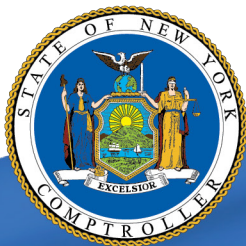


# Restitution Payments

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**DECEMBER 2021**

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

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# Report Highlights

## Restitution Payments

### Audit Objective

Determine whether 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 must do more to ensure victims receive court ordered restitution. Our review of 13 County Probation Departments found:

- More than half, or 160 of the probationers tested, were behind on their restitution payments by a total of \$283,620. The courts were often not notified because Department policies did not always require court notification or officials failed to follow their policy and notify the court that the probationer failed to pay restitution as ordered.
- Restitution payments were not always disbursed to victims promptly or appropriately and reasonable efforts were not made to locate victims to disburse as much as \$1.6 million the Departments had on deposit, with some undisbursed restitution being held for 27 years.
- Nearly half of the Departments tested did not maintain complete lists of unsatisfied restitution orders and more than 75 percent of the Departments cannot identify the source of all the money on deposit in their restitution accounts.

As a result, some victims will never receive the payments to which they are entitled.

### Key Recommendations

- Establish adequate written restitution policies and procedures for enforcing and monitoring restitution obligations.
- Make payments from the undisbursed restitution account to the crime victims whose restitution orders have remained unsatisfied for the longest period in a timely manner.

### Background

Probation Departments are responsible for collecting, enforcing and disbursing restitution.

Departments must notify the courts of non-compliance with restitution order terms before probation supervision ends, disburse restitution collected promptly and use reasonable efforts to search for victims with outstanding payments. If victims cannot be located after one year, Departments should take the appropriate steps to make payments to other victims with unsatisfied restitution orders.

This global report details significant restitution issues we identified.

#### Audit Period Quick Facts

|   |               |
|---|---------------|
| Departments Audited                     | 13            |
| Total Orders with Probation Supervision | 3,851         |
| Collections                             | \$5.9 million |
| Disbursements                           | \$6.1 million |
| Undisbursed Restitution <sup>a</sup>    | \$1.6 million |

a) Refer to Appendix A, Figure 7.

### Audit Period

January 1, 2018 – June 30, 2019.  
See Appendix C for scope extension information.

# Collecting, Enforcing and Disbursing Restitution

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Restitution is court-ordered compensation requiring a probationer to pay their victim for losses and/or damages sustained as a result of the probationer's criminal offense. Courts may require probationers to pay restitution:

- At the time of the sentencing,
- In periodic installments, or
- As 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. The court orders restitution at the time of sentencing and is the only authority that can modify the restitution terms. New York State Criminal Procedure Law, and rules and regulations promulgated by the Office of Probation and Correctional Alternatives, detail restitution-related requirements.

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.

Probation directors are responsible for managing their departments' day-to-day operations and developing and implementing 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.

The records of the 13 Departments included in this audit indicated they had more than \$20 million<sup>1</sup> in uncollected restitution for 1,950 open cases. However, due to inconsistent and limited reporting capabilities<sup>2</sup> among the Departments, this figure may also include restitution owed by probationers who were incarcerated, transferred to a different county for probation supervision or absconded from probation supervision.

## 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

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1 Refer to Appendix A for information on the 13 counties.

2 For one Department, this figure is also limited to open cases selected for testing.

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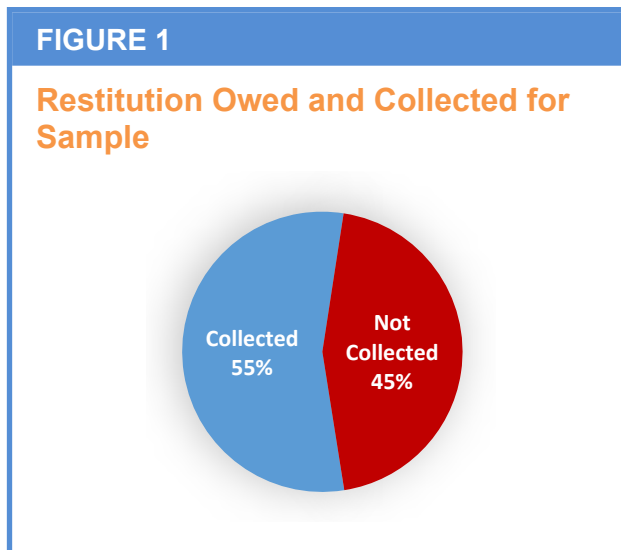
records of probationers' total current and past due restitution and actions the department took to enforce restitution orders.

Department policies and procedures should provide guidance to department employees for enforcing restitution, including when the court should be notified for non-payment of restitution.

### Officials Did Not Adequately Enforce Restitution Collections

Restitution Owed and Collected – The 13 Departments had a total of 3,851 restitution cases with probation supervision during our audit period. We reviewed 343<sup>3</sup> cases with ordered restitution totaling \$2.8 million to determine whether the Departments enforced the collection of restitution. The average collection rate was 55 percent, with collection rates for the Departments ranging between 10 percent and 97 percent.

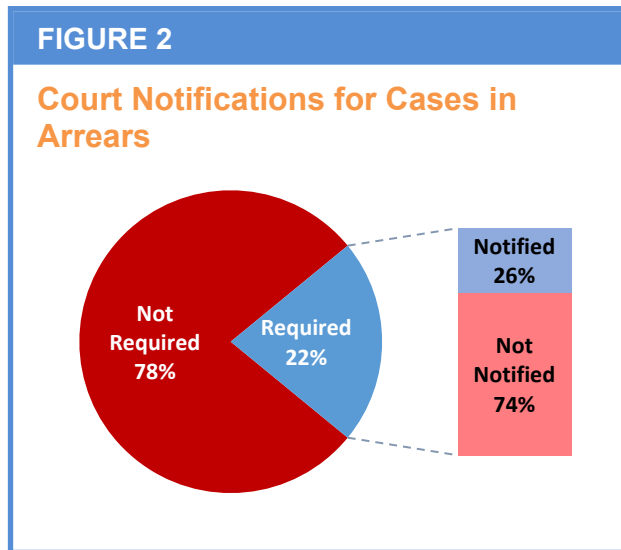
During the audit period, \$629,177 should have been collected from 313 cases with monthly or lump-sum payments that were ordered to be paid, including \$171,028 in prior period arrears (restitution payments outstanding at the commencement of our audit period). While \$345,557 was collected, \$283,620 remained outstanding (Figure 1). Specifically, 160 cases (51 percent) were in arrears and 153 cases (49 percent) were in compliance with the restitution order terms. Significant amounts of restitution owed remained uncollected.



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<sup>3</sup> This includes 30 cases for which court orders did not specify restitution payment terms. Therefore, Departments could not enforce restitution payments.

Court Notification – Of the 160 cases in arrears, five Departments had policies that required court notification for 35 cases (22 percent). Of them, the court was notified for nine (26 percent) and not notified for 26 (Figure 2). Court notification was not required by Department policies or procedures for the remaining 125 cases in arrears (78 percent) even though probationers associated with these cases were delinquent by \$239,384.



Five Departments (38 percent) had policies or procedures that required court notification for non-payment of restitution or restitution in arrears. Of them, only one followed their policy for notifying the court for the one case requiring notification, while four did not notify the court for 26 cases that were delinquent in making payments. For eight Departments whose policies did not establish court-notification requirements for nonpayment of restitution, six Departments notified the court for non-payment of restitution for 19 of the 73 cases tested (26 percent) but the court was not notified for 54 cases (74 percent), including two cases that were \$55,695 in arrears at the time probation supervision expired. Two Departments did not notify the court for any cases in arrears.

Department officials generally indicated their policies did not include specific requirements for court notification because the decision to notify the court is made on a case-by-case basis, often only if non-payment is determined to be willful. As a result, probation officers' and supervisors' actions were inconsistent. In addition, among Departments that had policies and/or procedures requiring court notification, there was little to no monitoring or oversight to ensure court notifications were made in accordance with such policies and procedures.

By not notifying the court for nonpayment of court-ordered restitution, particularly for cases where probation supervision may be ending, Departments may not be affording the court the opportunity to decide how to proceed while the probationer is still under probation supervision and victims may not receive the compensation to which they are entitled.

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Delinquency Notices – Delinquency notices may be used by Departments to encourage probationers to comply with restitution orders and inform probationers of the potential consequences of noncompliance. Two Departments’ policies addressed delinquency notices, one as a requirement and one as a recommendation. However, delinquency notices were rarely sent. Of the two Departments, one should have issued 21 notices and the other could have issued eight, but collectively only issued two notices (7 percent). The other 11 Departments did not require or issue delinquency notices.

Directors generally explained that delinquency notices were not issued in accordance with policy because either probation officers were responsible for sending the delinquency letters when a probationer violates the court’s restitution order and did not do so, or sending these notices was a best practice and was not a requirement. However, the lack of monitoring to ensure such notices in the two Departments were followed resulted in inconsistent actions taken by those Departments’ employees for restitution cases in arrears.

### **How Should Restitution Payments Be Processed?**

Departments 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.

County probation directors are responsible for establishing a system of controls to guarantee the timely disbursement of financial obligations. To provide guidance to their respective department employees, adequate policies and procedures for processing restitution payments and conducting victim location efforts should be established.

### **Officials Generally Disbursed Current Restitution Collections Promptly**

To determine whether restitution collections were paid to victims promptly, for our sample of 343 cases, we reviewed the last restitution payment made by each probationer and determined when it was disbursed to the intended victims. During our audit period, the last payments collected by the Departments for 245 orders totaled \$87,393, with no collections received for the remaining 98 orders. Overall, the Departments promptly distributed restitution collected to the intended victims and generally issued disbursements within one month after payment was received.

## Officials Generally Did Not Make Reasonable Efforts To Locate Victims

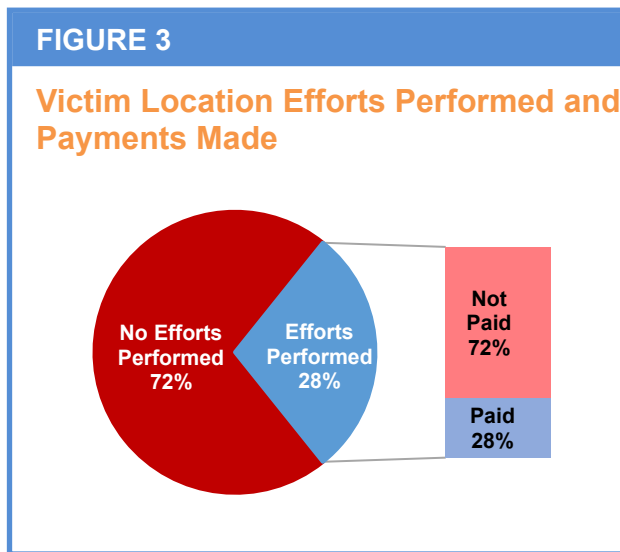
While two Departments did not have any uncashed checks or unissued victim payments older than one year, 11 Departments did not appropriately follow up on a significant number of uncashed checks and unissued victim payments. Records indicated Departments had uncashed checks and unprocessed payments totaling \$327,898 that were between one and 12 years old.

We reviewed 137 uncashed checks and unissued victim payments over one-year old totaling \$123,368 and found Departments documented no actions to locate victims, if any were taken, for 98 payments (72 percent) totaling \$67,631. While victim location efforts were documented for the other 39 payments (28 percent), and new checks totaling \$44,449 were issued to 11 victims (28 percent), 28 payments (72 percent) totaling \$11,288 were not distributed to victims or designated as undisbursed restitution (Figure 3).

Department officials were often unaware of the amount and age of uncashed checks and unissued payments because they were either not performing complete bank reconciliations or not adequately reviewing them. Department officials often explained that searches were performed but the results may not have been documented, or that searches were not performed due to a lack of staffing. Additionally, because some search efforts were not documented, Departments will need to perform these efforts again.

However, if victim location efforts were successful, Departments should have issued victim payments. Conversely, if the Departments could not locate victims after using reasonable efforts, because the payments were unclaimed for at least one year, the money should have been transferred to their respective undisbursed restitution accounts to be used to pay other unsatisfied victims. As a result of the lack of monitoring and oversight, some victims are not receiving payment to which they are entitled or are experiencing significant delays.

Department officials were often unaware of the amount and age of uncashed checks and unissued payments....





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## How Should Undisbursed Restitution Be Administered?

Undisbursed restitution payments (undisbursed restitution) are defined in law as 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 to determine which victims' restitution orders have gone unsatisfied for the longest period of time. If undisbursed restitution has 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 will be paid, 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. Each county probation director must provide for a mechanism whereby victims receive a proportion or fixed amount of undisbursed restitution.

## Officials Generally Did Not Make Undisbursed Restitution Payments

Overall, all 13 Departments failed to disburse all potential undisbursed restitution. Additionally, three Departments did not have written policies or procedures to provide guidance for the distribution of undisbursed restitution, as required.

We reviewed each Department's records and determined they had as much as \$1.6 million of undisbursed restitution that could have been used to pay victims with unsatisfied orders had the Departments properly handled these funds by making reasonable efforts to locate the victims. Ten Departments identified a combined total of \$78,636 in undisbursed restitution. In addition, 11 Departments had uncashed checks and unprocessed payments totaling at least \$226,682 that remained idle unnecessarily for more than one year and some for as long as 12 years. Further, 10 Departments (77 percent) had more than \$1.3 million in their restitution accounts for which they could not identify the sources of the funds, 97 percent of which was attributable to one Department.<sup>4</sup>

If Departments maintained adequate records, including the source of all funds, and performed reasonable efforts to locate the intended victims, all of these amounts should have been designated as undisbursed restitution and paid to the victims that remained unsatisfied for the longest period of time.

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<sup>4</sup> Refer to Appendix A.

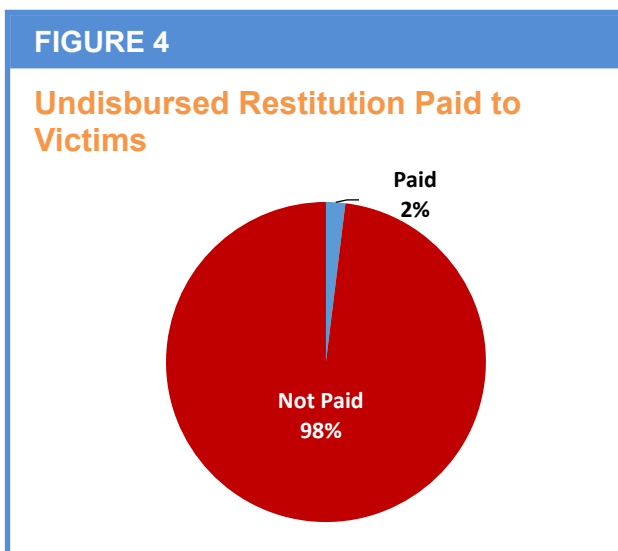
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While four Departments disbursed only \$31,350 (2 percent) to victims of unsatisfied orders, these Departments had as much as \$1.3 million<sup>5</sup> of undisbursed restitution that they unnecessarily held. Additionally, nine Departments with as much as \$260,349<sup>6</sup> of undisbursed restitution made no payments to victims that remained unsatisfied for the longest period of time (Figure 4).

Department officials offered various reasons why undisbursed restitution payments were not made to victims, including:

- A lack of documentation for some cases to determine which victims had the oldest unsatisfied restitution orders.
- A lack of staff to complete reasonable victim location efforts.
- Officials were unaware there was available undisbursed restitution to distribute.
- Officials were holding the undisbursed funds until the original intended victims could be found.
- Officials were unaware of the source of the funds.

Often, the Departments held money for years without payments being made. For example, one Department had checks outstanding for 12 years that they did not follow up on, and another Department had money designated as undisbursed restitution that remained idle for 27 years. As a result, some victims are not receiving the restitution they are entitled to, some of whom have waited decades to receive their court-ordered restitution.



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While four Departments disbursed only \$31,350 (2 percent) to victims of unsatisfied orders, these Departments had as much as \$1.3 million of undisbursed restitution that they unnecessarily held.

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5 This figure represents potential undisbursed restitution because Department officials must determine if the funds are restitution, have remained unclaimed for at least a year and perform reasonable efforts to locate the original intended victim before the funds can be used to pay other unsatisfied restitution orders.

6 Ibid.

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## Some Departments Did Not Properly Maintain Lists of Unsatisfied Restitution Orders

While seven Departments (54 percent) identified unsatisfied restitution orders by date to assist in determining which of the orders have remained unsatisfied for the longest period of time, the other six Departments (46 percent) did not. These six Departments either excluded certain victims from their lists or did not appropriately list victims by the oldest order date. Department officials explained that the lists were incomplete or inaccurate for several reasons including lack of documentation, software issues, differing interpretations of the law or their policy requirements excluded some orders. Additionally, there was a general lack of monitoring and supervisory oversight over the incomplete unsatisfied restitution order lists. Because some Departments did not maintain complete and accurate records, some victims will never receive the payments to which they are entitled.

### What Do We Recommend?

Each Department's Director or Commissioner should:

1. Develop adequate written policies and procedures for enforcing and disbursing restitution that convey management's expectations to ensure the program is operating effectively, including:
  - Establishing timeframes for sending court notifications,
  - Developing steps to be taken with outstanding checks and unprocessed payments,
  - Maintaining complete records,
  - Maintaining complete lists of unsatisfied restitution orders,
  - Developing procedures for handling undisbursed restitution money, and
  - Identifying the individuals responsible for each of the various steps.
2. Enforce and monitor restitution according to court orders and Department policies and procedures.
3. Make reasonable efforts to locate victims, document actions and results, and 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.

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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 performing and critically reviewing bank reconciliations, following up on outstanding checks or held payments and reviewing unsatisfied restitution order records to ensure payments are made.

# Appendix A: Probation Department Information

**Figure 5: County Probation Department Summary Information and Links to the Individual Reports.**

| Probation Department | Region           | Restitution Orders | Collections        | Disbursements <sup>a</sup> | Restitution Owed <sup>b</sup> |
|----------------------|------------------|--------------------|--------------------|----------------------------|-------------------------------|
| Chenango             | Southern Tier    | 101                | \$147,676          | \$148,469                  | \$343,838                     |
| Erie                 | Western          | 727                | \$721,290          | \$723,190                  | \$4,107,091                   |
| Franklin             | North Country    | 326                | \$209,361          | \$217,354                  | \$591,079                     |
| Jefferson            | North Country    | 315                | \$186,877          | \$186,690                  | \$832,461                     |
| Orange               | Mid-Hudson       | 369                | \$830,189          | \$874,272                  | \$2,220,539                   |
| Putnam               | Mid-Hudson       | 127                | \$117,795          | \$140,188                  | \$746,411                     |
| Rensselaer           | Capital District | 201                | \$336,987          | \$321,663                  | \$802,508                     |
| Saratoga             | Capital District | 210                | \$439,206          | \$415,766                  | \$41,699                      |
| Seneca               | Finger Lakes     | 56                 | \$49,646           | \$48,788                   | \$129,763                     |
| Suffolk              | Long Island      | 732                | \$2,329,302        | \$2,379,962                | \$7,079,129                   |
| Ulster               | Mid-Hudson       | 404                | \$330,141          | \$417,081                  | \$2,751,775                   |
| Wayne                | Finger Lakes     | 208                | \$102,564          | \$115,629                  | \$333,315                     |
| Wyoming              | Finger Lakes     | 75                 | \$137,240          | \$140,770                  | \$165,616                     |
| <b>Totals</b>        |                  | <b>3,851</b>       | <b>\$5,938,274</b> | <b>\$6,129,822</b>         | <b>\$20,145,224</b>           |

a Disbursements include money collected prior to the audit period and was subsequently disbursed during the audit period.

b Departments provided reports for open cases during field work, and could include payments made after the audit period, probationers that are incarcerated, transferred or otherwise supervised by another Department, and/or not on direct probation supervision.

**Figure 6: Collections and Enforcement**

| Probation Department | To Be Collected <sup>a</sup> | Amount Collected | Amount in Arrears | Collection Rate | Delinquency Rate | Cases Tested | Cases Tested in Arrears | Court Notifications Sent |
|----------------------|------------------------------|------------------|-------------------|-----------------|------------------|--------------|-------------------------|--------------------------|
| Chenango             | \$33,471                     | \$23,979         | \$9,492           | 72%             | 28%              | 20           | 6                       | 4                        |
| Erie                 | \$44,178                     | \$19,813         | \$24,365          | 45%             | 55%              | 30           | 10                      | 4                        |
| Franklin             | \$31,238                     | \$11,785         | \$19,453          | 38%             | 62%              | 30           | 16                      | 6                        |
| Jefferson            | \$6,992                      | \$6,768          | \$224             | 97%             | 3%               | 29           | 2                       | 0                        |
| Orange               | \$56,607                     | \$37,288         | \$19,319          | 66%             | 34%              | 29           | 19                      | 3                        |
| Putnam               | \$54,756                     | \$39,607         | \$15,149          | 72%             | 28%              | 11           | 5                       | 1                        |
| Rensselaer           | \$77,858                     | \$52,086         | \$25,772          | 67%             | 33%              | 28           | 13                      | 2                        |
| Saratoga             | \$30,798                     | \$18,147         | \$12,651          | 59%             | 41%              | 30           | 12                      | 2                        |
| Seneca               | \$70,706                     | \$6,901          | \$63,805          | 10%             | 90%              | 13           | 9                       | 0                        |
| Suffolk              | \$150,254                    | \$102,423        | \$47,831          | 68%             | 32%              | 44           | 22                      | 2                        |
| Ulster               | \$30,734                     | \$18,239         | \$12,495          | 59%             | 41%              | 29           | 16                      | 1                        |
| Wayne                | \$34,773                     | \$3,655          | \$31,118          | 11%             | 89%              | 26           | 24                      | 2                        |
| Wyoming              | \$6,812                      | \$4,866          | \$1,946           | 71%             | 29%              | 24           | 6                       | 1                        |
| <b>Totals</b>        | <b>\$629,177</b>             | <b>\$345,557</b> | <b>\$283,620</b>  |                 |                  | <b>343</b>   | <b>160</b>              | <b>28</b>                |

a Payments due during the audit period plus prior period amounts due and not collected

**Figure 7: Undisbursed Restitution**

| Probation Department | Undisbursed Restitution <sup>a</sup> | Uncashed Checks        | Unprocessed Payments | Unsupported Bank Balance <sup>b</sup> | 20% Held Per Policy <sup>c</sup> | Total Undisbursed Funds <sup>d</sup> | Disbursed       | Not Disbursed <sup>d</sup> |
|----------------------|--------------------------------------|------------------------|----------------------|---------------------------------------|----------------------------------|--------------------------------------|-----------------|----------------------------|
| Chenango             | \$356                                | \$1,662                | \$0                  | \$672                                 | \$0                              | \$2,690                              | \$0             | \$2,690                    |
| Erie                 | \$3,429                              | \$0                    | \$0                  | \$36,013                              | \$7,285                          | \$32,157                             | \$3,017         | \$29,140                   |
| Franklin             | \$0                                  | \$2,918                | \$0                  | \$0                                   | \$0                              | \$2,918                              | \$0             | \$2,918                    |
| Jefferson            | \$16,710                             | \$0                    | \$0                  | \$1,879                               | \$0                              | \$18,589                             | \$0             | \$18,589                   |
| Orange               | \$12,473                             | \$72,431               | \$3,440              | \$0                                   | \$0                              | \$88,344                             | \$0             | \$88,344                   |
| Putnam               | \$2,751                              | \$642                  | \$0                  | \$0                                   | \$0                              | \$3,393                              | \$0             | \$3,393                    |
| Rensselaer           | \$0                                  | \$107,417 <sup>e</sup> | \$0                  | \$1,372                               | \$0                              | \$108,789                            | \$0             | \$108,789                  |
| Saratoga             | \$3,877                              | \$22,279               | \$0                  | \$0                                   | \$0                              | \$26,156                             | \$0             | \$26,156                   |
| Seneca               | \$8,147                              | \$0                    | \$1,406              | \$0                                   | \$1,911                          | \$7,642                              | \$0             | \$7,642                    |
| Suffolk              | \$23,373                             | Unknown <sup>f</sup>   | \$11,743             | \$1,270,462                           | \$0                              | \$1,305,578                          | \$23,373        | \$1,282,205                |
| Ulster               | \$681                                | \$703 <sup>g</sup>     | \$0                  | \$0                                   | \$169                            | \$1,215                              | \$538           | \$677                      |
| Wayne                | \$6,839                              | \$618                  | \$0                  | \$0                                   | \$0                              | \$7,457                              | \$4,422         | \$3,035                    |
| Wyoming              | \$0                                  | \$1,423                | \$0                  | \$405                                 | \$0                              | \$1,828                              | \$0             | \$1,828                    |
| <b>Totals</b>        | <b>\$78,636</b>                      | <b>\$210,093</b>       | <b>\$16,589</b>      | <b>\$1,310,803</b>                    | <b>\$9,365</b>                   | <b>\$1,606,756</b>                   | <b>\$31,350</b> | <b>\$1,575,406</b>         |

a Amounts identified by individual departments as available undisbursed restitution, prior to disbursements, if any, to unsatisfied orders. This figure includes amounts that Department officials could not identify the source of the funds. Four Departments (Putnam, Saratoga, Seneca and Wayne) could not provide support for the source of some or all of the funds they identified as undisbursed restitution. Refer to individual Department reports for details.

b Unsupported bank balances are reported or determined balances that departments could not adequately support the source of such funds.

c Three Departments' policies required the Departments to hold 20 percent of their undisbursed restitution in the event an intended victim was found after disbursement.

d Amounts are potentially available because Department officials must determine if the funds are restitution and have remained unclaimed for at least a year and have made reasonable efforts to locate the original intended victim before the funds can be used to pay other unsatisfied restitution orders.

e The Department's accounting system reported 155 outstanding checks totaling \$27,935 that were over one year old, and 501 checks totaling \$79,482 that were marked as cancelled in the accounting program. All of these outstanding and canceled checks could have been available as undisbursed restitution if the intended victims could not be located using reasonable efforts.

f Although County Comptroller records listed 870 checks totaling \$179,159 outstanding for over one year, due to inaccurate recordkeeping, Department officials were unaware of how much is actually outstanding.

g The Department had 26 checks totaling \$2,242 that were outstanding over one-year old. However, five checks totaling \$703 were over one-year old at the end of the County's fiscal year and could have been distributed as undisbursed restitution per Department policy.

## Appendix B: Responses From County Officials

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We provided a draft copy of the global report to all 13 counties we audited and requested a response from each. We received five written responses. Eight counties chose not to respond (Franklin, Orange, Putnam, Rensselaer, Seneca, Suffolk, Wayne and Wyoming).

Chenango and Jefferson County officials provided comments that were specific to their own audit and were not included in this appendix. The following comments were excerpted from the three written responses that addressed the draft copy of this report.

Erie County officials said:

“A review of this report ... was determined useful in revealing trends within the state as well as identifying other probation departments as potential resources for our department. Those departments who have demonstrated a high collection rate of restitution and have implemented a court notification process for non-compliant probationers have now been identified as resources for internal practice improvement.”

“...[I]t is our view that a high rate of compliance with the restitution related terms of probation is quite challenging when considering the multitude of probation conditions and issues faced by individuals on probation supervision. Probation departments in NYS utilize a standard risk and needs assessment tool ... this tool is instrumental in directing a probation officer’s efforts in working with a probationer to address issues which contribute to criminal behavior. An officer will focus on criminogenic needs such as substance abuse and/or mental health concerns as well as housing and employment which are targeted in the assessment and are often critical to a law-abiding life. The collection of restitution from a probationer per the terms of that probationer’s court-imposed conditions is often difficult to prioritize when these other needs are evident. Court notification by departments...of such non-compliance clearly needs improvement as evidenced by OSC’s audits. Alerts of non-compliance forwarded to the Court such as “Delinquency Notices” referenced in this report on page 6 should also include a brief outline of the probationer’s circumstances, so that the court is informed and not simply notified.”

“This report’s assemblage of findings clearly exhibits the need for a state-wide information session coordinated between New York State Office of Probation and Correctional Alternatives (OPCA) and the Office of the New York State Comptroller wherein applicable laws are examined and discussed, guidance is provided on policy development, policy examples are made available and best practices identified via this audit process are shared with all county departments. It is my understanding that such a forum has been entertained and efforts are underway to execute this intervention.”

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Saratoga County officials said:

“We have reviewed the report and are in general agreement with the recommendations offered in the report.”

“... [W]e will utilize the recommendations to inform the updating of our policies and procedures in response to the audit.”

Ulster County officials said:

“It is clear that there is a lot of variation across the state in regard to restitution collection, disbursement and enforcement.”

“We are hopeful that through your recommendations, and future guidance by the NYS Office of Probation and Correctional Alternatives, we will have clear direction on how to best handle the different functions of this important work.”



## Appendix C: Audit Methodology and Standards

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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 13 counties for the audit based on reported restitution collected in 2016, population and geographical location. We selected counties with varying levels of reported restitution, population sizes and geographic locations across the State.
- We extended the scope for four Probation Departments to perform additional audit testing:
  - Orange County: We extended the scope to September 2015 to review the last undisbursed restitution payment.
  - Franklin County: We extended the scope to August 2017 to review the last undisbursed restitution payment.
  - Ulster County: We extended the scope to December 2017 to review restitution case monitoring actions for sampled cases.
  - Suffolk: We extended the scope to March 2015 to review victim location efforts for our testing of reported uncashed checks.
- 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 the collecting, disbursing and of enforcing court-ordered restitution and reviewed what was provided.
- We determined the total amount of restitution collected and disbursed during our audit period by obtaining and reviewing Department reports 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 343 restitution cases from all Departments' reports showing all new, open, and closed cases that involved restitution during our audit period to determine whether payments were made promptly and appropriately, and how Departments monitored the restitution cases.
- For the same sample of 343 cases with restitution orders, we reviewed the last payment made by the probationers to determine whether the Departments took the appropriate monitoring actions based on its policies and procedures for notifying the court. If a payment was not made by a probationer during our audit period, we used the first payment due date.

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- We obtained and reviewed restitution bank statements, reconciliations, and/or other Department records, to determine the total amount available to disburse for unsatisfied restitution orders.
  - We reviewed a sample of 137 outstanding checks and unprocessed payments to determine what efforts the Departments were using to attempt to locate the intended victims of these payments. If the victims were located, we determined if a new check was issued, and if the victims were not located, whether the money was moved to the undisbursed restitution account. This sample was selected due to high dollar amount, type of victim or repeated amounts. Refer to individual probation department reports for specific selection methodology.
  - We obtained and reviewed reports of unpaid restitution orders to determine if they were complete and accurate and which restitution orders have remained unsatisfied for the longest period of time.
  - We determined the last time the Departments made a payment of unclaimed restitution. For any payment of unclaimed restitution made during the audit period (if applicable), we determined if the recipient had a restitution order that remained unsatisfied for the longest period of time.
  - Based on our review of the Departments' policies, we determined if the Departments had written procedures regarding the processing and disbursing of unclaimed restitution, and whether Department staff were following their procedures for disbursing unclaimed restitution.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 relevant population size and the sample selected for examination.

## Appendix D: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf](http://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf)

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

[www.osc.state.ny.us/local-government/publications](http://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](http://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

[www.osc.state.ny.us/local-government/publications](http://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](http://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

[www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf](http://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](http://www.osc.state.ny.us/local-government/required-reporting)

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

[www.osc.state.ny.us/local-government/publications](http://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](http://www.osc.state.ny.us/local-government/academy)

## Contact

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