

Wayne 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

Wayne County Probation Department

Audit Objective

Determine whether the Wayne 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.

- 24 of the 26 restitution orders reviewed had uncollected payments totaling \$31,118.
- 13 probationers with delinquent restitution totaling \$7,767 were not reported to the court, as required.
- 16 outstanding restitution checks totaling \$618 were not properly followed up on and officials did not always make reasonable efforts to locate victims promptly.

In addition, officials did not maintain a complete list of unsatisfied restitution orders or maintain sufficient undisbursed restitution records. Without legal basis, the Department removed victims from its list of unsatisfied restitution orders.

Key Recommendations

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

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

Background

The County is located in western New York, in the Finger Lakes Region. The County is governed by a Board of Supervisors (Board), which is composed of the 15 Supervisors of each Town within the County.

The Board Chairman also serves as the County's Chief Executive Officer, but the County's day-to-day management is the responsibility of the Board-appointed County Administrator. The Treasurer 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	\$102,564
Disbursements	\$115,629
Orders with Probation Supervision	208

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.

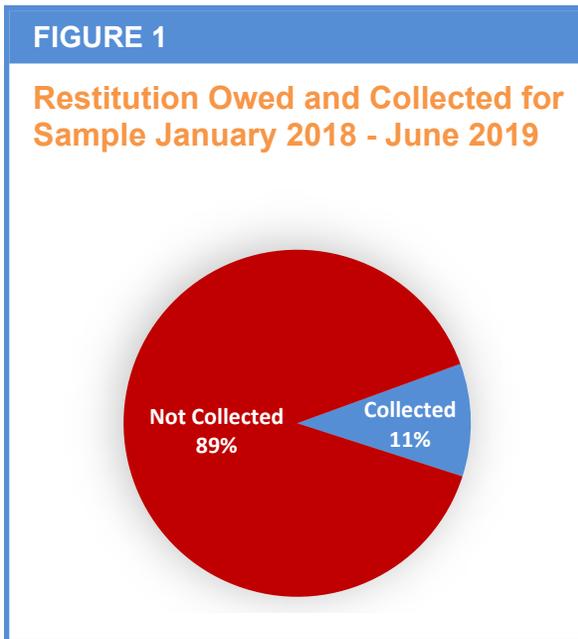
The Department's policy and procedure document (Policy) requires probation officers to notify the court of a probationer's failure to pay as directed in any case where payments have not been made for over 90 days. However, the Policy does not require a probation officer to send warning letters to probationers when they are non-compliant with a court's restitution order.

Officials Did Not Adequately Enforce Restitution Collections

The Department had 208 restitution orders (cases) with probation supervision during our audit period. We reviewed 26 restitution orders totaling \$135,833 to determine whether the Department enforced the collection of restitution. During our audit period, Department officials should have collected \$34,773 from probationers for these cases, including \$14,258 in prior period arrears (restitution payments outstanding at the commencement of our audit period). However,

only \$3,655 was collected while \$31,118 remained outstanding (Figure 1). Specifically, 24 cases were in arrears \$31,118 and the remaining two cases were in compliance with the restitution order terms.

The Department did not adequately enforce the restitution cases. We reviewed the last payment made by each probationer during our audit period to determine if the Department appropriately issued court notifications when payments were not made timely. In accordance with the Department's Policy, court notifications were required for 15 of the 24 cases in arrears because no payment was received for at least 90 days. Of the 15 requiring court notifications, only two notifications were sent while the other 13 were not with delinquent restitution totaling \$7,767.



For the two court notifications that were made, the court should have been notified in August 2017 and March 2019, respectively. However, the court was not notified of nonpayment until January 2018 and May 2019, respectively.

The Director told us he is aware that court notifications may not have been sent in some cases but did not provide any further explanation why they were not sent. Because the Director does not always enforce the Department's Policy for issuing court notifications, probation officers' actions were often inconsistent.

How Should Restitution Payments Be Processed?

The Department should disburse collected restitution to victims promptly. The Department's Policy does not specify timeframes for the disbursement of restitution payments to victims. The Policy explains that on a yearly basis, the Department will attempt to contact all victims with outstanding checks of \$10 or more. If reasonable attempts have been made to contact victims without success, those funds will be placed into undisbursed restitution for payment of the oldest unsatisfied restitution orders.

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

To determine whether payments were made to victims, for our sample of 26 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 10 of the 26 cases totaled \$1,091, with no collections received for the remaining 16 cases. The Senior Account Clerk made 10 payments totaling \$1,091 to the victims within 10 days.

We also reviewed the May 2019 bank reconciliation to determine if there was idle victim money and whether reasonable efforts were taken to disburse the money. The Department did not appropriately follow up on the 16 outstanding checks totaling \$618 that were between one and almost eight years old. Although the Director reviews the monthly bank reconciliations, the reconciliations are unsupported and inaccurate as they do not list the outstanding checks or deposits that have not yet cleared. The Director told us he is aware of the outstanding checks but has not cancelled and moved the funds to the undisbursed restitution account because there is a \$35 bank charge to stop payment on the checks and the Department does not have a line item in the budget to cover the expense.

Although a significant amount of time had elapsed, Department personnel made minimal to no attempts to locate victims who were no longer at the address on record.

- For nine checks totaling \$263, efforts to locate victims began on average 757 days after the initial check was issued. However, the results of the location efforts were not documented, none of the checks were replaced and none of the money was transferred to the undisbursed restitution account.
- For seven checks totaling \$355 that were on average 1,363 days old, no actions were taken to locate the victims, and new checks were not issued.

The Director told us that while the Probation Assistant was learning the process and that she may not have documented efforts to locate the victims, they will ensure such efforts and the results are documented in the future. If the Department could not locate the victims after using reasonable efforts, it should have transferred the money to the undisbursed restitution account, as required. As a result, 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

The Department did not appropriately follow up on the 16 outstanding checks totaling \$618....

...[S]ome victims are not receiving payments to which they are entitled or are experiencing significant delays.

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 the undisbursed restitution account. 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 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. 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, updated in 2016, does not specify the timeframe for making undisbursed restitution payments, but does provide that the Accounting Department will determine the oldest unsatisfied restitution orders from 2006 and on. The Policy further states that the Accounting Department is to disburse funds from undisbursed restitution chronologically from the oldest unsatisfied orders from 2006 forward at a rate of 20 percent of total outstanding balance when that account has a balance of at least \$50, continuing until the funds are disbursed.

Officials Did Not Maintain a Complete List of Unsatisfied Restitution Orders

The Department maintained the list of unsatisfied restitution orders used to make payments from the undisbursed restitution account with order dates starting from 2006 through present. We also found there were unsatisfied restitution orders dating back as far as 1990 that were excluded from the list. The Director and a Probation Assistant told us a previous administration chose 2006 as a starting date for the list of unsatisfied restitution orders when the Policy was updated because they thought there would be a better chance of locating victims with more recent restitution orders for payments from undisbursed restitution. There is no legal basis to exclude restitution orders with outstanding payments over 60 days old from the list based on the orders' age. Because the Department excluded unsatisfied restitution orders from the list, some victims did not and may never receive the payments to which they are entitled.

There is no legal basis to exclude restitution orders with outstanding payments over 60 days old from the list based on the orders' age.

Officials Made Undisbursed Restitution Payments but Not to Victims With the Oldest Unsatisfied Orders

The Department sent letters in March 2018 to 15 victims from the list of unsatisfied restitution orders beginning with the longest outstanding order since 2007 (orders from 2006 had been paid previously). These victims had unsatisfied restitution orders totaling \$4,422 which the Department determined they were able to pay from their undisbursed restitution. Once victims replied to confirm they were the intended recipient, a Probation Assistant made payments, according to the Policy payout terms, totaling \$4,422 from undisbursed restitution to these 15 victims in March, April and May 2018. However, based on the Department's updated Policy, victims with older unsatisfied restitution orders dating back to 1990 were excluded from payment.

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 balance sheet identified \$2,417 as undisbursed restitution. However, as previously discussed, we identified \$618 for 16 returned or uncashed victim checks outstanding more than a year. Therefore, the Department potentially has \$3,035 of undisbursed restitution payments that should be used to satisfy unsatisfied restitution orders.

...[T]he Department potentially has \$3,035 of undisbursed restitution payments....

Officials Did Not Maintain Undisbursed Restitution Records

The Department did not maintain records to track activity in the undisbursed restitution account or to support what comprised the balance of \$2,417 reported on the Department's balance sheet. A Probation Assistant and the Probation Director told us they were unaware that they should track payment amounts, dates and what comprises the undisbursed restitution amount. As a result of insufficient and unsupported records, 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 clear written policies and procedures for collecting, enforcing and disbursing restitution that convey management's expectations to ensure the program is operating effectively, including:
 - Timeframes for sending late payment notifications,
 - Steps to be taken with outstanding checks,
 - Maintaining complete records,

-
- Maintaining a complete list of unsatisfied restitution orders,
 - Procedures, with timeframes for handling undisbursed restitution money, and
 - Identifying the individuals responsible for each of the various steps.
2. Enforce and monitor restitution cases 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.
 3. Make reasonable efforts to locate victims, document actions taken and the results, issue payments to the victims who can be located and transfer unclaimed money to the undisbursed restitution account when appropriate.
 4. Contact the New York State Office of Probation and Correctional Alternatives for guidance in establishing a complete list of unsatisfied restitution orders and making undisbursed restitution payments for these orders, then update the unsatisfied restitution order list.
 5. Make payments from the undisbursed restitution account to the crime victims whose restitution orders have remained unsatisfied for the longest amount of time.
 6. Provide meaningful oversight to ensure the program is operating effectively, which should include actions such as critical reviews of bank reconciliations and unsatisfied restitution order records.
 7. Ensure the undisbursed restitution 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

Wayne County Department of Probation

and Correctional Alternatives

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PROBATION SUPERVISORS

████████████████████
Office of the State Comptroller, State of New York
110 State Street
Albany, New York 12236

Wednesday, June 23, 2021

Dear ██████████

Please allow this correspondence to serve as an acknowledgement of the receipt of the draft report regarding the collection and processing of restitution obligations by the Probation Department. Additionally, we would like to express our gratitude to ██████████ for their review and suggestions.

While in general we agree with the report, additional comments and our plan to address the findings will be contained in the attached corrective action plan. The implementation of corrective action on all identified issues will be done no later than August 01, 2021. We would like to make it known that during the scope of the audit, our department was involved in a complete financial conversion from our old system to our new system. This conversion started in November 2018 and ended in March 2019. We would like to take this opportunity to address a few of the findings with which we disagree:

- While we agree with the Comptroller's Office that our monthly bank reconciliations are deficient in listing outstanding checks or deposits that have not yet cleared, we use a statewide database that does not offer these options. The Probation Director has had a conversation with the Deputy Commissioner of the New York State Office of Probation and Correctional Alternatives, and further conversations will be had with the database provider to have these deficiencies corrected on a statewide level.
- It is stated in the report that the Director is aware of the outstanding checks but has not cancelled and moved to the undistributed funds account because of a \$35 stop payment fee that the department does not have in the budget. While the Director did say that there is not a specific line item in the budget for this, the department has been stopping payment on checks using our miscellaneous account.
- It is stated in the report that the Director said the Probation Assistant was learning the process and that she may not have documented efforts to locate victims, and will ensure such efforts are documented in the future. We do not agree with this statement, as the Probation Assistant has hand written notes for several of the cases involved in finding victims. We will ensure going forward that all notes are documented in our system and that none are missed.
- It is stated in the report that a Probation Assistant and the Director told the auditors that the Probation Director and Probation Assistant were unaware that they should track payment records for the undistributed funds account. We do not agree with this as the monthly bank reconciliation printed from our previous system does in fact show checks that were moved to the undistributed funds account. While we did not keep a separate tracking system, the reconciliation showed check numbers, victims, probation case numbers, and dates. The check amount needs to be pulled up under each individual probationer's account. We acknowledge that it needs to be done differently going forward, but we would not have said it didn't exist when in fact, it does.

See
Note 1
Page 13

See
Note 2
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See
Note 3
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See
Note 4
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Very truly yours,

Kenneth F. Miller, Chairman
Wayne County Board of Supervisors

Mark D. Ameele, Director
Wayne County Department of Probation

Unit Name: Wayne County Probation Department
Audit Report Title: Restitution Payments
Audit Report Number: S9-20-6

For each recommendation included in the audit report, the following list represents our corrective action(s) taken or proposed. For recommendations where corrective action has not been taken or proposed, we have included the following explanations.

Audit Recommendation:

Develop clear written policies and procedures for collecting, enforcing and disbursing restitution that convey management's expectations to ensure the program is operating effectively, including:

- Timeframes for sending late payment notifications,
- Steps to be taken with outstanding checks,
- Maintaining complete records,
- Maintaining a complete list of unsatisfied restitution orders,
- Procedures, with timeframes for handling undisbursed restitution money, and
- Identifying the individuals responsible for each of the various steps.

Implementation Plan of Action(s):

- Late payment notifications will be given to the probationer during their report meeting with their officer. Their officer will also let them know that if they go 90 days without payment, notification will be sent to the court. Each officer will review with the Probationer when their last payment was made, and document it in their CE contact event.

- Outstanding checks will be reviewed on a quarterly basis. Any uncashed checks will have stop payment orders issued at the end of each quarter. The probation department will send letters to persons to whom checks have been issued but not cashed. The letter shall advise the person that they have 90 days to respond to the probation department and advise whether they received the check or not. If any of the letters are returned by the U.S. Postal Service as being undeliverable, the probation department will check Clear and/or MCAC to attempt to locate an updated address or phone number for the person. At the end of the 90 day period, the list of persons to whom letters have been sent will be reviewed. Persons on the list who did respond to the letters will have their checks reissued. Money represented by the checks for which no reply was received will be moved to the undistributed funds account.

See Note 5 Page 13

- The Probation department will maintain complete records for undistributed funds by creating a binder and spreadsheets to log all activity. All correspondence will also be noted in the probationer's CE events. Officers will also be reminded that all financial interactions with their probationers must be documented. They must talk to them about their balances owed and last payment made during their reports.

- The department's current system maintains a report of all unsatisfied restitution orders (The Unpaid Victims report). This report can then be exported to a csv file and sorted by order date.

- Once per year, the probation department will send letters to the victims who have the oldest restitution orders. Funds will be dispersed to those persons until the undistributed funds account has been depleted to an amount to be determined by the Director, Deputy Director, and financial liaison.

- All financial procedures will be completed by the financial liaison or the designated backup liaison. Oversight will be provided by the Director or Deputy Director.

Implementation Date:

- This policy was last updated in 2006
- July 01, 2021
- June 07, 2021
- March 2019 (The completion of our financial conversion to CE)
- 3rd quarter of every year (July-September) starting July 01, 2021

-
- November 2018 (Prior to this there was no backup financial liaison)

Person Responsible for Implementation:

Director, Deputy Director, and financial liaison.

Audit Recommendation:

Enforce and monitor restitution cases 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.

Implementation Plan of Action(s):

The probation department has made a change to the probation conditions associated with financial obligations that will be in effect for all new cases. The change modifies the current condition which states, “...they are to be paid via Probation, at the minimum rate of ___/month beginning within thirty days of sentence or release from imprisonment.” The new language for this condition states, “They are to be paid via Probation, on a monthly basis, in accordance with the arrangement and plan made between you and your probation officer, which takes into consideration your financial circumstances.” From now on, at the probationer’s initial interview with their probation officer, the probation officer will be reviewing a financial agreement plan with the probationer. The plan will allow the probationer to make progress toward paying off their restitution and aid in their rehabilitation process, and will be signed by the probation officer and the probationer. However, if the judge still chooses to hand write in a set monthly minimum amount of payment that is expected, then the probation officer will abide by that ordered amount. The probation officers will now also be required to provide their supervisor with a monthly report that details the status of the financial obligations of the people on their caseload (financial obligation report). The supervisor shall review each of these reports to review the level of compliance with ordered financial obligations for the caseload. If there are cases that are at the 60 day mark without any payment, the supervisor will review those cases in depth and discuss the case with the probation officer assigned so the case can be brought into compliance. If a case has reached 90 days without any payments made, the supervisor will direct the probation officer to send a UCR to the court advising that the probationer is not meeting the financial obligations that have been ordered. The officer will have 5 days to prepare the UCR and send it to the court. If the UCR is not completed within the 5 day time period, the supervisor will prepare a memorandum to be placed in the officer’s personnel file. After three memoranda have been prepared for an officer’s noncompliance, the issue will be taken to the County Attorney’s Office for formal disciplinary review.

See Note 6 Page 13

Implementation Date:

- July 01, 2021

Person Responsible for Implementation:

Director, Deputy Director, Supervisors, and Probation Assistant

Audit Recommendation:

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.

Implementation Plan of Action(s):

Our new policy for locating victims will be as follows:

- Do a Clear search for the person to check for updated addresses and/or phone numbers
- If there is no new information in Clear, the department will reach out to MCAC and ask them to search for updated contact information for the person

• If a victim is deceased, the department will check with the Surrogate’s Court for estate information. If there is just one record, Surrogate’s Court will allow this inquiry by phone, but if there are multiple victims who need to be searched, the department will have to send a staff member to the court to use their public computers to search their records.

• If the victim is not deceased and the department is still unable to locate them through the search efforts outlined above, the department will take any payment that the probationer has made and apply it to another financial obligation that the probationer has related to their case(s). If there are no other outstanding obligations, the department will apply the payment(s) to the undistributed funds account to make the money available for victim payments in accordance with the procedures for that account.

See Note 7 Page 14

• The department will modify the form letter that is sent to victims as part of the PSI process. The letter will now include language that reads, “Should you be awarded restitution, it is your responsibility to notify the Wayne County Department of Probation and Correctional Alternatives of any change of address while you are still owed a balance of restitution.”

• All efforts made to locate victims will be documented in the probationer’s CE events.

Implementation Date:

- June 2018
- June 21, 2021
- April 2021
- Previous expectation but policy and procedures will be updated July 01, 2021 for consistency.
- July 01, 2021
- July 01, 2021

Person Responsible for Implementation:

Director, Deputy Director and financial liaison

Audit Recommendation:

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.

Implementation Plan of Action(s):

The department will not be taking action on the above recommendation. The department’s system provides a list of unsatisfied restitution orders and it’s able to sort by date, putting the oldest victim at the top. Going forward the department will be disbursing funds starting with the oldest victim.

Implementation Date:

Not applicable

Person Responsible for Implementation:

Not applicable

Audit Recommendation:

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

Implementation Plan of Action(s):

The department’s current system maintains a report of all unsatisfied restitution orders (The Unpaid Victims report). This report can then be exported to a .csv file and sorted by order date. Going forward the department will be printing this report yearly and dispersing funds starting with the oldest victim and working our way forward.

Implementation Date:

- July 01, 2021

Person Responsible for Implementation:

Financial liaison and Supervisor

Audit Recommendation:

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.

Implementation Plan of Action(s):

Critical review of the bank reconciliation is already being done. A reconciliation is being done by a Probation Assistant (different from the financial liaison who processes weekly deposits and prints checks). It is then printed and signed by that Probation assistant and given to the Director. The Director then goes through the reconciliation and signs off on it. Once the Director signs off, it is given to the financial liaison and filed with the paperwork for corresponding month. The department will continue doing this reconciliation process. The Probation Assistant, Director and Deputy Director will also oversee the undistributed funds processes. Spot checks will be done quarterly to ensure that all policies are being followed and documentation is being completed.

Implementation Date:

- Bank reconciliation process was switched over starting with the reconciliation for January 2020
- Undistributed Funds oversight will begin July 01, 2021

Person Responsible for Implementation:

Director, Deputy Director, financial liaison and Probation Assistant

Audit Recommendation:

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.

Implementation Plan of Action(s):

As stated in an above response, the department will maintain complete records for undistributed funds by creating a binder and spreadsheets to log all activity. The spreadsheets will list out each probationer and amount that was added to undistributed funds and what was paid out with the victim's name and address. The department has obtained a few spreadsheet examples from another county and plan to format them to fit the department's needs. These spreadsheets will be maintained by the financial liaison. All correspondence will also be notated in the probationer's CE events.

Implementation Date:

- June 07, 2021

Person Responsible for Implementation:

Financial liaison

Appendix B: OSC Comments on the County's Response

Note 1

The inability of the database to list outstanding checks or deposits has no impact on the Department officials' responsibility and ability to ensure monthly bank statements are properly reconciled with Department accounting records.

Note 2

Department officials did not provide documentation to support they stopped payment on 16 uncashed checks totaling \$618 that were between one and almost eight years old.

Note 3

During the audit, we discussed the lack of location efforts for seven victims. According to the Director, the Probation Assistant was learning the process and that she may not have documented efforts to locate the victims. No additional information, including hand-written notes, was provided.

Note 4

The report does not state payment records did not exist, but does state officials told us that they were unaware that they should track payment amounts, dates and what comprises the undisbursed restitution amount. While we asked officials to support the composition of the undisbursed restitution amount reported on their balance sheet, officials were unable to provide this documentation.

Note 5

Funds collected from a probationer do not constitute undisbursed restitution until such funds are unclaimed for a year and the location of the intended beneficiary cannot be found after using reasonable efforts. The Department's proposed corrective action suggests that funds may be moved to the undisbursed restitution account prior to the expiration of one year, which would be legally improper.

Note 6

The Department's modification of its financial conditions to require monthly payments and a financial agreement between a probationer and their probation officer exceeds the Department's legal authority. The New York State Court of Appeals has held that Penal Law sections 60.27 and 65.10 specify that the court alone must fix the amount of restitution and the manner of performance, and that such authority cannot be delegated to a probation department.

Note 7

As previously noted, the Department's new policy suggests that funds may be moved to the undisbursed restitution account prior to the expiration of one year, which would be legally improper. In addition, it is uncertain whether the Department's new policy for locating victims is legally sufficient. The statute requires the use of "reasonable efforts" to locate intended beneficiaries before funds are deemed undisbursed restitution payments. The regulation which seemingly applies to undisbursed restitution payments defines "reasonable efforts" to include initial notice by mail to the address of record and contact with the United States Post Office or telephone information service for a possible forwarding address or new telephone listing. The Department's new policy does not include these steps. However, the Department should contact the New York State Office of Probation and Correctional Alternatives (OPCA) for clarification and further guidance to ensure the Department's victim location policy is compliant with OPCA's regulation.

Further, the Department's new policy of applying a probationer's restitution payments to another financial obligation of the probationer when a victim is alive but cannot be located may be legally impermissible. The law provides that when a court imposes both a fine and restitution, payment of the restitution ordered must take priority over the payment of the fine. While a court may order that bail proceeds be applied to a defendant's other financial obligations, there does not appear to be an analogous provision that would allow restitution payments to be similarly applied. Instead, the law mandates that such undisbursed payments be designated for the payment of restitution orders that have remained unsatisfied for the longest period of time.

Appendix C: Audit Methodology and Standards

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

- We selected the County based on reported restitution collected in 2016, population and geographical location. For a fair representation of county probation departments, we selected counties with varying levels of reported restitution, population sizes and geographic locations across the State for this multi-unit audit.
- We 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 Department 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 to monitor, collect, record and disburse restitution funds and reviewed employees' user access to the computer systems in comparison to their job duties.
- We obtained and reviewed a report of cash receipts and disbursements that showed all cash receipts and disbursements related to all court orders for restitution during our scope period, and determined the total amount of restitution that was collected and disbursed during our audit period.
- Using a random number generator, we selected a sample of 26 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 were made promptly and appropriately, and how the Department monitors cases with restitution orders.
- For the same sample of 26 cases with restitution orders, 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 notifying the court if no payment was received for at least 90 days. If a payment was not made by a probationer during our audit period, we used the first payment due date.
- We obtained and reviewed the May 2019 restitution bank statement and reconciliation, including the May 2019 balance sheet and check register, to determine the total amount available to disburse for unsatisfied restitution orders.

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- We reviewed all 16 of the outstanding checks from our sample 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.
 - 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 written procedures regarding the processing and disbursing of unclaimed restitution, and whether the Department staff was following their 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 D: Resources and Services

Regional Office Directory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contact

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

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

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

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

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