

Saratoga County Probation Department

Restitution Payments

NOVEMBER 2021



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

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Report Highlights

Saratoga County Probation Department

Audit Objective

Determine whether the Saratoga 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 appropriately. As a result, some victims may never receive the payments to which they are entitled.

- Officials did not establish adequate policies and procedures to enforce and monitor court order restitution obligations.
- 12 of the 30 restitution orders we reviewed had uncollected payments totaling \$12,651.
- Officials did not make reasonable efforts to locate victims. For example, 238 outstanding checks totaling \$22,279 were not properly followed up on as required.

In addition, officials did not make undisbursed restitution payments to victims 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 generally agreed with our recommendations and indicated they will take corrective action.

Background

The County is located in northeastern New York, in the Capital Region. The County is governed by the Board of Supervisors (Board), which is composed of 23 Supervisors, one of whom also serves as the Chairman. The Board is the legislative and executive authority of the County.

The County Administrator is the chief administrative officer and is charged with the County's administrative operations under the Board's direction. The Treasurer 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	\$439,206
Disbursements	\$415,766
Orders with Probation Supervision	210

Audit Period

January 1, 2018 – June 30, 2019

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.

Officials Did Not Adequately Enforce Restitution Collections

The Department's Restitution Policy (Policy) says that the Probation Supervisor will run a restitution report every month. After reviewing the restitution report, the probation officers must schedule a meeting with the Probation Supervisor to discuss whether or not a Violation of Probation should be filed, or to discuss any applicable extenuating circumstances.

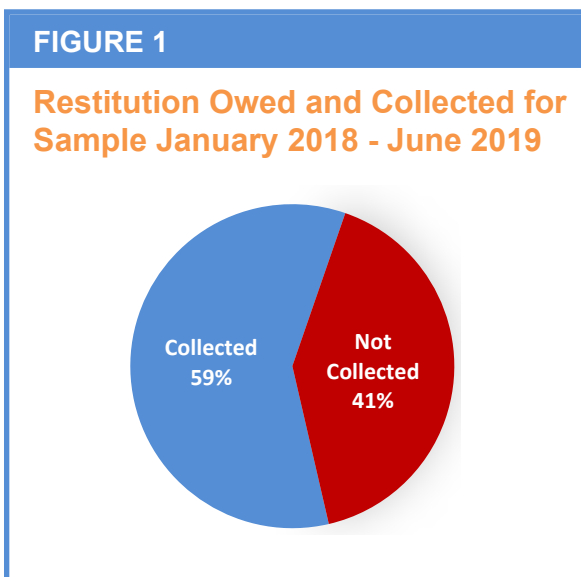
The Policy also includes that a "Notice of Restitution/Reparation Arrearage" (delinquency letter) may be sent to a probationer if they are non-compliant with the court's restitution order. If after a delinquency letter is sent, a probationer's payment is still not received, the court is to be notified via a Violation of the Order. The Policy does not define timeframes for sending such correspondences.

The Department had 210 restitution orders (cases) with probation supervision during our audit period. We reviewed 30 cases totaling \$81,328 to determine whether the Department adequately enforced the collection of restitution. During our audit period, Department officials should have collected \$30,798 from probationers for these cases, including \$3,562 in prior period arrears (restitution payments outstanding at the commencement of our audit period). However, while \$18,147 was collected, \$12,651 remained outstanding. (Figure 1) Specifically, 12 cases were in arrears \$12,651, one case transferred to another County before payment was due, and the remaining 17 cases were in compliance with the restitution order terms. We found the Department's actions to enforce the 28 cases that required monthly payments varied.

We reviewed the last payment made by the 12 probationers that were in arrears during our audit period to determine if and when the Department issued delinquency letters and/or notified the court when probationers were not compliant with the court's restitution order. Of the 12 cases in arrears, two made partial payments in June 2019 and the Department did not consider them delinquent because they made payments, one was only 17 days delinquent by the end of our audit period, and a Violation of

Probation was issued for one other probationer who absconded prior to our audit period. Of the remaining eight cases in arrears we found the following:

- For four cases that were delinquent between 35 and 72 days, no delinquency letters were issued and the court was not notified.
- For one case that was 37 days delinquent when it was transferred to another county, no warning letter was issued and the court was not notified for nonpayment of restitution prior to the transfer.
- For one case, the last payment made was in September 2018, no delinquency letter was issued and the court was not notified for nonpayment of restitution. The probationer passed away in November 2018.
- For two cases the court was notified when the cases were 35 and 150 days delinquent, respectively, but no delinquency letters were issued.



Probation officers often took informal actions to encourage probationers to pay their financial obligations. For 11 of the 12 cases in arrears, probation officers documented in all instances of having conversations with probationers regarding their restitution order (an average of five conversations per case). Conversations were not documented for the remaining case because the probationer absconded. The Probation Director told us probation officers generally have conversations with their probationers regarding restitution, instead of sending delinquency letters for cases in arrears. The Probation Supervisor who oversees restitution told us that while he generates a restitution report for each probation officer and discusses each case with probation officers monthly, we were unable to confirm the Probation Supervisor’s statement because copies of such reports were not retained.

The Probation Supervisor told us sending delinquency letters is considered a best practice, not a requirement. As a result, he did not require probation officers to issue delinquency letters. Moreover, because the Policy does not require delinquency letters or court notifications, probation officers’ actions were often inconsistent.

The Department did not appropriately follow up on 238 outstanding checks totaling \$22,279....

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 Policy includes steps to process disbursements to victims, but does not provide a clear timeframe in which checks are to be sent to victims.

Officials Disbursed Restitution Payments but Did Not Make Reasonable Efforts To Locate Victims With Uncashed Checks

To determine whether payments were made to victims promptly, for our sample of 30 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 Department received collections for 26 of the 30 orders, with no collections received for the remaining four orders. The account clerk made 26 payments totaling \$9,932 to the 26 victims on average five days (between zero and 15 days) after payment was received.

We also reviewed the May 2019 bank reconciliation to determine if there was idle victim money and what efforts the Department made to disburse the money. The Department did not appropriately follow up on 238 outstanding checks totaling \$22,279 aged over one year. Overall, although a significant amount of time had elapsed, the Department did not attempt to locate victims who were no longer at the address of record.

Of the 238 outstanding checks, we reviewed 10 checks totaling \$7,523 that were between two and almost 12 years old. We reviewed the Department's records to learn what efforts were made to locate the victims of uncashed checks in order to issue new checks for the payments. We found for all 10 checks, that averaged 2,288 days old, no actions were taken to locate the victims, and new checks were not issued.

The confidential secretary told us the Department employees did not actively conduct victim location efforts during our audit period. She was unable to perform location searches for unpaid victims because she did not have time as she was performing additional duties due to vacancies in the Department.

Because the Policy does not provide guidance for what actions should be taken to locate victims or timeframes for such efforts to occur, 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 victims' restitution orders have 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.

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 \$3,877

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as undisbursed restitution. However, as previously discussed, we identified \$22,279 for 238 uncashed victims' checks more than a year old. Therefore, the Department potentially has \$26,156 of undisbursed restitution payments that should be used to satisfy unsatisfied restitution orders.

The Department is able to identify unsatisfied restitution orders by age from the software program used to administer restitution. According to the Department's records, it could potentially satisfy the 20 oldest unpaid orders totaling \$17,982.

The Probation Director told us the Department did not make any payments from the undisbursed restitution because victim location efforts were not performed due to staffing issues. The Probation Director also told us he did not have time to update the Policy because the Department was preparing to move to a new facility and to upgrade the restitution accounting software. However, we noted some of the potential undisbursed restitution is more than 12 years old.

The Department's Policy does not include guidance on when to pay undisbursed restitution to beneficiaries, what reasonable victim location efforts to conduct or types of records to maintain. Further, the Director has not ensured the Policy includes a mechanism to disburse undisbursed restitution to victims. As a result, some victims are not receiving payments to which they are entitled.

Officials Did Not Maintain Sufficient Undisbursed Restitution Records

While the Department maintained records to support \$3,687 of their May 2019 undisbursed restitution amount of \$3,877, officials could not identify the source of the remaining \$190. Department officials cannot be sure whether this amount of undisbursed restitution is accurate. Further, without complete and accurate records, the risk of theft and misuse of collections increases.

What Do We Recommend?

The Director should:

1. Develop written policies and procedures for handling restitution that convey management's expectations to ensure the program is operating effectively, including:
 - Establishing timeframes for issuing delinquency letters and court notifications,
 - Establishing timeframes for issuing restitution payments to victims,
 - Developing steps to be taken with uncashed checks,
 - Maintaining complete records,

...[T]he Department potentially has \$26,156 of undisbursed restitution payments....

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- 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 court orders 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. Make payments from the undisbursed restitution account to the crime victims whose restitution orders have remained unsatisfied for the longest amount of time.
 5. 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.
 6. Ensure the undisbursed restitution balance is supported with records showing the amount and dates of payments that comprise the balance, including if any payments are made from the account.

Appendix A: Response From County Officials



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June 23, 2021

Julie Landcastle, Chief Examiner
Statewide Audit
State Office Building, Suite 1702
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Binghamton, NY 13901-4417

Dear Ms. Landcastle,

Please accept this correspondence as an acknowledgment of our receipt of the draft report on the Examination of Restitution Payments in the Saratoga County Probation Department. We have reviewed the report and are in general agreement with the recommendations offered in the report. Further, we appreciate the time and effort expended by your agency in conducting and preparing this report.

Our comments on steps already taken or their future inclusion in a corrective action plan are listed below the recommendations made in the report. We intend to submit our corrective action plan within 90 days of the release of the final global audit report.

Recommendation #1 – Develop written policies and procedures for handling restitution that convey management’s expectations to ensure the program is operating effectively, including:

- Establishing time frames for issuing delinquency letters and court notifications,
- Establishing time frames for issuing restitution payments to victims,
- Developing steps to be taken with uncashed checks,
- Maintaining complete records,
- Establishing procedures for handling undisbursed restitution money, and
- Identifying the individuals responsible for each of the various steps.

Response - We have made changes to our policies and procedures which address several of the items listed above, including handling undisbursed restitution. Our affected staff have been informed of those changes. We look forward to the release of the final global report and the recommendations contained therein to assist us in finalizing the update of those policies. The policies will be updated and shared with our staff within 90 days of the release of the report.

Recommendation #2 - Enforce and monitor restitution according to court orders and the Department's policies and procedures including sending written notifications to probationers and the court when probationers do not make required restitution payments.

Response - We agree that the above should be clearly outlined in updated policies and procedures. Again, we will look to the finalized global report to assist in that effort to be completed and shared with staff within 90 days of the release of the final global report.

Recommendation #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 moneys to the undisbursed restitution account when appropriate.

Response – As the result of actions taken over the past year, the above items have been accomplished in the majority of cases. Documentation has been complete and has been made more efficient since the implementation of our use of a restitution software program in April 2021.

Recommendation #4 – Make payments from the undisbursed restitution account to the crime victims whose restitution orders have remained unsatisfied for the longest amount of time.

Response – Over the past several months, we have disbursed approximately 80% from the undisbursed fund to crime victims with the oldest unsatisfied restitution orders. We will continue these efforts on a regular basis and will modify our policies and procedures within 90 days of the release of the final global report as necessary to reflect any recommendations contained in that report.

Recommendation #5 - Provide meaningful oversight to ensure the program is operating effectively, which should include actions such as critical reviews of bank reconciliations and unsatisfied restitution orders.

Response – We look forward to the release of the global report to gain further information to completely update our policies and procedures in this regard. We will also seek guidance from our local resources for assistance to this end.

Recommendation #6 – Ensure the undisbursed restitution balance is supported with records showing the amount and dates of payments that comprise the balance, including if any payments are made from the account.

Response – We have established the applicable records for the undisbursed restitution balance and going forward, the process will be thorough and efficient with the use of our newly implemented restitution software program.

We appreciate the efforts of the Comptroller's Office in assisting us with improving our operations with regard to the processing of our restitution accounts. Please contact the undersigned should you have any questions.

Sincerely,

Steven R. Bayle
Probation Director

CC. Theodore T. Kusnierz, Jr., Chairman of the Board
Steve Bulger, County Administrator

Appendix B: 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 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. We compared employee's user access to the computer system 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 30 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 30 restitution cases, we reviewed the last payment made by the probationers to determine whether the Department took the appropriate monitoring actions based on its policies and procedures for sending 30-day late notices and 60-day court notifications. If a payment was not made by a probationer during our audit period, we used the first payment due date.
- 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.

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- We reviewed a sample of 10 outstanding checks 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 based on high dollar amounts.
 - We reviewed the Department's documentation for the undisbursed restitution payments and compared the documentation with 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 Policy, we determined if the Department had adequate written procedures regarding the processing and disbursing of unclaimed restitution, and whether 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 Board to make the CAP available for public review in the Clerk's office.

Appendix C: 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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