

Putnam 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

Putnam County Probation Department

Audit Objective

Determine whether the Putnam 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, 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 and the limited policies that were in place were not followed.
- Five of the 11 restitution orders reviewed had uncollected payments totaling \$15,149.
- 10 outstanding checks totaling \$642 were not properly followed up on and officials did not make reasonable efforts to locate victims with uncashed checks promptly.

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

Key Recommendations

- Establish adequate written 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 eastern New York, in the Mid-Hudson Region. The County is governed by the County Legislature (Legislature), which is composed of nine elected Legislators.

The County Executive is the Chief Executive Officer and is responsible for oversight of County operations. The Commissioner of Finance is the County's Chief Fiscal Officer and manages the County's financial affairs.

An appointed Probation Director (Director) oversees and manages the Department.

Restitution Quick Facts

For the Audit Period:

Collections	\$117,795
Disbursements	\$140,188
Orders with Probation Supervision	127

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.

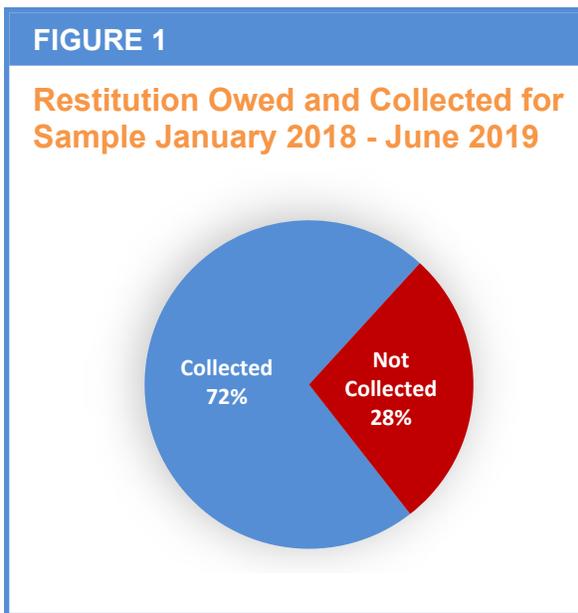
Officials Did Not Adequately Enforce Restitution Collections

While the Department's Restitution Policy (Policy) states that the probation officer supervising a probationer is ultimately responsible to enforce restitution orders as per standard operating procedures, specifically, misconduct reports, violation of probation reports and modification appearances before the court, the Policy does not define timeframes for such actions including when to send notifications to the court. In addition, the Policy states that the Account Clerk must report all delinquent accounts to the supervisor every six months and the supervisor must institute appropriate action but the Policy does not require a probation officer to send warning letters to probationers requesting payment when probationers are delinquent with their court-ordered restitution payments.

The Department had 127 restitution orders (cases) with probation supervision during our audit period. We reviewed 11 cases totaling \$200,058 to determine whether the Department adequately enforced the collection of restitution. During our audit period, Department officials should have collected \$54,756 from probationers for these cases, including \$33,399 in prior period arrears (restitution payments outstanding at the commencement of our audit period). However, while \$39,607 was collected, \$15,149 remained outstanding (Figure 1). Specifically, five cases were in arrears \$15,149, five other cases were paid as required, and one case did not have payments due during our audit period.

We reviewed the last payment made by each probationer during our audit period to determine if the Department notified the court when payments were not made timely. Of the five cases in arrears, one was delinquent on restitution payment for 302 days; however, the Department did not issue a court notification for the delinquency. The Probation Supervisor told us they did not notify the court because the probationer was in a special program with additional court monitoring, and it was their practice to not issue court notifications for probationers in this program. Of the remaining four cases, one was 60 days delinquent and the court was not notified. Two made payments more frequently than monthly throughout the audit period and although they were still in arrears, the Department did not consider them delinquent or notify the court. The court was notified of one case prior to our audit period because the probationer absconded.

The Director told us that if nonpayment of restitution becomes a pattern or is willful, the probation officer brings it to the attention of the Probation Supervisor. The Probation Supervisor can advise the probation officer to notify the court. However, the Probation Supervisor may meet with the probationer informally to try to correct the deficiency. He told us that he meets with the probationers and probation officer to discuss the consequences of not paying restitution and that if the probationer shows willful and blatant disregard for making payment, the court would be notified.



Two probation officers told us that the supervisors review quarterly notices for each probationer in arrears and then, give the notices to them to provide to the probationers. A supervisor we interviewed provided us with an example of an arrears notice. However, copies of such notices are not retained so we could not determine if they were generated and provided to the supervisors for every probationer in arrears as is required by the Department's Policy.

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 will be disbursed once per month. The Policy further specifies that the Account Clerk will, in six month intervals, issue stop payment orders on all outdated checks and at least three attempts shall be made to locate the respective victims, including issuing letters, making phone calls and receiving updated victim addresses from probation officers.

Officials Disbursed Restitution Payments but Did Not Document if Efforts Were Made To Locate Victims With Uncashed Checks

To determine whether payments were made to victims in accordance with the Policy, for our sample of 11 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 Department received collections for eight of the 11 orders, with no collections received for the remaining three orders. The Account Clerk made eight payments totaling \$7,858 to the victims timely and in accordance with Policy terms. It took the Department on average 15 days to issue and send out checks after receiving payments from probationers, with a range in time elapsed between payment and disbursement to the victim between seven to 30 days.

We also reviewed the March 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 10 outstanding checks totaling \$642 that were between one and over seven years old.

We reviewed the Department's records to learn what efforts were made to locate the victims of uncashed checks in order to issue new checks for the payments. For all 10 checks totaling \$642 that averaged 1,237 days old, there was no documentation to support actions, if any, taken to locate victims nor were new checks issued. The Account Clerk told us that she attempts to contact victims who are owed restitution by performing searches for current addresses, sending letters and calling victims but she did not retain documentation of these efforts. Overall, although a significant amount of time had elapsed, the Department did not have

The Department did not appropriately follow up on 10 outstanding checks totaling \$642....

documentation to support reasonable attempts were made to locate victims with uncashed checks.

If the Department could not locate the victims after using reasonable efforts, because the payments were already unclaimed for at least one year, it should have transferred the money to the undisbursed restitution account. By not maintaining adequate records of the outcomes of victim location efforts, searches for the victims' addresses will have to be performed again.

The Director told us he reviews the monthly bank reconciliations and monthly transactions, but that he was unaware of the outstanding checks. Because there was inadequate monitoring and oversight by the Director, 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 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 Policy states if the Department is unable to locate a victim for more than one year, the undisbursed restitution money is to be transferred to the undisbursed restitution ledger. The money and accumulated interest is to be disbursed to victims with the oldest unsatisfied orders at the rate of 25 percent of the total amount owed or \$250, whichever comes first.

Because there was inadequate monitoring and oversight by the Director, some victims are not receiving payments to which they are entitled or are experiencing significant delays.

Officials Did Not Distribute Undisbursed Restitution Payments to Unsatisfied Orders

We reviewed Department records to determine the amount of undisbursed restitution the County had available to pay victims with unsatisfied restitution orders. The Department's March 2019 reconciliation identified \$2,751 as undisbursed restitution. However, as previously discussed, we identified \$642 for 10 uncashed checks outstanding more than a year. Therefore, the Department potentially has \$3,393 of undisbursed restitution payments 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 19 of the oldest unpaid orders for a total of \$3,295, in accordance with its Policy.

The Account Clerk told us she did not know the last time the Department had made payments from undisbursed restitution. Additionally, she had not moved funds for victims she could not locate because she was unaware of the procedure to move the funds to the undisbursed restitution account. The Director told us that he reviews the bank reconciliations, but that he was unaware that the account was not being used to pay unsatisfied restitution orders. Due to the Director's lack of monitoring and oversight, victims may not receive the payments to which they are entitled.

Officials Did Not Maintain Undisbursed Restitution Records

The Department did not maintain records for what comprises their undisbursed restitution bank balance of \$2,751. The Director told us he was unaware that the account was not being used to pay unsatisfied restitution orders. Because records were not maintained, 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 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 delinquency warning letters to probationers and notifications to the court,

...[T]he Department potentially has \$3,393 of undisbursed restitution payments....

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- Transferring funds to the undisbursed restitution account,
 - Maintaining sufficient undisbursed restitution account records, and
 - Making payments from the undisbursed restitution account.
2. Enforce and monitor restitution according to court orders, and the Department's policies and procedures including sending written notifications to the court when probationers do not make required restitution payments.
 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. Make payments from the undisbursed restitution account 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 critical reviews of bank reconciliations and unsatisfied restitution order records.
 6. 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

GENE J. FUNICELLI
Director



JOHN F. OSTERHOUT II
Probation Supervisor

RANDY M. AMOS
Probation Supervisor

DEPARTMENT OF PROBATION

June 16, 2021

Julie Landcastle, Chief Examiner

Statewide Audit
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Binghamton, NY 13901-4417

Dear Ms. Landcastle,

We are writing in response to your office's Draft Report of Examination- S9-20-2, Putnam County Probation Department, Restitution Payments, which we received on May 24, 2021.

After a careful review of your report, we substantially accept your findings and recommendations. We believe that the key action necessary to improve this department's restitution collection and disbursement is to update our current policy regarding this function, including a clear delineation of responsibilities, time frames, record keeping, and oversight of all activities related to this function. This updated policy will specify the graduated steps we believe are appropriate when dealing with delinquent payments by probationers. Please know that we have already begun to address one issue cited in your report, namely the proper management of undisbursed restitution payments. Our goal is to develop and implement a policy and procedure that maximizes the delivery of restitution payments to victims in an efficient and timely manner.

Yours truly,

Gene J. Funicelli
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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 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 11 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 11 restitution cases, 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 sending 90-day court notifications. If a payment was not made by a probationer during our audit period, we used the first payment due date.
- We reviewed the March 2019 bank statement and reconciliation 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 also reviewed associated documents to verify the reconciliation was supported.

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- We reviewed all 10 outstanding checks dated over one 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 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, victim location, and whether the Department staff was following the procedures for disbursing unclaimed restitution.

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

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

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

Appendix C: Resources and Services

Regional Office Directory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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