

Jefferson 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

Jefferson County Probation Department

Audit Objective

Determine whether the Jefferson 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 or notify the court when a probationer violated the court order. As a result, some victims may not receive the payments to which they are entitled.

- Officials did not establish adequate policies and procedures to enforce and monitor restitution obligations.
- The Department retained \$18,589 in restitution that could have been used to pay victims with unsatisfied orders: some of the money was collected between seven and 27 years ago.
- The Department cannot account for \$1,879 that was deposited in the restitution account.

In addition, officials did not maintain an accurate list of unsatisfied restitution orders, 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 agreed with our recommendations and indicated they will take corrective action. Appendix B includes our comment to the County's response.

Background

The County is located in northern New York, in the North Country Region. The County is governed by a Board of Legislators (Board), which is composed of 15 elected members, one of whom serves as the Chairman.

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 County Administrator, who is appointed by the Board. The County Treasurer is the Chief Fiscal Officer and manages the County's financial affairs.

A Probation Director (Director) oversees and manages the Department.

Restitution Quick Facts

For the Audit Period:

Collections	\$186,877
Disbursements	\$186,690
Orders with Probation Supervision	315

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 has not established policies or procedures to guide probation officers with enforcing and monitoring restitution obligations, including if and when the court should be notified for non-payment of restitution, and if and when written warning notices should be sent requesting payment when probationers are delinquent with their court-ordered restitution payments and advising such probationers of potential court notification.

The Department had 315 restitution orders (cases) with probation supervision during our audit period. We reviewed 29 restitution cases totaling \$51,518 to determine whether the Department adequately enforced the collection of restitution. Payment terms were set by the courts or Department for nine cases. The court did not specify payment terms for the remaining 20 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 collected \$6,768 of the total \$6,992¹ due from probationers for the nine cases with set payment terms, with \$224 for two cases remaining outstanding. Specifically, two cases were in arrears \$224 and the required payments for seven cases were in compliance with the restitution order terms.

For the 29 cases in our sample, two required full payment at the end of the probation term, seven required monthly payments, and 20 did not have set payment terms. For the two cases that required full payment by the end of the probation term, one was not yet due, but was partially paid, and payment was made in full for the other case.

The 20 cases that did not have set payment terms had total restitution orders of \$33,934. While \$5,643 was collected from seven cases (17 percent) during the audit period, 13 made no payments during our audit period. However, these cases were not in arrears because payment terms were not set.

Probation officers often took informal actions to encourage probationers to pay their financial obligations. For the two cases with payments in arrears, probation officers documented in both instances having conversations with probationers regarding their restitution order (an average of 11 conversations per case). However, probation officers did not send written notices to the probationers for missed payments or notify the court. While the Department collected partial payments in April and May 2019 for one of the cases that was required to start making payments in March 2019, it was unable to collect any payment for the other case for a year and did not notify the court.

The Director told us that they do not send written notices to probationers for nonpayment. Sending written notices to probationers for nonpayment of restitution and advising such probationers of potential court notification may encourage probationers to pay. The Director also told us they do not notify the court every time a scheduled payment is missed, or on a defined or periodic basis. Rather, court notification is made when the probation officers and probation supervisors deem it necessary. By not establishing specific guidelines for when the court should be notified for nonpayment of restitution, probation officers' actions may be inconsistent.

¹ Including \$1,614 in prior period arrears (restitution payments outstanding at the commencement of our audit period).

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.

Officials Disbursed Current Restitution Payments

To determine when payments were made to victims, for our sample of 29 cases, we reviewed the last restitution payment made by each probationer and determined when it was disbursed to the victim. During our audit period, the last collections received for 16 of the 29 cases totaled \$6,200, with no collections received for the remaining 13 cases. The Department made 16 payments totaling \$6,200 to the victims on average 22 days after payment was received.

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 have any outstanding checks more than a year old that should have been followed up on or transferred to the undisbursed restitution account.

How Should Undisbursed Restitution Payments Be Administered?

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

Written procedures must be established for how undisbursed restitution payments will be disbursed, and should include: timeframes for actions, identify the individuals responsible for each of the various steps, the types and the number of victim searches that should be conducted prior to transferring unclaimed money (e.g., unprocessed and outstanding checks) to the undisbursed restitution account and the records to be maintained. Money may be disbursed based upon month or year of the unsatisfied order, and a local director shall provide for a mechanism whereby victims receive a proportion or fixed amount of undisbursed restitution.

The Department’s written policy for handling unclaimed restitution does not define when “unclaimed restitution payments” should be transferred to the Department’s Interest and Undisbursed Payments (IUP) Account. The Department’s policy requires that reasonable efforts be made to locate the intended beneficiary including notice by mail to the address on record and contact with the United States Postal Service or telephone information service for a possible forwarding address or new telephone listing. The policy directs that the funds remain in the account for a year prior to being used to pay unsatisfied restitution orders other than the intended beneficiary. If the intended beneficiary cannot be located, the policy states the Department may distribute the funds to verified victims from their unsatisfied restitution order list.

In addition, the Department’s written policy requires that it maintain a chronological list of unsatisfied restitution orders and distribute undisbursed restitution to victims with the oldest unsatisfied restitution orders after confirming the identity of the victim and that they have not received restitution from other sources.

Officials Did Not Maintain an Accurate List of Unsatisfied Restitution Orders

The Principal Clerk was able to provide a list of unsatisfied restitution orders. However, the Principal Clerk told us that once probation supervision ends, she changes the restitution order dates to the date the cases were closed. Therefore, she is unable to determine which unsatisfied restitution order is the oldest. The Director told us she was unaware that the restitution orders no longer under probation supervision did not have the restitution order date recorded.

Officials Did Not Distribute Undisbursed Restitution Payments to Unsatisfied Orders

We reviewed Department records to determine the amount of undisbursed restitution the Department has available to pay victims with unsatisfied restitution orders. We found the Principal Clerk maintains undisbursed restitution tracking sheets that indicate the Department has \$16,710 of undisbursed restitution, of which the total amount was over a year old. This money could be used to pay unsatisfied restitution orders to other than the original intended beneficiaries, if reasonable efforts had already been made to locate the intended beneficiaries.

In addition, our review of the Department’s bank reconciliation, corresponding bank statement and restitution payment information, indicated the Department has an additional \$1,879 in the bank account for which the source is unknown. Therefore, the Department potentially has \$18,589 of undisbursed restitution payments that should be used to pay unsatisfied restitution orders.

...[T]he Department potentially has \$18,589 of undisbursed restitution payments that should be used to pay unsatisfied restitution orders.

We reviewed a sample of undisbursed restitution amounts the Department designated as undisbursed restitution to determine what efforts were made during our audit period to locate the intended victims for payment and if the undisbursed restitution was paid to them.

We reviewed 10 undisbursed restitution amounts totaling \$4,961. We found:

- The Principal Clerk documented the results of searches performed for nine of the 10 amounts totaling \$3,614 that were between seven and 27 years old. However, search dates were not always recorded and the \$3,614 remained unpaid.
 - For five, letters were sent to updated addresses (January 29 through April 4, 2019) in attempt to locate the victim and confirm they were owed restitution. However, no responses were received.
 - For four, the search notes were not dated but showed the victims were deceased. Three included notes indicating there were no estates to make payments to. However, the other one did not.
- For one amount of \$1,347 that was over six years old, there were no notes indicating any efforts were performed during our audit period to locate the victim and the money remained undisbursed.

The Principal Clerk told us that she periodically uses a software program that searches various databases to find a current location for victims. If she finds an updated address, she will send a confirmation letter to determine if the intended victim is at that address. If an affirmative confirmation letter is returned, she will send payments to the victim at the confirmed address. The Director and Principal Clerk were unsure why the one amount designated as undisbursed restitution did not appear to have a victim location search performed.

The Department did not make any payments to victims with unsatisfied restitution orders, during our audit period, unless they were able to find the original intended beneficiary. However, because all the funds were designated as undisbursed restitution for over a year, once reasonable efforts to locate the original intended victim were determined to be unsuccessful, the Department should have attempted to locate and pay other victims whose restitution orders have gone unsatisfied for the longest period of time. The Director and Principal Clerk told us that the undisbursed restitution tracking sheets were inherited processes from previous Department employees and that they were attempting to locate the intended beneficiaries for whom restitution payments had been remitted. As a result, victims other than the intended beneficiaries are not receiving payments to which they are entitled.

Officials Did Not Maintain Sufficient Undisbursed Restitution Records

The Principal Clerk tracks undisbursed restitution payments using two spreadsheets - one spreadsheet tracks undisbursed restitution prior to a change in software and the other tracks undisbursed restitution after the change in software. However, Department officials were unable to provide support for the \$1,879 unaccounted for in the bank account. As a result of insufficient and unsupported records, Department officials cannot be sure whether this amount actually pertains to undisbursed restitution payments, if the undisbursed restitution amount is accurate, which probationers made these payments and how long the money has been idle. 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 collecting and enforcing restitution and processing undisbursed restitution that convey management's expectations to ensure the program is operating effectively, including:
 - Establishing timeframes for sending late payment and court notifications,
 - Maintaining complete records,
 - Maintaining a chronological list of unsatisfied restitution orders,
 - Developing procedures, with timeframes for handling undisbursed restitution money, 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 in establishing a complete list of unsatisfied restitution orders and making undisbursed restitution payments for these orders, then update the unsatisfied restitution order list.
3. Contact the New York State Office of Probation and Correctional Alternatives for guidance when orders lack set payment terms.
4. Make reasonable efforts to locate all victims with undisbursed restitution payments.
5. Make payments from the undisbursed restitution account to the crime victims whose restitution orders have remained unsatisfied for the longest amount of time.

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6. Provide meaningful oversight to ensure the program is operating effectively, which should include actions such as critical reviews of bank reconciliations and maintaining unsatisfied restitution order records.
 7. Ensure the undisbursed restitution tracking sheets include all amounts and dates for when payments were received, including if any payments are made from undisbursed restitution.

Appendix A: Response From County Officials

County of Jefferson Board of Legislators

Scott A. Gray
Chairman of the Board
Legislator, District 13

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Historic Courthouse
195 Arsenal Street, 2nd Floor
Watertown, NY 13601
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Email: scottg@co.jefferson.ny.us

Date: June 25, 2021

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

Dear Chief Examiner Landcastle,

Jefferson County is in receipt of the draft Report of Examination S9-20-10 of the County Probation Department's Restitution Payments audit. We agree with the findings in the report. Since auditors were on site in January and February of 2020, a number of recommended actions have been taken in response.

Audit Recommendation 1:

Develop adequate written policies and procedures for collecting and enforcing restitution and processing undisbursed restitution that convey management's expectations to ensure the program is operating effectively.

Action taken:

- Effective 9/1/20 (and updated 6/18/21 subsequent to phone conference), the new Probation Department policy makes the Probation Officer and Probation Supervisor responsible to notify the court seeking further guidance in the event that:
 - There have been three consecutive months of missed payments on a case;
 - A case is within 60 days of maximum expiration and there is outstanding restitution.
- All records are to be maintained exclusively in Caseload Explorer, by the Senior Secretary and supervised by the Probation Director.
- Unsatisfied restitution orders are now maintained chronologically, by the Senior Secretary and supervised by the Probation Director.
- New procedures are in place with timeframes for the distribution of undisbursed restitution:
 - If after 6 months and at least 5 attempts the victim cannot be located, these payments become undisbursed funds;
 - At this point, these funds will be used to pay an earlier victim who has not been satisfied by their payee and who has remained unsatisfied for the longest amount of time.
- All records will be maintained by the Senior Secretary and supervised by the Probation Director.

See
Note 1
Page 12

Audit Recommendation 2:

Contact NYSOPCA 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.

Action taken:

- A complete list of unsatisfied restitution orders will be maintained electronically in Probation Department. Should a situation arise where guidance is needed, NYSOPCA will be contacted for guidance.

Audit Recommendation 3:

Contact NYSOPCA for guidance when orders lack set payment terms.

Action taken:

- Following the onsite audit, the Probation Director conferred with Jefferson County Court Judge David Renzi to discuss this issue. As a result, all matters involving restitution will have terms of payment included on the County Court Order and Conditions of Probation at the time of case assignment. Should an order lack proper restitution payment terms, the Probation Department will contact the sentencing court upon receipt of the order, and request a clarification on payment terms.

Audit Recommendation 4:

Make reasonable efforts to locate all victims with undisbursed restitution payments.

Action taken:

- The new departmental restitution policy specifies at least 5 attempts to contact the victim over a 6 month period of time. Resources used to locate the victim will include, but are not limited to: social media, search engines, CLEAR, Jefferson County Land Records, US Post Office forwarding addresses, etc.

See Note 1 Page 12

Audit Recommendation 5:

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

Action taken:

- After 6 months and at least 5 attempts to locate, undisbursed funds will be used to pay the victim who has remained unsatisfied for the longest amount of time.

See Note 1 Page 12

Audit Recommendation 6:

Provide meaningful oversight to ensure the program is operating effectively, which should include actions such as critical reviews of bank reconciliations and maintaining unsatisfied restitution order records.

Action taken:

- The bank reconciliation is completed by the clerical staff monthly, and reviewed by the Director.
- With regard to unsatisfied restitution order records, those records will be maintained electronically by clerical staff and overseen by the Director.

Audit Recommendation 7:

Ensure the undisbursed restitution tracking sheets include all amounts and dates for when payments were received, including if any payments are made from undisbursed restitution.

Action taken:

- The Jefferson County Probation Department is currently in the process of obtaining education and training regarding the transfer of funds between victims. Once training has been completed, staff will ensure that the undisbursed restitution sheets are used to properly identify the oldest unsatisfied victims first.

Sincerely,

Scott A. Gray

Chairman of the Board

cc: Michael Montigelli, Finance & Rules Chair
Kristine Maloney, Probation Director
Robert Hagemann, County Administrator

Appendix B: OSC Comment on the County's Response

Note 1

By law, efforts to locate the intended victim must occur prior to unclaimed restitution being designated as undisbursed restitution payments. The law defines undisbursed restitution payments as those payments remitted by a defendant but not disbursed to the intended victim, which are unclaimed for a year and the location of the intended victim cannot be found after using reasonable efforts. Once such funds are designated as undisbursed restitution payments, they must be used to pay restitution orders that have remained unsatisfied for the longest period of time. Continuing to search for intended victims once the funds constitute undisbursed restitution payments runs contrary to the law, because funds cannot legally be designated as undisbursed restitution payments until reasonable efforts have already been taken to locate intended victims. Furthermore, undisbursed restitution payments must be designated for the payment of restitution orders that have remained unsatisfied for the longest period of time, not the original victim.

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 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 the documentation 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 29 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 29 restitution cases, we reviewed the last payment made by the probationers to determine whether the Department took the appropriate monitoring actions based on their policies and procedures for court notification.
- We reviewed the Department's May 2019 bank statements and reconciliations for restitution, which included unclaimed restitution payments aged more than a year, to determine the age and potential amount available to disburse to unsatisfied restitution orders. We also reviewed associated documents to verify the reconciliation was supported.

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- We reviewed the Department's two undistributed restitution lists and selected 10 undistributed restitution amounts, on a non-biased, judgmental basis, to determine if the Department was attempting to locate the intended victims for payment and what those efforts included.
 - We obtained and reviewed reports 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 policies and procedures, we determined if the Department had written procedures regarding the processing and disbursing of unclaimed restitution, and whether Department staff was following the procedures for disbursing unclaimed restitution.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Legislature 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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