

Suffolk 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

Suffolk County Probation Department

Audit Objective

Determine whether the Suffolk 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 all victim restitution payments. As a result, some victims may never receive the payments to which they are entitled.

- Officials are unnecessarily holding nearly \$1.3 million that should be used to pay victims with unsatisfied restitution orders. Some of this money was collected in the 1980's.
- Officials did not establish adequate policies and procedures to enforce and monitor restitution orders.
- 22 of the 44 restitution orders we reviewed had uncollected payments totaling \$47,831.
- 870 listed outstanding checks totaling \$179,159 were not properly followed up on and/or recorded accurately.

In addition, officials did not maintain a complete and accurate list of unsatisfied restitution orders, distribute all available restitution, 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 disagreed with some of our findings and recommendations. Appendix B includes our comments on issues raised in the County's response letter.

Background

The County is located in eastern New York in the Long Island Region. The County is governed by the County Legislature (Legislature), which is composed of 18 elected Legislators.

The County Executive is the chief executive officer and is responsible for the oversight of County operations. The Comptroller is the Chief Fiscal Officer and manages the County's financial affairs.

The Probation Director (Director) oversees and manages the Department. An Acting Director was appointed in November 2020.

Restitution Quick Facts

For the Audit Period:

Collections	\$2.3 million
Disbursements	\$2.4 million
Idle Victim Money over 1 year old	\$1.3 million
Orders with Probation Supervision	732

Audit Period

January 1, 2018 – June 30, 2019.

We extended the scope back to March 23, 2015 to review victim location efforts for undisbursed restitution.

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.

The former Probation Director was employed throughout our audit period and retired in November 2020. An Acting Director was appointed in November 2020.

How Should the Collection of Restitution Be Enforced?

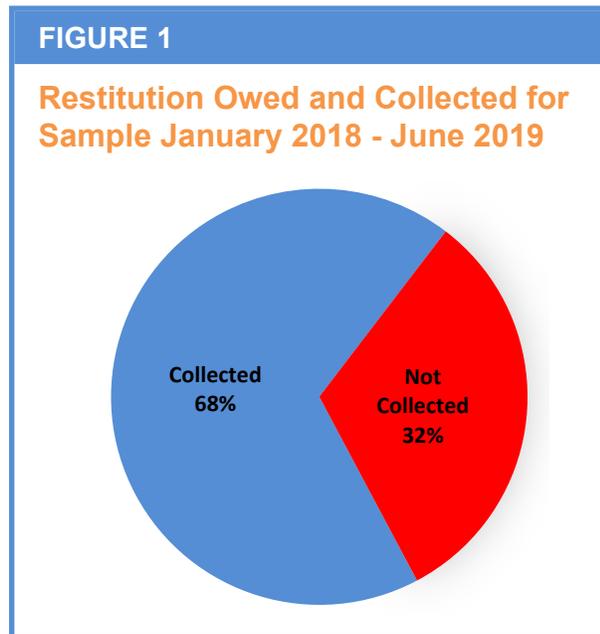
Probation departments must have a system that details the use of incentives and sanctions to encourage probationers to comply with the court's restitution order. A probationer's failure to comply with a restitution order must be reported to the court prior to probation supervision ending, allowing the 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.

The Department's Violation of Probation (VOP) Policy (Policy) states corrective action in the form of a graduated sanction should always be considered prior to instituting a VOP. However, when the graduated sanction fails to produce the desired response in terms of the offender's behavior, or if the offender's overall level of compliance precludes the use of graduated sanctions, then the VOP is inevitable. The Policy, with regard to failure to pay restitution, states that as a matter of routine, the case (probation) officer will monitor the status of the probationer's restitution account and update the offender as necessary as to that status. The Policy further includes that if at any time the offender's account is three months in arrears, the case must be conferenced with the supervisor and an action plan developed. At that point, the case officer and their supervisor

may choose to schedule an administrative conference. However, if that option is not exercised, or if the administrative conference fails to result in compliance, then further action by the court would be required. Notification to the court is to be initiated by the probation officer. The Policy does not define timeframes for the potential court actions described nor does it require probation officers to issue warning letters to probationers when they are non-compliant with a court's restitution order.

Officials Did Not Adequately Enforce Restitution Collections

The Department had 732 restitution orders (cases) with probation supervision during our audit period. We reviewed 44 cases totaling \$400,667 to determine whether the Department adequately enforced the collection of restitution. During our audit period, Department officials should have collected \$150,254 from probationers for these cases, including \$22,127 in prior period arrears (restitution payments outstanding at the commencement of our audit period). However, while \$102,423 was collected, \$47,831 remained outstanding (Figure 1). Specifically, 22 cases were in arrears \$47,831, probation was revoked for one case before payment was due, one case was transferred to another County before payment was due and the remaining 20 cases were in compliance with the restitution order terms.



Six of the 44 cases in our sample required full payment by a specific date during the probation term and 38 required monthly payments. Of the six cases that required full payment, two were paid in full, three were not yet due and one did not pay as ordered. We found the Department took no actions to enforce the restitution order for the one case that required full payment during the audit period. The Department's actions for the cases requiring monthly payments varied.

We reviewed the last payment made by each probationer during our audit period to determine what actions were taken and if the court was notified when

probationers were not compliant with the court's restitution order. Of the 22 cases in arrears, 13 made partial payments and two did not make any payments, but the Department did not consider any of these cases delinquent because they did not go 90 days without making a payment.

For seven cases that went at least 90 days without a payment, we found the following:

- For five cases with delinquent payments ranging from 100 to 710 days, there was no indication in the case notes that supervisor conferences were held, action plans were developed or administrative conferences were held, and the courts were not notified, as required.
 - For one case, the probation officer issued a sanction to deny travel due to non-payment of restitution. However, the probationer did not adhere to the sanction or pay restitution as ordered. Although the case notes indicated that the court was notified for nonpayment of restitution, Department officials could not provide supporting documentation.
- For two cases, the court was notified when the probationers were 107 and 223 days delinquent in making payments.
 - For one case, no actions other than the court notification was documented in the case notes. As a result of the notification, and the victim receiving garnished funds from the probationer, the court modified the order and no longer required the probationer to make monthly restitution payments.
 - For one case, a supervisor case conference was documented, but there was no indication that an action plan was developed or that an administrative conference was held. The court did not change the originally ordered restitution terms.

Probation officers often took informal actions to encourage probationers to pay their financial obligations. For the 22 cases in arrears, probation officers documented having conversations with 20 probationers regarding their restitution orders (an average of 12 conversations per case). There was no documentation of conversations, if any occurred, for the other two cases. For one of these two cases, the probationer did not report to the scheduled probation appointment. The probationer absconded and the Department notified the court. For the second case, the probation officer documented having conversations with the probationer, but nothing was noted that the probation officer discussed the probationer's late restitution payments. The Acting Director told us because this probationer owed a small amount of restitution, the officer focused on other court-ordered conditions and did not enforce restitution as ordered.

The Acting Director told us probation officers generally have conversations to collect restitution before other enforcement actions are taken. He explained probation officers use their discretion if probationers have circumstances preventing them from paying restitution, such as medical issues, an eviction or job loss. Depending on the extenuating circumstances, they would not issue a court notification. The Acting Director told us he was unaware that probation officers were not scheduling supervisor case conferences, developing action plans and/or documenting reasons for not notifying the court. A probation supervisor told us the probation officer is responsible for ensuring restitution payments are made and notifying their supervisor when probationers are delinquent. As a result of a lack of clear expectations and supervisory monitoring and oversight, probation officers' actions were often inconsistent. In addition, the probation officers' conversations with probationers regarding late or incomplete restitution payments generally did not result in compliance with court restitution orders.

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 Restitution Payments Collected During the Audit Period but Did Not Make Reasonable Efforts To Locate Victims With Uncashed Checks or Unprocessed Payments

The Department's Financial Practices document states that all restitution payments are processed through the Revenue Accounting Unit, which is overseen by the Administrator I (Administrator). To determine when payments were made to victims for our sample of 44 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 36 of the 44 orders totaled \$23,211, with no collections received for the remaining eight orders. The Department made 36 payments totaling \$23,211 to the victims on average six days (between 0 and 29 days) after payment was received.

We also reviewed bank statements and related Department records to determine if there was idle victim money, and whether reasonable efforts were taken to disburse the money. We found the Department did not appropriately follow-up on 870 outstanding checks totaling \$179,159 that were between one and over five years old, or ensure they were accurately recorded. The Department also did not issue checks to 40 victims for which the Department collected and held restitution payments totaling \$11,743 between one and almost 10 years. Overall, although a significant amount of time had elapsed, the Department did not always attempt

...[T]he Department did not appropriately follow-up on 870 outstanding checks totaling \$179,159 that were between one and over five years old, or ensure they were accurately recorded.

to locate victims who were no longer at the address on record. We reviewed outstanding checks and unprocessed payments and found the following:

Outstanding Checks – Of the 870 listed outstanding checks totaling \$179,159, we reviewed 10 checks totaling \$60,825 that were between one and over five years old. We reviewed the Department’s records to learn what efforts were made to locate the victims and issue new checks for the payments. We found:

- For three uncashed checks totaling \$26,308 that were between 1,080 and 1,521 days old, we found:
 - For two, Department records indicated that no actions were documented, if any, to locate the victims and new checks were issued 790 and 742 days from the dates the original checks were issued. These new checks were subsequently voided in the Department’s system.
 - For one, a letter was sent to the address on record in April 2016, prior to the audit period, and no further victim location efforts were performed during the audit period. A new check was not issued.
- For seven checks totaling \$34,517 that were listed as outstanding checks, the Department had already marked each as voided in the Department’s accounting system and issued new checks for the payments between 35 and 644 days after the original check was issued.
 - For four checks totaling \$26,717, efforts to locate victims began 25 to 644 days after the original check date.
 - For three checks totaling \$7,800, although no actions were documented, if any, to locate victims, new checks were issued between 322 to 483 days after the original check date. The Administrator told us she thought she had updated addresses so she did not need to make additional location efforts for these three victims.

Unprocessed Payments – Five of the 40 probationers’ payments, totaling \$6,608, had been unprocessed between almost two and over six years. Of the five payments, the Department began searching for one victim when \$1,200 of restitution collected and owed to the victim had been idle for over five years. The Department sent letters to an updated address for the victim in December 2018 and June 2019, but the victim did not respond to either letter. No victim location efforts were performed during the audit period for the other four victims.

The Department does not have written guidance for disbursing restitution or handling uncashed checks and unprocessed payments, nor actions to be taken to locate victims. The Administrator told us she conducts victim location efforts when she has time and may assign another staff person to conduct such efforts, but that she does not always have time to ensure such efforts have been performed. In addition, while the Department’s Financial Practices document does not address

maintaining restitution account bank statements or reconciling the bank account, the Department's Principal Financial Analyst told us she has never requested or received Department bank statements or a list of outstanding checks. She thought the County Comptroller's (Comptroller) office reconciled the account. However, the Principal Financial Analyst from the Comptroller's office told us the Comptroller's office does not have access to the Department's restitution accounting system to perform a reconciliation. As a result, the restitution bank account has not been reconciled, as required.

The Administrator told us her understanding was that checks were cancelled by the bank if they remained uncashed for 180 days. However, because Department officials do not reconcile the restitution account, they were unaware of which checks remained uncashed unless a check was returned to the Department as undeliverable. She also told us the last time she received an uncashed check list¹ was June 2017 and she had not requested an updated list from the Comptroller's office.

The former Director told us she did not monitor the restitution account because she believed one of her employees was monitoring the account. Due to a lack of written guidance, monitoring and oversight, the Department did not maintain accurate records of outstanding checks, reconcile the bank account or disburse all victim payments. As a result, victims may not receive the payments they are entitled to and there is a significant risk that money could be stolen or misused without detection.

How Should Undisbursed Restitution Payments Be Administered?

Undisbursed restitution payments (undisbursed restitution) are 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.

Due to a lack of written guidance, monitoring and oversight, the Department did not maintain accurate records of outstanding checks, reconcile the bank account or disburse all victim payments.

¹ The Department does not issue the victim checks. The Department electronically transfers restitution funds to the Comptroller's restitution account and sends the Comptroller's office a list of checks to issue to victims. The Department does not receive bank statements for the Department's bank account nor does the Department receive monthly reconciling information for the Comptroller's restitution account. Thereby unless a victim check is returned to the Department as undeliverable, the Department is not aware of uncashed victim checks.

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.

Officials Did Not Maintain a Complete List of Unsatisfied Restitution Orders

Although the Department is able to generate a report of unsatisfied restitution orders by age from the software program used to administer restitution, not all restitution orders were entered into the accounting system. The Principal Financial Analyst told us the Department has part-time workers scan the original case files, including the original court orders, to a server when the case is closed. However, some digital files were lost due to a computer issue. Furthermore, Department officials did not retain original court orders or other documentation for unsatisfied orders. Because the Department did not maintain complete and accurate records in order to identify the oldest unsatisfied restitution orders, some victims will never receive the payments to which they are entitled.

Officials Did Not Distribute All Available 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 Department records indicated the Department did not formally identify any funds as undisbursed restitution available to pay unsatisfied restitution orders during our audit period. However, as previously discussed, we identified \$11,743 in unprocessed payments over one year old that could be used to pay other unsatisfied victims if the original intended victim cannot be located through reasonable efforts. In addition, bank statements and other records indicate the Department has nearly \$1.3 million that should be used to satisfy other unsatisfied restitution orders if the original victims cannot be located.

While the Department did not formally identify any funds as undisbursed restitution, we found that 72 disbursements totaling \$23,373 were made to unsatisfied victims during the audit period. The Administrator told us that these funds were from victim checks that were returned to the Department as undeliverable. She said that when she receives undeliverable checks and cannot locate the original intended victims after making multiple attempts for at least a year, she distributes the money to the oldest unsatisfied victims that can be

Because the Department did not maintain complete and accurate records in order to identify the oldest unsatisfied restitution orders, some victims will never receive the payments to which they are entitled.

located. As previously discussed, Department officials did not maintain complete records of unsatisfied restitution orders. Therefore, we could not verify whether the Department paid the oldest unsatisfied orders first or whether all of the funds distributed were idle for over one year.

The former Director told us that she was unaware of the undisbursed restitution balance and that the Administrator was paying the unsatisfied restitution orders. The Principal Financial Analyst also told us that she did not pay out all undisbursed restitution because she was unaware of the total amount of the undisbursed restitution balance. The Administrator told us that the Department has been working on locating victims of the nearly \$1.3 million for the past five or so years and that these funds date back to the 1980's. The Department's Policy did not include guidance for handling undisbursed restitution, including what victim location efforts must be performed and when, the records to be maintained, and when and how to disburse funds. Due to the Department's failure to establish policies for the handling and distribution of undisbursed restitution payments, along with a lack of supervisory monitoring and oversight, Department officials unnecessarily withheld nearly \$1.3 million from unpaid victims.

Officials Did Not Maintain Undisbursed Restitution Records

Department officials could not provide documentation to support what made up the nearly \$1.3 million in undistributed funds, including when the original payments were made and for how much, or which probationers paid the funds. As a result of insufficient and unsupported records, Department officials cannot be sure whether this amount accurately constitutes undisbursed restitution. Further, without complete and accurate records, the risk of theft and misuse of collections significantly increases.

What Do We Recommend?

The Director should:

1. Develop adequate written policies and procedures for handling restitution that convey management's expectations to ensure the program is operating effectively, including:
 - Establishing timeframes for issuing restitution payments to victims,
 - Developing steps to be taken with uncashed checks and unprocessed payments,
 - Maintaining complete records,
 - Developing procedures for handling undisbursed restitution money, and
 - Identifying the individuals responsible for each of the various steps.

Due to the Department's failure to establish policies for the handling and distribution of undisbursed restitution payments, along with a lack of supervisory monitoring and oversight, Department officials unnecessarily held \$1.3 million from unpaid victims.

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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, and then update the Department's unsatisfied restitution order list.
 3. 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.
 4. 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.
 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 ensuring bank reconciliations are completed, all applicable records are retained, and further monitor such actions by performing critical reviews of bank reconciliations and 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

COUNTY OF SUFFOLK



Steven Bellone
SUFFOLK COUNTY EXECUTIVE

DEPARTMENT OF PROBATION

THOMAS P. BRANCO
ACTING DIRECTOR

July 21, 2021

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street
12th Floor
Albany, New York 12236

Dear [REDACTED]:

As requested, the following is being offered in response to Draft Report S9-20-9, which was received on June 24, 2021. The report concerns the practices of the Suffolk County Department of Probation in terms of Restitution enforcement and collection. The audit period is identified as January 1, 2018- June 30, 2019.

Prior to proceeding, it appears important to note that the depth of this response is significantly compromised by the absence of the Department Director who served in that capacity throughout the entire tenure of the audit. It would be far more meaningful for this response to be received from the administration that served during the audit period as opposed to one currently serving over two years later. Given that the previous Director did not leave service until seventeen months following the audit's end, the report makes only very little reference to that vital resource. The additional absence of a Deputy Director during the audit period further mitigates the availability for a concise administrative perspective of the timeframe cited in this report.

After receiving and reviewing the Draft Report, Departmental staff requested an opportunity to respond to overall content and respective individual items. The following includes a detailed account of our review.

Suffolk County Probation Department Response to NYS Comptroller Report in Restitution Payments – March 2021

1. Pages 4 – 6: How Should The Collection of Restitution Be Enforced?

A. The Departmental Policy that served as the basis for the report's examination of restitution enforcement appears to be a Violation of Probation Policy, which was provided by the previous Director and identified as the Department's Restitution Policy. Although it references guidelines for violation criteria, it lacks the detail appropriate for the subject issue and outlines procedures that are more general.

See Note 1 Page 15

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It also appears outdated and ill-suited to current departmental philosophy and need. Given that this document was apparently provided by the previous Director several years ago and determined as policy, we are left with limited opportunity for response other than what could be implemented in the future. The Department is actively undergoing efforts to establish a comprehensive restitution policy that will be detailed in the corrective action plan.

B. Page 6: Statement of the Acting Director - The auditors appear to lack a thorough understanding of the Violation of Probation process and the various types of cases supervised by the department. On page #6, the audit refers to a case in which “the probation officer issued a sanction to deny travel due to non-payment of restitution. However, the probationer did not adhere to the sanction or pay restitution as ordered and the court was not notified”. A review of the case reveals that a Violation of Probation in this matter was issued in 2017 (prior to the audit period) and that the Violation of Probation was adjourned until 2020 (after conclusion of audit period.) The case record reflects numerous updates from the Probation Officer that were presented to the court on adjournment dates. The matter of restitution is repeatedly referred to within the updates and the probationer is cited for non-compliance. An amendment for the adjournment date of 7/31/2018 is included within the file and makes specific reference to the issue of the travel incident.

See
Note 2
Page 15

C. The following entry in the report states, “For one case, the court was notified on the last day of the probation term, when the probationer was already 329 days delinquent, which significantly restricted the court’s time to determine how to proceed. There was no indication in the case notes that a conference was held with the supervisor or an action plan was developed, as required, or that an administrative conference was held with the probationer. A review of this case reveals that it was an Interim Probation case that involved a subject who was sentenced in Suffolk but resided in Nassau. Suffolk maintained administrative responsibility for the case while Nassau County Probation provided community supervision. Given the nature of this case, the audit’s assertion that the court was “significantly restricted in terms of time to determine how to proceed” is misleading. As Interim Probation is more a voluntary agreement as opposed to formal sentence, the court clearly maintained full discretion as to the issue of restitution on the date actual sentence was to be imposed. Although arguably, it may have been appropriate to request the matter be restored prior to the end of the interim term, it is imperative to distinguish between how interim and post-dispositional probation are monitored and sanctioned and accurately convey how it relates to the court.

See
Note 3
Page 15

D. Page 6 of the report makes further reference to “informal actions” attempted by Probation Officers to enforce restitution and to interviews with the Acting Director and a Probation Supervisor. The content appears dismissive and omits both context and important points that were shared. The reference to “conversations” between Probation Officers and Probationers appears to attempt to marginalize such efforts as inconsequential, when efforts of this kind are actually vital to best practices of Probation Supervision. We have previously emphasized our commitment to extending fairness, transparency and an opportunity to participate and be heard to our probationers. The informal efforts referred to in the report underscore that commitment and also reflect key elements of the Motivational Interviewing and Interactive Journaling training that our department is emphasizing through DCJS support.

See
Note 4
Page 15

The report’s reference to interview with the Acting Director on Page #6 was vague and lacked context. It is clearly logical that a Probation Officer would speak with a probationer prior to initiating more formalized efforts and that any extenuating circumstances would be considered prior to such action. This approach is rooted in best practices and conveyed during the interview. The report also omitted any reference to our department’s efforts and success at reducing unwarranted Violations of Probation, particularly for technical allegations. This department has initiated significant efforts in this area and currently maintains a Violation Rate below New York State average.

See
Note 5
Page 15

Page 6 of the report further contended that the actions of our Probation Officers are often inconsistent due to “a lack of clear expectations and supervisory monitoring and oversight.” The basis for this assertion appears to be interviews cited with the Acting Director and Supervisor that are referenced in the report. The interview with the Acting Director essentially alleges a lack of awareness of the deficient efforts of staff. It should be noted that the Acting Director was interviewed once for this report, over the telephone, barely three months into service during a pandemic. The interview with the Supervisor occurred several years ago and appeared to provide a logical response that a Probation Officer would serve as the first level in restitution monitoring. Given the severity of the report’s assertions in this area, it would appear that more comprehensive efforts at securing and clarifying information would be warranted.

See
Note 6
Page 15

2. Pages 6-8: How Should Restitution Payments be Processed?

A. The 870 outstanding checks were from a list generated by the Suffolk County Comptroller’s Office at the request of the NYS Comptroller’s Office during the audit period. Many of the checks on the list were dealt with by Probation when originally notified they were stale dated. The information was not communicated regularly between the Department and the Comptroller’s Office. This will be addressed in the corrective action plan to ensure regular communication between the Probation Department and the Suffolk County Comptroller’s Office to document the status of outstanding checks in a timely manner.

B. Ten outstanding checks totaling \$60,825 were reviewed. Three of those, totaling \$26,308, were between 1,080 and 1,521 days old, and no new checks were issued. The paragraph should note that the length of time to issue new checks is based upon the time Probation receives notice the check is stale and not from the date the check is issued. This would reduce the number of days the check is listed as old in the Probation records. If the number of days is calculated from the time the check is issued, then a statement should be included in the report to indicate when the Probation Department is notified that the check is stale.

See
Note 7
Page 16

- i. Check one was issued on 5-1-2015. The Probation Department received notification it was stale on 10-19-2016. A new check was re-issued on 6-29-17. This would be 253 days old.
- ii. Check two was issued on 7-5-2016. The Probation Department received notification it was stale on 11-15-2017. A new check was reissued on 7-27-2018. This would be 251 days old.
- iii. Check three was issued on 6-19-2015. The Probation Department was notified it was stale on 9-29-2016. The Department made numerous attempts to locate the victim with no response. The money was put into victims trust on 2-9-2020. This would be 1,231 days old.
- iv. Seven checks were listed as outstanding and voided by the department when new checks were issued. This will be addressed through the corrective action plan to increase communication between probation and the county comptroller’s office regarding stale checks and the change in procedures to reduce the time to issue a new check or move funds to the victims trust.

C. The Probation Department did modify the procedures for stale checks to reduce the length of time to reissue a new check or transfer the monies to the victims trust. A spreadsheet was developed to list all stale dated checks/recipients with each check researched to obtain updated contact information. Checks are either re-issued or transferred to the victims trust after one year. These procedures were put into effect during the audit period and should be noted in this section of the report. The procedures for managing stale checks will be detailed in the corrective action plan.

See
Note 8
Page 16

3. Page 8: Unprocessed Payments

A. Paragraph two cites the Department's Financial Practice's document which states that the Principal Financial Analyst is to maintain copies of bank statements and reconcile the account. This is listed under the procedures for asset forfeiture and not restitution.

See
Note 9
Page 16

B. The footnote on page 8 describes the reasons for why the restitution bank account is not reconciled. This explanation should be included in the body of the report and not in the footnote for the checklist. The corrective action plan will address this through the increased communication between the Probation Department and County Comptroller's office to reconcile the restitution bank account.

C. Paragraph three cites the Administrator stating the last uncashed check list received was June 2017. The correct statement would be that the last stale dated list received was August 8, 2019 for 2017.

See
Note 10
Page 16

4. Page 11: Cites the former Director stating she was unaware of the undisbursed restitution balance and that the Administrator was paying the unsatisfied restitution orders. This statement may be inaccurate given the former Director was updated regularly on the amount of the undisbursed restitution balance and the status of what had been paid by the Administrator.

See
Note 11
Page 16

5. Page 11: Cites the Principal Financial Analyst stating she did not pay out all of the undisbursed restitution because she was unaware of the total amount of the undisbursed restitution balance. This is incorrect. The Principal Financial Analyst has been aware of the balance and does not pay out the restitution.

See
Note 12
Page 16

Thank you for providing the opportunity for us to furnish this response to the content of this Draft Report. We request a review and consideration prior to release of the final copy. At that time, we will proceed to formulating a Corrective Action Plan.

Very truly yours,

Thomas P. Branco
Acting Director

TPB: emf

Appendix B: OSC Comments on the County's Response

Note 1

In addition to the Department's Violation of Probation Policy we used the NY Codes, Rules and Regulations as the basis for our examination of restitution collection enforcement.

Note 2

We modified the report to clarify that while the case notes indicated the court was notified for nonpayment of restitution, Department officials could not provide supporting documentation (i.e., the court notification or the court's response). We reviewed the probationer's case notes for the entire audit period and requested all documentation for court notifications. The case notes indicated a VOP was pending on January 23, 2018. However, the notes did not indicate the VOP addressed noncompliance with restitution. While the Acting Director informed us that a VOP was issued in 2017, when we requested supporting documentation, none was provided. The case notes further indicate the court was notified for non-payment of restitution and not adhering to travel sanctions in July 2018. However, Department officials could not provide supporting documentation. In addition, although the case notes stated the probationer travelled from December 2018 to January 2019 without permission, there was no supporting documentation the officer notified the court in 2019 for noncompliance with the travel sanction. While the Acting Director stated in March 2021 that the court was notified for noncompliance with restitution and travel sanctions, he did not provide any documentation to support that the court notifications occurred and when. After receiving the County's response in July 2021, we contacted the Acting Director and again requested supporting documentation, including documentation for the adjournment referred to in the Acting Director's response, and none was provided.

Note 3

We removed the finding for this case from the report as it was not within the scope of the audit.

Note 4

The reported conversations between the probation officer and the probationer is not dismissive or marginalized. The report states what occurred during the audit period.

Note 5

The scope of the audit was on the Department's procedures for enforcing court-ordered restitution, notifying the court when a probationer violated the court order and disbursing victim restitution payments promptly and appropriately.

Note 6

The basis for the conclusions presented in the report are the results of our testing of Department actions in comparison to expectations and requirements

per relevant State laws, rules and regulations, and Department policies and procedures. The inclusion of Department officials' responses during the audit are to provide perspective and/or explanations for deviations from those expectations and/or requirements. We made comprehensive efforts to discuss the issues identified with the former Director and Acting Director during audit field work, prior to, during, and after our summary of findings discussion, and during the audit exit discussion.

Note 7

We updated the report to include information that was provided after field work was completed and that is applicable to the audit scope period. We emphasize that we requested such information during the audit and that it is the Department's responsibility to ensure it has accurate and timely records of uncashed checks.

Note 8

The Department amended procedures for victim location efforts but did not define timeframes for conducting victim location efforts, the types or number of efforts to perform or documentation requirements for such efforts. The amendment occurred outside the audit scope period and the Department could not support location efforts were made for all applicable cases.

Note 9

We modified this statement in the report.

Note 10

Uncashed checks should be monitored and followed-up on a timely basis. The Administrator provided the list of uncashed checks she received from the County Comptroller's office in June 2017 and told us this was the last email regarding uncashed checks she received.

Note 11

The former Director told us she did not know the balance of the restitution bank account, that the Department did not have a policy to disburse unclaimed funds, and that she was unaware if the Department had paid undisbursed restitution. The former Director was not aware of how much undisbursed restitution was available.

Note 12

The Principal Financial Analyst did not review restitution accounting transactions or perform bank reconciliations. As a result, she was unaware of the actual amount of undisbursed restitution available. Because the Principal Financial Analyst supervises restitution, she was responsible for ensuring undisbursed restitution was paid. It is the responsibility of the Director to ensure that the Department is handling restitution effectively.

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 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. We compared employee's user access to the computer system to their job duties. We further reviewed seven posted transactions that were recorded over seven days from the entry date.
- 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. We further traced all transactions that were collected and disbursed during the audit period to the hard copy bank statements.
- Using a random number generator, we selected a sample of 44 restitution cases from the Department's reports showing all new, open and closed court cases that involved restitution and were on probation supervision 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 44 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 holding case conferences and creating action plans, holding administrative conferences and/or whether court notification was issued. If a payment was not made by a probationer during our audit period, we used the first payment due date.
- We reviewed the restitution bank statements for the audit period and compared to all determined probationer deposits and disbursements for

the audit period, which included any unclaimed restitution payments aged more than a year. We also reviewed associated documents to ensure that recorded transactions were deposited in the bank. Using the June 2019 bank statement, we calculated the potential amount available to disburse to unsatisfied restitution orders.

- We requested a list of outstanding restitution checks from the County Comptroller's office. We reviewed the list provided to determine which of the outstanding checks reported by the County Comptroller's office were aged over one year from the end of the audit period.
- We reviewed a sample of 10 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 account. The 10 outstanding checks were selected based on high dollar amounts. For these 10 checks, we extended the scope to March 23, 2015 to review victim location efforts which had taken place prior to the audit period.
- We reviewed a sample of five victims with unprocessed payments aged over a year to determine if the Department was attempting to locate the intended victims of these payments, and what the efforts included. The five victims were selected based on total high dollar amounts and type of victim.
- We obtained and reviewed a report of unpaid restitution orders to determine which restitution orders remained unsatisfied for the longest period of time.
- We determined the last time the Department made a payment of unclaimed restitution. For the last 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 restitution 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 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

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