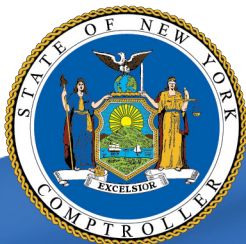


Franklin County Probation Department

Restitution Payments

DECEMBER 2021



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

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Report Highlights

Franklin County Probation Department

Audit Objective

Determine whether the Franklin 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 promptly and 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.
- 16 of the 30 restitution orders we reviewed had uncollected restitution totaling \$19,453.
- Officials did not always make reasonable efforts to locate victims promptly.
- None of the 26 outstanding checks totaling \$2,918 were properly followed up on.

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

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

Background

The County is located in the North Country Region of New York. The County is governed by the County Legislature (Legislature) which is composed of seven members, one of whom serves as the Chairman.

The Chairman also serves as the Chief Executive Officer, but the County's day-to-day administration is the County Manager's responsibility. 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	\$209,361
Disbursements	\$217,354
Orders with Probation Supervision	326

Audit Period

January 1, 2018 – June 30, 2019. We extended our scope back to August 2017 to determine the last time the Department made undisbursed restitution payments.

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 Policy and Procedures document (Policy) indicates that probation officers are to monitor restitution payments through the accounting system and if a restitution case falls into arrears as a consequence of non-payment, the Department may seek available remedies including, but not limited to: denying travel permits, re-classifying probationers as higher risk, or making changes to reporting schedules in an effort to prompt compliance.

The Policy also states that when a criminal court probation case is approaching the maximum expiration date and a restitution balance remains, the Department will strive to notify the sentencing court at least one month prior to the maximum expiration date. Further, the Department may pursue a violation of probation (court notification) at any stage as deemed appropriate but typically do not file

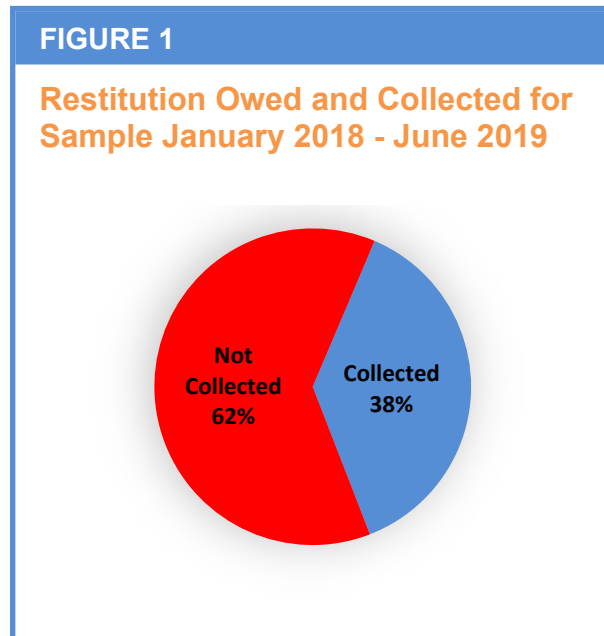
based exclusively on a failure to pay restitution unless such is deemed willful. The Policy does not require the Department to send warning letters to probationers when they are delinquent in paying.

The Department had 326 restitution orders (cases) with probation supervision during our audit period. We reviewed 30 restitution cases totaling \$61,192 to determine whether the Department enforced the collection of restitution. During our audit period, Department officials should have collected \$31,238 from probationers for these cases, including \$14,264 in prior period arrears (restitution payments outstanding at the commencement of our audit period). However, only \$11,785 was collected while \$19,453 remained

outstanding (Figure 1). Specifically, 16 cases were in arrears \$19,453, and 14 cases were in compliance with the restitution order terms.

The court established monthly payment requirements for three cases and ordered the Department to determine a schedule of payments for 27 cases. Because the Department established monthly payment requirements for these 27 cases in accordance with court orders, our audit assumed the validity of those payment schedules and the Department's authority to enforce such schedules. The Department considered missed monthly payments to be in arrears as they would be had the court established the payment schedule itself. Therefore, we reviewed all 30 cases to determine if the Department notified the court when probationers were not in compliance with the payment schedules set by the court or the Department pursuant to court orders.

The Department did not notify the court specifically due to non-payment of restitution for any of the 16 cases in arrears. The Director told us they do not typically notify the court solely for non-payment of restitution. However, if the Department notifies the court for non-compliance with other conditions of probation, it will include information regarding non-payment of restitution. No written notices were provided to the probationers warning that noncompliance with their payment schedule could result in court notification. The Department notified the court for non-payment as a secondary reason in six of the 16 cases in



arrears (\$379 in arrears). For the other 10 cases in arrears, we reviewed the last payment to determine how many days had elapsed without court notification. We found:

- Six cases each made partial payments. Three made payments in June 2019 but were in arrears due to prior missed or incomplete payments and three were delinquent 29 to 90 days in making payments at the end of the audit period.
- Four cases had no payments made in the audit period. For three, 21 to 60 days elapsed and for one the court revoked probation when the case was 460 days delinquent. Case notes explained a court notification was pending, but Department officials did not have documentation to support the court was notified or when. None of these four cases required court notification due to approaching the maximum expiration date.

Probation officers sometimes took additional actions to encourage probationers to pay their financial obligations. For the 16 cases in arrears, probation officers documented conversations with 12 probationers regarding their overdue restitution payments (an average of seven conversations per case). There was no support for conversations, if any occurred, documented for the other four cases. Additionally, five of the 16 cases in arrears had other actions taken to encourage payment of restitution. Of these five cases, case notes showed that four had travel denied, one of which also included an administrative reprimand (a documented meeting with the probationer, a probation supervisor and a probation officer regarding non-compliance with restitution). One other case had an administrative reprimand. The other 11 cases had no such actions documented.

The Director told us that the Policy states the Department may notify the court or take other actions to gain compliance, but does not require it, so that they can treat each case individually on a case-by-case basis. As a result, probation officers' actions were often 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 states that disbursements shall be made once a month. If a check remains uncashed for 60 days, a letter should be sent to inform the payee that the Department will stop payment on the check after 90 days and that a new check will not be reissued until the original check is returned or the Department receives communication from the payee. The Policy provides several means for locating victims including, but not limited to, reviewing the client's file, conducting an Internet search and contacting the United States Postal Service (USPS), the District Attorney's office and/or the court. However, the Policy is not clear regarding when victim location

efforts should occur or when unclaimed funds are to be transferred to the Unfound Victims Account (undisbursed restitution account) at the County Treasurer's Office.

The Policy requires the Administrative Aide (or Principal Clerk, if the Administrative Aide is unavailable) to reconcile all accounts at least once a month and Department management to ensure monthly bank reconciliations are being performed timely and accurately.

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 in accordance with the Policy, for our sample of 30 cases, we reviewed the last restitution payment made by the probationer and determined when it was disbursed to the victim. During our audit period, the last collections received for 23 of the 30 cases totaled \$2,605, with no collections received for the remaining seven cases. The Administrative Aide made 22 payments totaling \$2,365 to the victims on average 14 days after payment was received. One other payment for \$240 was disbursed 37 days after it was received. In this instance, a previous payment sent to the victim remained uncashed. The Department held the \$240 payment until victim location efforts were performed and contact was made with the victim.

We also reviewed the June 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 outstanding checks totaling \$2,918 that were over a year old. Overall, although a significant amount of time had elapsed, the Department made minimal to no attempts to locate victims who were no longer at the address on record. While the Policy is unclear on who is responsible for contacting victims with outstanding checks, the Principal Clerk was performing these duties. We reviewed Department records for nine outstanding checks, totaling \$2,428, which were between one and more than two and half years old to learn what efforts were made to locate the victims and issue new checks for the payments. We found:

- For eight checks totaling \$2,319 that averaged 719 days old, letters were not sent to victims, and additional victim location efforts were not performed.
- For one check for \$109, the Principal Clerk began efforts to locate a valid address for the victim and sent them a letter 14 days after the initial check was issued. However, no response was received, and no additional location efforts were documented.

While the Policy indicates methods that can be used to try to locate victims, it does not provide clear guidance for when efforts should occur. The Principal

The Department did not appropriately follow up on 26 outstanding checks totaling \$2,918 that were over a year old.

Clerk told us that when he has time, he uses a software program which searches, among other databases, the USPS and the New York State Department of Motor Vehicles (DMV) to try to find current addresses for the victims. If he finds an updated address, he sends the payment to the victim. Additionally, the Director and the Principal Clerk told us that the Department was short staffed during the audit period and was not able to send letters to the victims with outstanding checks or perform victim searches.

While the Director told us she reviews monthly bank reconciliations, we determined that the report the Director reviews is not an actual reconciliation. Rather this report lists which bank deposits and checks cleared the bank that month. The report does not identify deposits in transit or outstanding checks. The Director acknowledged the Department was not reconciling the book balance to the bank balance and that she was unaware how long checks were outstanding. As a result of unclear guidance and a lack of monitoring and oversight, some victims are not receiving payments to which they are entitled or are experiencing significant delays. In addition, because bank reconciliations are not performed, the Director cannot be assured that all money is accounted for.

How Should Undisbursed Restitution Payments Be Administered?

Undisbursed restitution payments (undisbursed restitution) is defined in law as those payments that were remitted by a defendant but not paid to the intended victim and remain unclaimed for a year, and the location of the intended victim cannot be found after using reasonable efforts. A list of unsatisfied restitution orders must be maintained in order to determine which victims' restitution orders have gone unsatisfied for the longest period of time to make payments from undisbursed restitution. Unsatisfied restitution orders are defined to mean that the last scheduled payment is at least 60 calendar days overdue. If undisbursed restitution payments have gone unclaimed for a 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.

As previously mentioned, the Policy is not clear regarding when victim location efforts should occur or when unclaimed funds are to be transferred to the undisbursed restitution account. However, the Policy properly defines

As a result of unclear guidance and a lack of monitoring and oversight, some victims are not receiving payments to which they are entitled or are experiencing significant delays.

undisbursed restitution and requires undisbursed restitution to be transferred to the undisbursed restitution account. The Policy indicates that after funds are transferred to the account, the Department will make efforts to locate these victims and if there are other individual victims in the account, the money can be redistributed to those victims. The Policy also requires the Administrative Aide to “maintain a list of the oldest active victims.” The Department is to use that list to determine which individual victim has remained unsatisfied for the longest period of time. The Policy states that those individuals are to be paid first and after all individuals are paid, the Department may make undisbursed restitution payments to the second priority accounts. The Policy states that disbursements shall be made to victims in the following priority: individual victims, small locally owned businesses, large/franchised businesses, public agencies and insurance companies. The Policy also states that in any case where a victim who was not reimbursed due to the Department’s inability to locate them, comes forward or is located, and the money was transferred to the undisbursed restitution account, that victim will be considered the highest priority for payment of undisbursed restitution for that year.

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. We reviewed the Department’s bank statement and other records and identified \$2,918 for 26 returned or uncashed victim checks outstanding more than a year that should be used to satisfy unsatisfied restitution orders.

The Department is able to identify unsatisfied restitution orders by age from the software program it uses to administer restitution. According to the Department’s records, it could potentially disburse funds to four of the oldest unpaid orders, all of whom were individual victims, fully paying the three oldest orders and partially paying the fourth oldest order.

The Principal Clerk provided documentation showing the last payment made from undisbursed restitution was in August 2017 for \$1,028. The Director told us that no payments were made during our audit period due to being short staffed and having to train new staff. The Director also told us that due to the staffing issues, the necessary victim searches have not been performed and amounts have not been transferred to the undisbursed restitution account, both of which would need to be done prior to making a payment from the undisbursed restitution account. However, it does not appear reasonable that no Department personnel had time to perform victim location efforts for a period of approximately 22 months. As a result, victims are not receiving payments to which they are entitled.

Officials Did Not Maintain Undisbursed Restitution Records

The Department did not maintain undisbursed restitution records and was unaware of how much undisbursed restitution it had available to pay unsatisfied restitution orders. According to the Principal Clerk, when he searches for victims with unclaimed restitution amounts outstanding more than a year and cannot locate them, the unclaimed amounts will be considered undisbursed restitution. He then transfers these funds to the Treasurer's office along with a list of victims with the oldest unsatisfied restitution orders and the amounts the Treasurer's office is to send each of them. There were no transfers of undisbursed restitution during our audit period. The Department did not track undisbursed restitution, including which probationers made the payments and when, who the intended victims were, and when the original payments were made to these victims. The failure to maintain adequate records increases the risk of theft and misuse of collections.

What Do We Recommend?

The Director should:

1. Develop clear written policies and procedures for enforcing and disbursing restitution that convey management's expectations to ensure the program is operating effectively, including:
 - Establishing timeframes for sending court notifications,
 - Developing timeframes for following up on outstanding checks and unprocessed payments,
 - Maintaining complete records, and
 - Identifying the individuals responsible for each of the various steps.
2. Enforce and monitor restitution according to court orders.
3. Make reasonable efforts to locate victims, issue payments to the victims who can be located and transfer unclaimed money to undisbursed restitution when appropriate.
4. Make payments from undisbursed restitution to the crime victims whose restitution orders have remained unsatisfied for the longest amount of time.
5. Provide meaningful oversight to ensure the program is operating effectively, which should include actions such as performing bank reconciliations, following up on outstanding checks and making payments from undisbursed restitution.
6. Ensure undisbursed restitution records are maintained and the balance is supported to show 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



Jonathan E. Sanger
Probation Director

County of Franklin
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June 30, 2021

Jane Landcastle, Chief Examiner
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Binghamton, NY 13901-4417

Re: Franklin County Audit

Chief Examiner Landcastle,

The Franklin County Probation Department acknowledges receipt of the audit findings from the audit conducted in 2020 by your office. We do not dispute the findings and are presently working on a corrective action plan to address the key recommendations which we will provide at the required time.

It is the hope of this Department that the ongoing global audit will result in more detailed directives from State authorities on how Departments across the State should 'enforce' restitution orders to make victims whole.

Very truly yours,

Jonathan E. Sanger
Probation Director

Don Dabiew
Chairman Franklin County Legislature

Donna Kissane
County Manager

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 extended our scope period back to August 2017 to determine when Department staff last made payment of undisbursed restitution.
- We interviewed Department staff to gain an understanding of the financial operations and existing internal controls related to collecting, disbursing and enforcing court-ordered restitution.
- We reviewed relevant State laws, rules, and regulations. We also requested from officials all Department policies and procedures applicable to collecting, disbursing and enforcing court-ordered restitution and reviewed what was provided.
- We interviewed Department officials to gain an understanding of the Department's computer systems used for monitoring, collecting, recording and disbursing restitution funds and we compared employees' user access to the computer systems to their job duties.
- We determined the total amount of restitution collected and disbursed during our audit period by obtaining and reviewing a report that showed cash receipts and disbursements related to all court-ordered restitution during our scope period.
- Using a random number generator, we selected a sample of 30 restitution cases from the Department's reports showing all new, open and closed court cases that involved restitution during our audit period to determine whether payments are made promptly and appropriately, and how the Department monitors the restitution cases.
- For the same sample of 30 restitution cases, we reviewed payments made by the probationers to determine if/when the Department notified the court for non-payment of restitution. If a payment was not made by a probationer during our audit period, we used the first payment due date.
- We reviewed the June 2019 bank statement and outstanding check list for the restitution bank account, which included any unclaimed restitution payments aged more than a year, to determine the age and potential amount available to disburse to unsatisfied restitution orders.

-
- We reviewed a sample of nine outstanding checks aged over a year to determine if the Department was attempting to locate the intended victims of these payments, and what those efforts included. If the victim was located, we determined if a new check was issued and if the victims could not be located, whether the money was appropriately moved to the undisbursed restitution. The nine 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.
 - 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 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

Contact

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