve the matter and have an Advisory Opinion issued.

See
Note 3
Page 13

Overshadowing the audit in its entirety are two factors that the County would be remiss in our review/response to the draft findings if we did not address them. The ordering and enforcement of restitution is completely within the purview of the court system. The courts set the amount of restitution, set the payment schedule, determine whether or not a failure to pay is entertained and what if any inducements or sanctions will be imposed to secure payments. Many courts are responsive to issues regarding restitution; however, there are a significant number that are not. These courts do not respond to failure to pay notifications, do not hold the offender accountable and in some cases advise the offender that if they do not pay, that it is okay. Any steps that the Office of the Comptroller can take to compel or encourage the courts to act would be appreciated. Secondly, the auditors were well aware that the Department was using an older financial management program that is no longer supported by the vendor. This older product lacked the capability to produce many of the reports necessary for the audit and makes compiling information for review and action very difficult. Something as simple as an aging report really doesn't exist in the program and makes the identification

See
Note 4
Page 14

See
Note 5
Page 14

of problem cases difficult and time consuming. The Department has been working on a replacement program for over 5 years and hopes to have a new financial program by the end of 2021.

CORRECTIVE ACTION PLAN

Many of the recommendations contained in the draft findings have already been implemented. The Orange County Probation Department Policy Manual was updated and reissued on 12/31/2020 and a further revision with respect to IUR was made in February, 2021. One additional change will be made by July 1, 2021.

See Note 6 Page 14

Recommendation:

1a – Page 36, Section XVI (B – F) addresses this recommendation. Subsection B will be amended no later than 7/1/2021 to read as “When a probationer/defendant fails to pay as ordered, the probation officer/crime victim counselor is required to **take enforcement action which includes but is not limited to conversations with the offender, issuance of arrears and warning letters, text reminders and supervisory interdiction. All efforts are to be documented within the case management system. If at any time the probationer/defendant falls the equivalent of 60 days in arrears, the following action is to occur by the 90th day:**

1b – Page 38, Section XXI (A – C) addresses the recommendation. Already implemented

1c - Addressed throughout the Restitution Policy pages 31- 39. Already implemented.

1d – Page 38, Section XXI (B – C) addresses the recommendation. See Attached. Already implemented.

1e – Pages 38 -39, Section XXI (D – F) addresses the recommendation. See attached. Already implemented.

2 - Addressed throughout the Restitution Policy pages 31- 39. Already implemented.

3 – Pages 38 – 39, Section XXI (A – F) addresses the recommendation. Already implemented.

4 – Recommendation was addressed in house via the previously indicated policies.

5 - Pages 38 – 39, Section XXI (A – F) addresses the recommendation. See attached. Already implemented.

6 – Recommendation has already been implemented as illustrated by the attached records.

7 – Recommendation has already been implemented as illustrated by the attached records.

Respectfully submitted,

Timothy A. Davidian
Probation Director

Appendix B: OSC Comments on the County's Response

Note 1

The Department's written policy requires probation officers to notify probationers via warning letters if they are non-compliant with the court's restitution orders and instruct them to comply. The Director acknowledged during the audit that probation officers are responsible for sending warning letters when probationers violate court restitution orders but did not provide monitoring and oversight to ensure probation officers complied with the policy. While our testing considered the Department's unwritten policy for issuing warning letters when probationers were 30 and 60 days past required payment dates, we found that warning letters were not issued at all for 13 of 15 (87 percent) probationers tested who were not compliant with court restitution orders, in accordance with the Department's written policy.

Note 2

The Department is required by law to "establish a written procedure for handling of undisbursed restitution payments." The law also requires the Department's Director to "provide for a mechanism whereby crime victims receive a proportion or fixed amount of undisbursed monies." Within this mechanism, the law gives the Director the option of disbursing money either "based upon month or year of the unsatisfied order." Although the Director advised during the audit that the Department's undisbursed restitution practices were based on the opinion of a former Assistant County Attorney, such an opinion does not eliminate the Department/Director's legal obligation to establish a written procedure along with a mechanism for paying undisbursed restitution.

Note 3

In our view, the questions of whether restitution-related judgments are criminal or civil in nature, or become unenforceable by a court at some particular time, are not determinative of the underlying issue. Instead, the question is whether the Department is properly interpreting the law governing probation departments' obligations to pay victims undisbursed restitution. Our audit report has been slightly revised to further clarify this issue.

The applicable law, 9 NYCRR Section 353.3 (c), is a rule promulgated by the New York State Office of Probation and Correctional Alternatives (OPCA). The Department's interpretation of the relevant portion of this law appears to be offender-specific; once a defendant's obligation to pay a victim expires, the Department believes it should no longer have to pay the victim undisbursed restitution. We read the law in a more victim-centric manner: victims who have gone 60 days without a restitution payment must be placed on the unsatisfied restitution order list and are entitled to payment from undisbursed restitution when they have gone unsatisfied for the longest period of time. Removing unsatisfied victims from a probation department's list is not expressly authorized, regardless

of the status of a defendant's obligation to pay their victim directly. Knowing the potential ambiguity in the law, we did not flatly say the Department's practice was unlawful, but instead recommended that the Department contact OPCA for guidance on a rule that it controls.

It must be noted, however, that the Department's contention that "there also does not appear to be a prohibition to removing victims after 20 years" is misguided. County probation departments, being an arm of local governments, are creatures of the State whose powers are limited and defined by the statutes under which they are constituted; they possess only such powers as are expressly conferred or necessarily implied. Thus, the lack of a prohibition against the Department's practice is irrelevant. In turn, because the removal of victims from the list is not expressly authorized in the applicable laws, any potential implied authority would be dependent on OPCA's interpretation (absent any controlling case law).

Note 4

While we understand the Department's sentiment, the audit addressed the Probation Department's handling of restitution, particularly regarding the actions that must and should be taken to carry out its duties in accordance with the law and its own policy. To the extent the Department took appropriate measures to collect restitution and alert the court of probationers' failures to pay, we would not be critical of the Department's practices, regardless of whether a court took any further action or not.

Note 5

The Director is responsible for ensuring complete and accurate records are maintained, whether they are system-generated or manual, that would allow for proper monitoring and oversight over restitution. While the system being used may not have the capability to generate certain reports, information necessary for monitoring restitution was available within the system, such as probationer balances, dates of last payments and amounts the probationer was in arrears.

Note 6

We did not include the attached supplemental information as it is outside our audit scope period.

Appendix C: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We selected the County based on reported restitution collected in 2016, population and geographical location. For a fair representation of county probation departments, we selected counties with varying levels of reported restitution, population sizes and geographic locations across the State for this multi-unit audit.
- We extended our scope period back to September 2015 to determine when Department staff last made payment of undisbursed restitution.
- We interviewed Department staff to gain an understanding of the financial operations and existing internal controls related to collecting, disbursing and enforcing court-ordered restitution.
- We reviewed relevant State laws, rules and regulations. We also requested from officials all Department policies and procedures applicable to collecting, disbursing and enforcing court-ordered restitution and reviewed what was provided.
- We interviewed Department officials to gain an understanding of the Department's computer systems used for monitoring, collecting, recording and disbursing restitution funds and we compared employees' user access to the computer systems to their job duties.
- We determined the total amount of restitution collected and disbursed during our audit period by obtaining and reviewing a report that showed cash receipts and disbursements related to all court-ordered restitution during our scope period.
- Using a random number generator, we selected a sample of 29 restitution cases from the Department's reports showing all new, open and closed court cases that involved restitution during our audit period to determine whether payments are made promptly and appropriately, and how the Department monitors the restitution cases.
- For the same sample of 29 restitution cases, we reviewed the last payment made by the probationers (or first payment due date during our audit period if no payments were made) to determine whether the department took the appropriate monitoring actions based on their policies and procedures for sending 30 or 60 day late notices and 90 day court notification.
- We reviewed the May 2019 bank statement and reconciliation for the restitution bank account, which included any unclaimed restitution payments aged more than a year, to determine the age and potential amount available

to disburse to unsatisfied restitution orders. We also reviewed associated documents to verify the reconciliation was supported.

- We reviewed a sample of 10 outstanding checks and five unprocessed payments aged over a year to determine if the Department was attempting to locate the intended victims of these payments, and what those efforts included. If the victim was located, we determined if a new check was issued and if the victims could not be located, whether the money was appropriately moved to the undisbursed restitution account. The 10 outstanding checks were selected from 402 outstanding checks over a year old based on high dollar amounts, repeated amounts, or even number amounts. The five hold payments were selected using a random number generator.
- We reviewed the Department's spreadsheet used to track the undisbursed restitution payments, including the amount reported as undisbursed restitution in the bank reconciliation.
- We obtained and reviewed a report of unpaid restitution orders to determine which restitution orders have remained unsatisfied for the longest period of time.
- We determined the last time the Department made a payment of unclaimed restitution. For any payment of unclaimed restitution made during the audit period, we determined if the recipient had a restitution order that remained unsatisfied for the longest period of time.
- Based on our review of the Department's restitution policy and other Policy Manual sections, we determined if the Department had written procedures regarding the processing and disbursing of unclaimed restitution, and whether the Department staff was following the procedures for disbursing unclaimed restitution.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more

information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature to make the CAP available for public review in the Clerk's office.

Appendix D: Resources and Services

Regional Office Directory

<https://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf>

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

<https://www.osc.state.ny.us/local-government/publications>

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

<https://www.osc.state.ny.us/local-government/publications>

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

<https://www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf>

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

<https://www.osc.state.ny.us/local-government/publications>

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

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www.osc.state.ny.us/local-government

Local Government and School Accountability Help Line: (866) 321-8503

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