

Ulster County Probation Department

Restitution Payments

DECEMBER 2021



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

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Report Highlights

Ulster County Probation Department

Audit Objective

Determine whether the Ulster 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, disburse all victim restitution payments appropriately or notify the court when a probationer violated the court order.

- 16 of 29 restitution orders reviewed had uncollected restitution totaling \$12,495.
- 26 outstanding checks totaling \$2,242 were not properly followed up on and officials did not always make reasonable efforts to locate victims promptly.

Key Recommendations

- Ensure policies are clear to enforce and monitor restitution obligations.
- Enforce and monitor restitution according to court orders and Department policies and procedures.
- Make efforts to locate victims with outstanding checks promptly.

County officials generally agreed with our recommendations and indicated they will take corrective action.

Background

The County is located in southeastern New York, in the Mid-Hudson Region. The County is governed by the County Legislature (Legislature), which is composed of 23 elected Legislators.

The County Executive is the Chief Executive Officer and is responsible for oversight of County operations. The Commissioner of Finance is the County's 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	\$330,141
Disbursements	\$417,081
Orders with Probation Supervision	404

Audit Period

January 1, 2018 – June 30, 2019. We extended the scope back to December 19, 2017 to review a court notification.

Collecting, Disbursing and Enforcing 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?

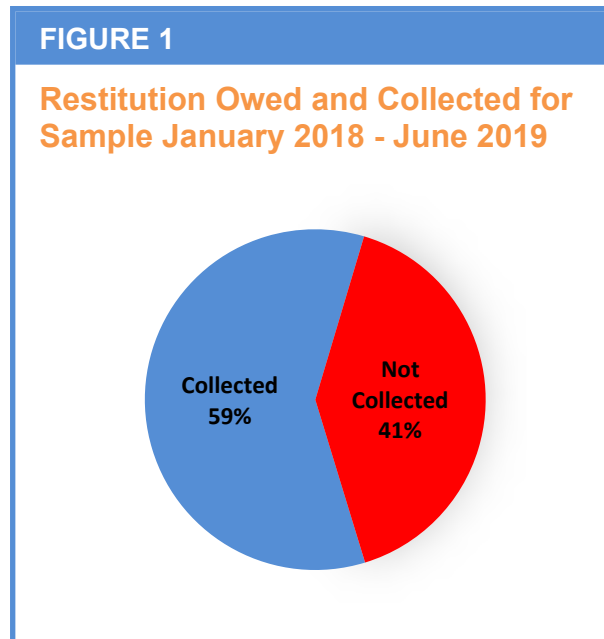
Probation departments must have a system that details the use of incentives and sanctions to encourage probationers to comply with the court's restitution order. A probationer's failure to comply with a restitution order must be reported to the court prior to probation supervision ending, allowing the 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 Financial Policy (Policy) states that probation officers should address financial obligations during every personal contact and will use a system of graduated sanctions but did not define the timeframes for implementation. Additionally, the Policy requires that probation officers are to notify the court when a case is 180 days delinquent. The Policy does not require a probation officer to send warning letters to probationers when they are non-compliant with a court's restitution orders.

Officials Did Not Adequately Enforce Restitution Collections

The Department had 404 restitution orders (cases) with probation supervision during our audit period. We reviewed 29 restitution orders totaling \$519,812 to determine whether the Department adequately enforced collection of restitution. During our audit period, Department officials should have collected \$30,734 from

probationers for these cases, including \$6,223 in prior period arrears (restitution payments outstanding at the commencement of our audit period). However, \$18,239 was collected while \$12,495 remained outstanding (Figure 1). Specifically, 16 probationers were in arrears during our audit period and 13 cases were in compliance with the restitution order terms. Additionally, one case that did not have defined payment terms made payments totaling \$3,755 towards restitution.



For the 29 cases in our sample, 26 required monthly payments, two required full payment at the end of the probation term, and one did not have defined payment terms. Two cases that required full payment were not due during our audit period, and the one case without defined payment terms made payments during the audit period. However, we found the Department did not adequately enforce the cases that required monthly payments.

We reviewed each probationer's case to determine if and when the Department issued court notifications when payments were not made timely. In accordance with the Department's Policy, court notifications were required for eight of the 16 cases in arrears because no payment was received for at least 180 days. Of the eight cases that required court notifications, we found that the Department did not notify the court for nonpayment of restitution for seven cases. Six of these cases were 299 to 816 days delinquent and one case was 180 days delinquent at the end of our audit period. For one case that was 627 days delinquent during our audit period, the Department notified the court when probationer was 137 days delinquent because the probationer absconded. For the other eight cases in arrears during our audit period, court notifications were not required because the payments were not over 180 days late.

Probation officers sometimes took other actions to encourage probationers to pay their financial obligations. For the 16 cases in arrears, probation officers documented having conversations with 10 probationers regarding their overdue restitution payments (an average of four conversations per case). There was no supporting documentation for conversations, if any occurred, for the other six cases. Additionally, probation officers applied sanctions to two probationers who

were late paying restitution - one had travel privileges revoked; and although not listed as a sanction in the Policy, the other lost merit credits (a protocol by which probationers may be considered for a reduction in contacts by their probation officer, or eligible for other forms of incentives).

The Director told us that while probation officers are primarily the Department employees responsible for tracking restitution payments and that the Court should be notified when a probationer is six months delinquent, the Department considers probationers situations on a case-by-case basis. The Director also told us that the probation officers may view other violations of probation as taking priority over restitution payments, especially if there is a safety issue, and may not address restitution when filing court notifications. Additionally, she told us that some probation officers do not always document conversations with probationers regarding restitution. As a result, the probation officers' actions were often inconsistent, and notifications were not always sent to the court.

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 states that reasonable efforts shall be made to locate victims with whom the Department has lost contact, whose checks have been returned as undeliverable or have been uncashed. The Policy specifies that efforts may include, but are not limited to using: New York State Department of Motor Vehicles (DMV) records, voter registration rolls, United States Postal Service records and Internet searches. Upon the completion of all reasonable efforts listed in the Policy and a determination is made that the victim cannot be located, the unclaimed funds are to be transferred to the Victim's Trust Account (undisbursed restitution account). The Policy also specifies that restitution checks will be disbursed twice monthly on or about the 1st and 15th of the month and that the Director/Deputy Director is to review bank reconciliations.

Officials Disbursed Restitution Payments Timely, But Did Not Always Make Reasonable Efforts to Locate Victims With Uncashed Checks

To determine whether payments were made to victims in accordance with the Department's Policy, 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 20 of the 29 orders totaled \$1,581, with no collections received for the remaining nine orders. The Account Clerk made all 20 payments to victims the same day or within 14 days after payment was received, in accordance with the Policy.

We also reviewed the May 2019 bank statement and Department records 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 26 checks totaling \$2,242 that were over one year old. Overall, although over a year had elapsed, the Department made minimal to no attempts to locate victims who were no longer at the address of record.

Outstanding Checks – We reviewed 10 outstanding checks totaling \$1,796 that were over one year 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:

- For three checks totaling \$266, the Senior Probation Assistant began efforts to locate a valid address for the victims by mailing letters 20 to 602 days after the initial checks were issued and performing an Internet search for one victim. No location attempts were made using voter registration rolls or DMV records and new checks were not issued.
- For seven checks totaling \$1,530 that averaged 525 days old, no actions were documented, if any were taken to locate the victims, nor were new checks issued.

The Senior Probation Assistant told us because she had other restitution duties to perform, she did not always have time to look for victims with uncashed checks, and as a result, the follow up for these checks may not have been completed. She also told us that she may not have documented all of her victim location attempts. By not maintaining complete records of the outcome of victim location efforts, the searches for victim addresses will have to be performed again. Further, when reasonable victim location efforts are completed and unsuccessful, the undisbursed money should be transferred to the undisbursed restitution account.

The Director told us she reviews monthly bank reconciliations and that the Senior Probation Assistant attempted to locate victims but that not all searches were documented. She also told us the Department does not have a lot of administrative personnel, so they have to perform tasks when they have time. As a result, all reasonable efforts to locate the victims may not have been performed. Because the Department is not ensuring victim location efforts are performed promptly and are documented, 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

The Department did not appropriately follow up on 26 checks totaling \$2,242 that were over one year old.

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 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 the 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.

The Department's Policy states that following the close of the fiscal year, a list will be generated of all cases in which restitution payments have been collected and have gone unclaimed for at least one year. The Policy further states that at the end of each fiscal year, the Department will generate a list of all obligations for which no payment was made that year and that the list will constitute those victims entitled to receive unclaimed restitution from that fiscal year's account. After identifying eligible victims and retaining 20 percent of the unclaimed funds for victims who may come forward following the close of the fiscal year, the Department will disburse funds up to \$500 to all eligible victims beginning with the oldest unpaid restitution order.

Officials Made Undisbursed Restitution Payments

We reviewed Department records to determine the amount of undisbursed restitution the County had available to pay victims with unsatisfied restitution orders. The Department's May 2019 bank reconciliation identified \$143 from accumulated interest that could be available to pay undisbursed restitution. However, as previously discussed, we identified \$2,242 for 26 uncashed victim checks outstanding for more than a year. Of those checks, five totaling \$703 were at least a year old at the end of the County's fiscal year. Therefore, \$846 could be available to pay unsatisfied victims if the respective victims were not located after reasonable efforts were used. After retaining \$169, which would be the 20 percent for victims who may come forward after the fiscal year, the Department potentially has additional undisbursed restitution funds totaling \$677 that should be used to pay unsatisfied restitution orders.

The Department is able to identify unsatisfied restitution orders by age from the software program it uses to administer restitution. During our audit period, the

Department disbursed unclaimed restitution totaling \$538 to two victims in March 2019. Prior to the distribution, the Senior Probation Assistant attempted to contact the oldest unsatisfied victims by letter. She documented the results of her efforts and made payments to the oldest unsatisfied orders that responded to her letters.

The Director told us the Department pays undisbursed restitution to the victims with the oldest unsatisfied orders once a year, when there are funds available and after the Senior Probation Assistant attempted to locate the victims.

Officials Maintained Undisbursed Restitution Records

The Probation Office Assistant provided adequate records to support unclaimed restitution amounts that were disbursed to the oldest unsatisfied victims during our audit period. Those records included which probationers made the payments and when, which victims had the oldest unsatisfied restitution orders, victim location efforts made, and which victims were paid when and for how much.

What Do We Recommend?

The Director should:

1. Ensure written policies and procedures for enforcing and disbursing restitution accurately convey management's expectations for the program to operate effectively including:
 - Establishing timeframes for sending late payment notifications,
 - Developing steps to be taken with outstanding checks,
 - Maintaining complete records,
 - Clearly specifying all potential graduated sanctions and timeframes, and
 - Identifying the individuals responsible for each of the various steps.
2. Contact the New York State Office of Probation and Correctional Alternatives for guidance when restitution terms are silent.
3. Enforce and monitor restitution according to court orders and the Department's policies and procedures including sending written notifications to the court when probationers do not make required restitution payments.
4. Make reasonable efforts to locate victims with uncashed checks, 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.

Appendix A: Response From County Officials



PATRICK K. RYAN
County Executive

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July 1, 2021

Dear Chief Examiner Landcastle,

We are in receipt of the draft report of examination of restitution payments for the Ulster County Probation Department. We also attended the exit interview held on June 8, 2021. Thank you for your report as well as the hard work of your office conducting this audit and for giving us an opportunity to respond. We take our responsibilities to victims seriously and will utilize the findings to improve services.

While we acknowledge the technical aspects of this audit, we also want to note the extraordinary work done by our staff on the majority of restitution matters in assuring victims are made whole. We work with clients who often have obstacles in finding any funds to pay restitution. Nonetheless, our staff have worked hard make victims whole while also addressing complicated situations faced by individual probationers.

During the audit, certain factors came to light and we have already made changes within the department. Probation staff have been advised of the issues in the audit and these are being addressed. Some of these concerns were based on staff not documenting their activities. Several cases had violations filed and were being addressed by the court for violation behavior other than restitution such as new arrests or absconding.

Our efforts to locate victims are being documented more thoroughly. We are doubling our efforts to find victims including those who do not notify us of a change of address. In the past year, we have significantly reduced outstanding items and have had greater success in locating victims who have changed their address.

We will be providing a Corrective Action Plan as required. We look forward to seeing the final report of all the Probation departments audited during this process and hope to gain insight into best practices across the state. We are also hopeful for guidance from the New York State Office of Probation and Correctional Alternatives to address areas not currently covered by State Probation rules and regulations.

Please advise if you need anything further.

Sincerely,

Nancy Schmidt
Probation Director

CC: John Milgrim, Ulster County Deputy County Executive
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www.ulstercountyny.gov

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 audited 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 spread 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 enforcing, collecting and disbursing 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 reviewed employees' user access to the computer systems in comparison 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.
- Using a random number generator, we selected a sample of 29 restitution cases from the Department's reports showing all open and closed court cases that involve restitution during our audit period to determine whether payments are made timely and appropriately, and how the Department monitors the restitution cases.
- From our sample of 29 restitution cases, we reviewed whether the total amount of unpaid restitution was over 180 days late for each probationer and reviewed monitoring actions taken to determine whether the Department took the appropriate monitoring actions based on their policies and procedures for sending court notifications. We extended the audit scope back to December 19, 2017 to review court notifications made outside our scope period.
- We obtained and reviewed the May 2019 bank reconciliation and related bank statement for the separate bank account the Department maintains for restitution, including any unclaimed restitution payments aged more than a year, to determine total amount available to disburse to unsatisfied restitution orders, and to test the accuracy of the bank reconciliation.

-
- We reviewed a sample of 10 outstanding checks, to determine if the Department was attempting to locate the intended victims of these payments and what those efforts included. If the victim was not located, we verified whether the money was appropriately moved to undisbursed restitution. Five outstanding checks were selected based on high dollar amounts. The remaining checks were selected because they should have been available to pay unsatisfied victims.
 - We obtained and reviewed a report of unpaid restitution orders to determine which restitution orders have remained unsatisfied for the longest period of time, and to calculate how many of the oldest unsatisfied orders could be disbursed from the available undisbursed restitution balance.
 - We reviewed the Department's records for undisbursed restitution to determine whether the Department maintained documentation for money distributed to the victims with restitution orders that 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 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 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

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