

Chenango 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

Chenango County Probation Department

Audit Objective

Determine whether the Chenango 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 are not receiving payments to which they are entitled or are experiencing significant delays.

- Officials did not establish adequate policies and procedures to enforce and monitor restitution obligations.
- Six of the 20 restitution orders reviewed had uncollected restitution totaling \$9,492.
- 30 outstanding checks totaling \$1,662 were not properly followed up on.
- Officials did not make reasonable efforts to locate victims.

In addition, officials did not make undisbursed restitution payments or maintain sufficient undisbursed restitution records.

Key Recommendations

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

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

Background

The County is located in central New York, in the Southern Tier Region. The County is governed by the County Board of Supervisors (Board), which is composed of 23 members, one of whom serves as the Chairman of the Board.

The Board has administrative authority over County operations. The County 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	\$147,676
Disbursements	\$148,469
Orders with Probation Supervision	101

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?

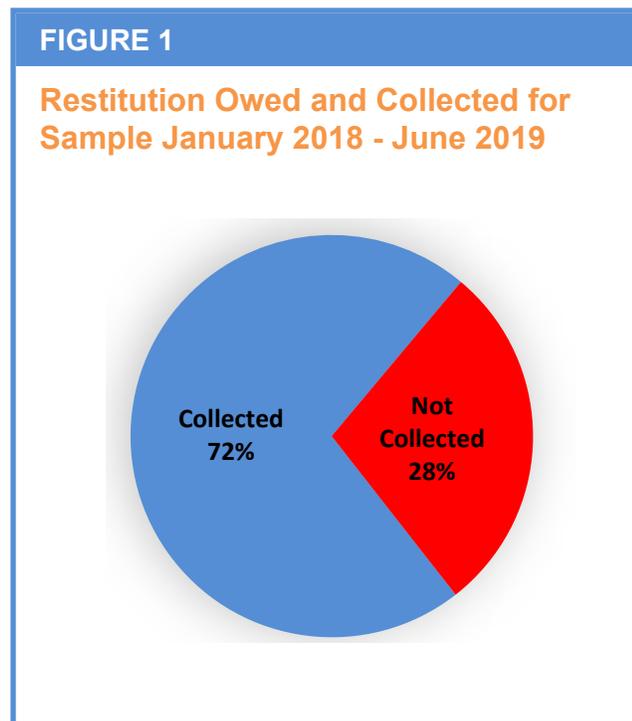
Probation departments must have a system that details the use of incentives and sanctions to encourage probationers to comply with the court's restitution order. A probationer's failure to comply with a restitution order must be reported to the court prior to probation supervision ending, allowing the 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 Financial Obligations Policy and Procedures document (Policy) states that the objective is to set guidelines for Department staff to follow when setting up, collecting and disbursing restitution payments and that the goal is to ensure that collection and disbursement of financial obligations are in accordance with legal requirements and to promote offender accountability and victim compensation. The Policy states that probation officers have direct access to the accounting program and can see at each office visit how the client is doing with their financial obligations. The Policy further states that probation officers should advise clients if they have outstanding accounts and must document such contacts in the accounting system. However, the Policy does not establish specific guidelines for enforcing and monitoring restitution obligations, including if and when warning letters and/or court notifications should be sent when probationers are non-compliant.

The Department had 101 restitution orders (cases) with probation supervision during our audit period. We reviewed 20 restitution cases totaling \$110,172 to determine whether the Department enforced the collection of restitution. Payment terms were set by the court for 18 cases. However, the court did not specify payment terms for the remaining two cases. Without established restitution payment terms, Department officials do not have requirements to enforce and victims may never receive the restitution to which they are entitled.

During our audit period, Department officials should have collected \$33,471 from probationers for the 18 cases with required payment terms, including \$9,715 in prior period arrears (restitution payments that were outstanding at the commencement of our audit period). However, while \$23,979 was collected, \$9,492 remained outstanding (Figure 1). Specifically, six cases were in arrears \$9,492, 10 cases were paid as required, and two that required full payment at the end of their probation terms were not due until after our audit period.



We found the Department's actions to enforce the cases that required monthly payments varied. We reviewed the last payment made by each probationer during our audit period to determine if and when the Department notified the court when probationers were not compliant with the court's restitution order. Of the six cases in arrears, the Department notified the court solely based on a probationer's non-payment of restitution for one case. The probationer in this case was transferred to the Department for probation supervision in April 2018, made partial payments in July and August, and the Department notified the court in August, 15 days prior to the end of probation supervision. The Department notified the court for non-payment of restitution as a secondary reason for three cases when the cases were 42, 163 and 182 days delinquent. However, the Department did not notify the court for the other two cases, each of which had partial payments made in

April 2019, but were delinquent in making any additional payments for 46 and 60 days, at the end of the audit period.

Of the six cases in arrears, probation officers documented having conversations with probationers for four cases regarding their restitution orders (an average of seven conversations per case). For the two cases with no conversations documented, one was on probation supervision for a month prior to probation being revoked so no meetings were held with the probationer, and the other probationer absconded so the Department was not able to hold any meetings with the probationer.

The Director told us they do not notify the court every time a scheduled payment is missed, nor do they notify the court on a defined or periodic basis. Rather, court notification is made when the probationer is nearing the end of their probation term with unpaid restitution, or when the probation officers and probation supervisors deem it necessary based on the probationer lacking a justifiable reason for non-payment. Because the Department's Policy did not provide specific guidance on when the court should be notified for nonpayment of restitution, Department officials' actions were inconsistent.

How Should Restitution Payments Be Processed?

The Department should disburse collected restitution to victims promptly. Further, Department officials should make reasonable efforts to locate victims that no longer reside at the address on record in a timely manner. The Policy specifies that restitution checks are written and printed on or about the 15th and 30th of each month for the Director's approval and signature. The Policy also states that when a check remains uncashed for approximately three months, a letter is sent to the victim with the date and amount of the check sent originally, asking them to call the Department. If there is no response, a second letter is sent. If the victim responds that they never received the check or they lost it, a stop payment will be placed on the original check and a second one issued.

Further, the Policy states if the victim does not respond to the letters, the Department will employ other methods to find the victim, such as running a New York State Department of Motor Vehicles check, calling any pertinent phone numbers in the file or contacting the United States Post Office for a forwarding address. All efforts made to locate a victim will be kept in a continuous record. The funds remain in the account while a search is made for the victim. If after a period of 12 months the victim has not been located, the funds are then considered to be undisbursed restitution payments.

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

To determine whether payments were made to victims in accordance with the Policy, 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 17 of the 20 cases totaled \$8,546 with no collections received for the remaining three cases. The account clerk made 17 payments totaling \$8,546 to the victims according to the Policy terms, on average seven days after payment was received.

We also reviewed the June 2019 bank reconciliation to determine if there was idle victim money and whether reasonable efforts were taken to disburse the money. Although the Director reviews the monthly bank reconciliations, they include only a total amount for outstanding checks, not the date and amount of each. The Department did not appropriately follow up on 30 outstanding checks totaling \$1,662 that were between one and more than four years old. We reviewed six of the outstanding checks totaling \$1,232 and found no documentation to indicate letters were sent or other efforts were made to locate the victims, and new checks were not issued. The Director told us that she thought Department staff performed some searches to locate victims with outstanding checks, but they may not have documented them. She could not explain why the search efforts may not have been documented. However, she also told us that the Department has not been performing all victim searches according to Policy due to staff shortages and turnover. However, it does not appear reasonable that no Department personnel had time to follow up on outstanding checks, some of which were over four years old. If the Department could not locate the victims after using reasonable efforts, because the payments were already unclaimed for at least one year, the funds would be considered undisbursed restitution payments under the law. By not maintaining adequate records of the outcomes of victim location efforts, searches for the victims' addresses will have to be performed again.

As a result of lack of monitoring and oversight, 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

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restitution payments have gone unclaimed for a one-year period 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.

The Department's Policy states that if a victim has funds remaining in their account and cannot be found after a year of searching for them, those funds can be used to pay a victim who has not been satisfied by their payee. The Policy further states that a search is made of old restitution orders to find an unsatisfied victim and that the most delinquent case will be looked at first and it will be determined if the victim can be located. If the most delinquent victim cannot be located, the next most delinquent case will be researched. Once a victim is located, they are sent the money with an explanation stating that they are being paid from undisbursed funds.

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. Our review of the Department's bank reconciliation, correlating bank statement and other records identified \$356 as undisbursed restitution. However, as previously discussed, we identified \$1,662 for 30 uncashed victim checks outstanding more than a year. In addition, the Department has an additional \$672 in its bank account for which Department officials could not provide records to support. Therefore, the Department potentially has \$2,690 of undisbursed restitution funds that should be used for unsatisfied restitution orders.

The Department's personnel can use a software program to identify unsatisfied restitution orders by age. Although the Policy does not specifically state when payments from undisbursed restitution should be made, the Department could potentially disburse \$2,690 to the oldest unsatisfied restitution order.

The Director told us that they have not been able to perform victim location efforts and have not made any payments from undisbursed restitution since at least 2014 due to personnel changes and general understaffing in the Department. However, it does not appear reasonable that no Department personnel had time to perform

...[T]he Department potentially has \$2,690 of undisbursed restitution funds....

victim location efforts in a period of approximately five years. As a result, victims are not receiving payments to which they are entitled.

Officials Did Not Maintain Sufficient Undisbursed Restitution Records

The Department had records for what comprises their reported undisbursed restitution balance. However, the Director was unable to determine what comprised the additional \$672 in the Department's bank account. 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 adequate written policies and procedures for enforcing and disbursing restitution that convey management's expectations to ensure the program is operating effectively, including:
 - Establishing timeframes for sending late payment notifications and court notifications,
 - Maintaining complete records,
 - Developing procedures, including timeframes, for when to pay undisbursed restitution, 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 orders lack set payment terms.
3. Enforce and monitor restitution cases according to court orders.
4. Make reasonable efforts to locate victims, document actions and results, issue payments to the victims who can be located, and identify unclaimed money as undisbursed restitution when appropriate.
5. Make payments from undisbursed restitution funds 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



STATE OF NEW YORK
DIVISION OF PROBATION
CHENANGO COUNTY
PROBATION DEPARTMENT

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PROBATION SUPERVISOR

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DIRECTOR

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CURTIS J. HOSE
PROBATION SUPERVISOR

May 27, 2021

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

Dear Ms. Landcastle;

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 Chenango County Probation Department.

While in general we agree with the report, additional comments and our plan to address the findings will be contained in the forthcoming corrective action plan. We would like to take this opportunity to address a few of the findings that have been corrected ahead of our formal response:

- The Probation Department recently amended the May 13, 2019 Financial Obligations policy governing the collection and processing of restitution and supervision fees by the department. The policy has been enhanced with greater detail and directives for staff members and should provide for greater continuity in the future.
- Other changes were more immediate beginning in August 2019 with the modification of accounting forms and checklists for uniformity in case processing.
- The addition of a second Probation Supervisor position in the 2020 budget has provided for greater oversight of individual probation cases since the Supervisor to Probation Officer ratio has decreased.
- Trainings on financial matters were held in 2019 and 2020 for staff new to positions and financial processes. These trainings enabled staff members to address and correct cited areas of concern, completing the designated tasks.
- Since November 2020 the Probation Department has contracted with our probation software company to provide a hosting service for this department. Among the benefits of this service is our enhanced ability to consult with the company on accounting software questions.

Audit Response Letter – Chenango County Probation Department – page 2 of 2

If you have any questions, please do not hesitate to call me 607-337-1733.

Sincerely,

Kristin M. Snow

Director, Chenango County Probation Department

Approved by:

George Seneck

Chairman, Chenango County Board of Supervisors

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 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 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 20 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 20 restitution cases, we reviewed the last payment made by the probationers to determine if and when the Department notified the court for noncompliance with court-ordered restitution payments. 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 June 2019 restitution bank statement and reconciliation and other Department records, to determine the total amount of undisbursed restitution available to disburse to unsatisfied restitution orders.
- We reviewed a sample of six 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 undisbursed restitution. The six outstanding checks were selected based on high dollar amounts.

- 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 reported by the Department could be paid from the available undisbursed restitution balance.
- We determined the last time the Department made a payment of unclaimed restitution.
- 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 victim location, 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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