

# Seneca County Probation Department

## Restitution Payments

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**DECEMBER 2021**

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

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# Report Highlights

## Seneca County Probation Department

### Audit Objective

Determine whether the Seneca 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 never receive the payments to which they are entitled.

- Officials did not establish adequate policies and procedures to enforce and monitor restitution obligations.
- Nine of the 13 restitution orders reviewed had uncollected payments totaling \$63,805.
- Restitution payments totaling \$1,406 were not paid to 11 victims and another \$8,147 in undisbursed restitution collected in 2012 or before could have been paid to victims but was not.

In addition, officials did not maintain a complete list of victims with 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.

### Background

The County is located in western New York, in the Finger Lakes Region. The County is governed by the County Board of Supervisors (Board), which is composed of 14 elected members.

The Board Chair also serves as the County's Chief Executive Officer but the County's day-to-day management is the responsibility of the County Manager, who is appointed by the Board. 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	\$49,646
Disbursements	\$48,788
Orders with Probation Supervision	56

### Audit Period

January 1, 2018 – June 30, 2019

# Collecting, Enforcing and Disbursing Restitution

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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 setting forth guidelines for enforcing and monitoring restitution obligations. The policies and procedures should include guidelines for if and when the court should be notified for probationers' 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 56 restitution orders (cases) with probation supervision during our audit period. We reviewed 13 restitution cases totaling \$112,851 to determine whether the Department adequately enforced the collection of restitution.

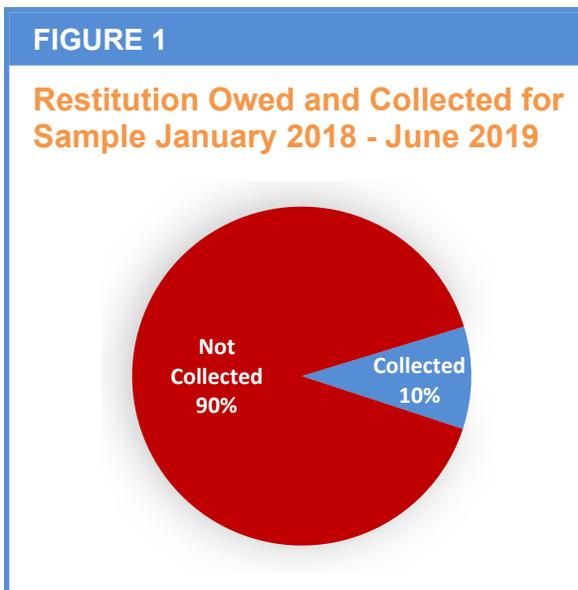
During our audit period, Department officials should have collected \$70,706 for these cases, including \$31,304 in prior period arrears (restitution payments outstanding at the commencement of our audit period). However, only \$6,901 was collected while \$63,805 remained outstanding (Figure 1) as nine cases were in arrears. The remaining four cases were in compliance with restitution order terms.

For the 13 cases in our sample, one required full payment by the end of the probation term and 12 required monthly payments. The case that required full payment had not yet become due at the time of our audit. We found the Department did not adequately enforce the 12 cases that required monthly payments.

For the nine cases in arrears, probation officers did not notify the court of nonpayment. While the Department collected partial payments for seven of these cases, it did not collect any payment for the other two cases. Additionally, two of the seven cases with partial payments made had probation supervision expire within our audit period with restitution remaining. However, the court was not notified despite \$55,695 being in arrears. Therefore, the court was not provided the opportunity to take further action on these cases.

Probation officers often took informal actions to encourage probationers to pay their financial obligations. For the nine cases in arrears during our test, probation officers documented in all instances having conversations with probationers regarding their restitution order (an average of five conversations per case).

The Director told us that the Department has not established policies or procedures defining when the court should be notified for non-payment of restitution because they treat each case individually and they do not notify the court for non-payment of restitution unless the probation officers, in consultation with a Probation Supervisor or the Director, determine the non-payment is willful. Therefore, the Department did not determine it necessary to notify the court for the seven cases in arrears for which probationers made partial payments. Additionally, the Director told us they did not notify the court for the two cases that had probation supervision expire because civil judgments were issued at the time of the original sentencing for the restitution. However, the issuance of a civil



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judgment does not preclude the Department from notifying the court of expiring probation supervision with restitution owed. The court should be notified prior to the probation supervision expiring, allowing the court time to decide whether to take further action on these cases to enforce and collect the restitution.

### **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 Generally Disbursed Restitution Payments Collected During the Audit Period and Made Efforts To Locate Victims With Unprocessed Payments**

Although the Department had no written policy or procedures outlining when restitution payments should be made to victims, the Director and the Accountant told us it is the Department's practice to disburse payments to victims once a month. To determine how long it took the Department to disburse collections to victims for our sample of 13 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 Department received collections totaling \$2,075 for nine of the 13 cases, with no collections received for the remaining four cases. The Principal Clerk made nine payments totaling \$2,075 to the victims, on average 12 days after payment was received.

We also reviewed the June 2019 bank reconciliation for the Department's restitution account to determine if there was idle victim money and whether reasonable efforts were taken to disburse the money. We identified collections of \$1,406 more than a year old (received March 2012 through June 2018) for which the Department did not issue checks to 11 victims (unprocessed payments) or transfer the funds to undisbursed restitution.

We reviewed six of the 11 unprocessed payments, totaling \$1,114, that were unprocessed for 365 to 2,654 days to determine what efforts were taken to locate the victims and disburse the money. There were no records indicating that efforts were made to locate the victim for one of the six unprocessed payments for \$45 that was collected in June 2018. For the other five unprocessed payments totaling \$1,069, we reviewed documentation that showed the Department mailed inquiry letters in August 2017 to the addresses on file, and that all five were returned to the Department as undeliverable. Department records also indicate that they mailed letters to the United States Postal Service (USPS) in September 2017 requesting current addresses for these five victims by mailed letter, but that none were provided. The Department took no further action to locate the

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victim or otherwise disburse the undisbursed money. If the Department could not locate the victims after using reasonable efforts, because the five payments were already unclaimed for at least one year, it should have transferred \$1,069 to the undisbursed restitution account, as required.

Although the Department does not have written policies or procedures for victim location efforts, the Accountant told us that if victims cannot be located, she sends letters to the USPS requesting updated addresses. If a new address is provided, she sends a letter to the victim requesting they contact the Department for payment.

The Accountant did not provide reasons why victim search efforts were not taken or why unprocessed payments were not transferred to the undisbursed restitution account. While the Director did not provide reasons for not having a policy for victim location efforts, he explained that the Accountant performs duties for the Department on a part-time basis as of January 2018 and that she may not have had time to conduct the searches during our audit period. Because there was inadequate monitoring and oversight by Department officials, and a lack of policies and procedures, money that could have been used to pay unsatisfied restitution orders was not appropriately transferred to the undisbursed restitution account. As a result, some victims may not receive 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 must provide a mechanism whereby victims receive a proportion or fixed amount of undisbursed restitution.

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If the Department could not locate the victims after using reasonable efforts, because the five payments were already unclaimed for at least one year, it should have transferred \$1,069 to the undisbursed restitution account, as required.

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The Department's written procedures for undisbursed restitution require the senior account clerk to maintain a list of unsatisfied restitution victims, and an ongoing list of undisbursed restitution. Any funds outstanding for more than one year will be declared undistributed and placed in a separate bank account. At the end of each fiscal year, the senior account clerk determines the amount of undisbursed money available and issues checks to victims with the oldest unsatisfied restitution orders. The Department's written procedures also state that victims shall be prioritized and divided into three categories – individuals are Category I, businesses or private agencies are Category II and insurance companies or public agencies are Category III. All Category I victims will be paid in full before Category II victims are paid, and all Category II victims will be paid in full before Category III victims are paid.

The Department is also to retain 20 percent of the unclaimed funds each year to pay beneficiaries who may come forward following the close of the fiscal year disbursement.

### **Officials Did Not Maintain a Complete List of Unsatisfied Restitution Orders**

The Department did not maintain a complete list of unsatisfied restitution orders. The Director and the Accountant told us that the Department converted to a different software program in 2012 to track restitution and that all unsatisfied restitution orders issued subsequent to the conversion were included in the list of unsatisfied restitution orders. However, they also told us the documentation they maintained for some of the unsatisfied restitution cases prior to the conversion in 2012 did not contain the restitution orders, nor did they obtain them during the audit period. As a result, the Department did not add these cases to their unsatisfied restitution order list. Because the Department does not maintain a complete list of unsatisfied restitution orders, some victims may never receive the payments to which they are entitled.

### **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 June 2019 bank reconciliation and corresponding bank statement for the undisbursed restitution account indicated the Department had \$8,147 designated as undisbursed restitution. Additionally, as previously mentioned, the Accountant tracks unprocessed restitution payments within the software which indicated the Department has \$1,406 of unprocessed restitution payments over a year old. Therefore, the Department potentially has \$9,553 of undisbursed restitution funds, of which twenty percent (\$1,911) must be retained and \$7,642 should be used to pay unsatisfied restitution orders.

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...[T]he Department potentially has \$9,553 of undisbursed restitution funds....

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The Director told us that they have not made any payments from undisbursed restitution since he became Director in 2004 because the list of unsatisfied restitution orders is incomplete. He told us he would like to have a complete list of unsatisfied restitution orders, chronological by restitution order date, prior to making any payments from the undisbursed restitution money. The Director also told us no efforts have been made to update the list due to the reassignment of the Accountant who previously handled these functions in January 2018. However, this does not explain why the Department failed to compile a list of unsatisfied restitution orders in the fourteen years since he became a Director in 2004 and prior to the Accountant's reassignment. The explanation also does not explain why one and a half years after the reassignment he took no action to disburse the money to other victims.

### **Officials Did Not Maintain Sufficient Undisbursed Restitution Records**

The Department did not maintain sufficient records to support what comprises \$8,147 in undisbursed restitution. While the Department identified the source and payment dates for \$510, the remaining \$7,637 is shown on the reconciliation as "undisbursed restitution not identified", Department officials did not know the source of the money but told us it was in the account when the Department converted to a new software program in 2012. 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 and court notifications,
  - Developing steps to be taken for unprocessed payments,
  - Maintaining complete records,
  - Maintaining a complete list of unsatisfied restitution orders, and
  - Identifying the individuals responsible for the various steps.
2. Enforce and monitor restitution according to court orders.

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3. Make reasonable efforts to locate victims, and document actions taken and the results, issue payments to the victims who can be located and transfer unclaimed money to the undisbursed restitution account when appropriate.
  4. Contact the New York State Office of Probation and Correctional Alternatives for guidance in establishing a complete list of unsatisfied restitution orders and making undisbursed restitution payments for these orders, then update the unsatisfied restitution order list.
  5. Make payments from the undisbursed restitution account to the crime victims whose restitution orders have remained unsatisfied for the longest amount of time.
  6. Provide meaningful oversight to ensure the program is operating effectively, which should include actions such as critical reviews of bank reconciliations and unsatisfied restitution order records.
  7. Ensure the undisbursed restitution balance is supported with records showing the amount and dates of payments that comprise the balance, including if any payments are made from the account.

# Appendix A: Response From County Officials

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## *Seneca County* *Department of Finance*

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July 16, 2021

Office of State Comptroller  
Division of Local Government and School Accountability  
110 State Street, 12<sup>th</sup> Floor  
Albany, New York 12236  
[REDACTED]

RE: Seneca County Audit of Restitution Payments Report of June 1, 2021

Dear Sir or Madame,

This letter is to serve as Seneca County's official response to the Comptroller's audit report for the Seneca County Probation Department entitled Restitution Payments covering the period of January 1, 2018 through June 30, 2019. I would like to thank you for the opportunity to work collaboratively with the Comptroller's Office to improve operations related to the County's Probation Department and value the input you have provided with your report.

Seneca County acknowledges your recommendations and has begun discussing the recommendations with our new Probation Director Matthew Verkey. These recommendations as listed below will be addressed in greater detail as part of our corrective action plan:

### **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:
  - a. Establishing timeframes for sending late payment and court notifications,
  - b. Developing steps to be taken for unprocessed payments,
  - c. Maintaining complete records,
  - d. Maintaining a complete list of unsatisfied restitution orders, and
  - e. Identifying the individuals responsible for the various steps.
2. Enforce and monitor restitution according to court orders.

- 
3. Make reasonable efforts to locate victims, and document actions taken and the results, issue payments to the victims who can be located and transfer unclaimed moneys to the undisbursed restitution account when appropriate.
  4. Contact the New York State Office of Probation and Correctional Alternatives for guidance in establishing a complete list of unsatisfied restitution orders and making undisbursed restitution payments for these orders, then update the unsatisfied restitution order list.
  5. Make payments from the undisbursed restitution account to the crime victims whose restitution orders have remained unsatisfied for the longest amount of time.
  6. Provide meaningful oversight to ensure the program is operating effectively, which should include actions such as critical reviews of bank reconciliations and unsatisfied restitution order records.
  7. Ensure the undisbursed restitution balance is supported with records showing the amount and dates of payments that comprise the balance, including if any payments are made from the account.

Sincerely,

Halle P. Stevens  
Finance Director

cc. Robert W. Hayssen, Chairman of the Board of Supervisors

C. Mitchell Rowe, County Manager

Matthew Verkey, Probation Director



## Appendix B: Audit Methodology and Standards

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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 and Department policies and procedures applicable to collecting, disbursing and enforcing court-ordered restitution.
- 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.
- Using a random number generator, we selected a sample of 13 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 13 restitution cases, we reviewed the last payment made by the probationers (or first payment due date during our audit period if no payments were made) to determine whether the Department took the appropriate monitoring actions based on their policies and procedures, including any court notification or other actions for non-payment or restitution in arrears.
- We reviewed the June 2019 bank statements and reconciliations for the Department's two restitution bank accounts, 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 a sample of six unprocessed restitution payments aged over a year to determine if the Department was attempting to locate the intended victims of these payments, and what those efforts included. The unprocessed payments were selected based on 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. For any payment of unclaimed restitution made during the audit period, we determined if the recipient had a restitution order that remained unsatisfied for the longest period of time.
  - Based on our review of the Department's Policy, we determined if the Department had written procedures regarding the processing and disbursing of unclaimed restitution, and whether the Department staff was following 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

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### **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](http://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](http://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](http://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](http://www.osc.state.ny.us/local-government/academy)

## Contact

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

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