



Chemung County Probation Department Collections and Disbursements

Report of Examination

Period Covered:

January 1, 2014 — September 18, 2015

2016M-10



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

June 2016

Dear County Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and County Legislature governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Chemung County Probation Department, entitled Collections and Disbursements. This audit was conducted 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.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Chemung County (County) is governed by the County Legislature (Legislature), which is composed of 15 elected members who represent the one city, 11 towns and five villages located within the County. The County Executive, who is elected for a four-year term, is the chief executive officer.

The Probation Department (Department) assists in reducing the incidence of crime by probationers in the community. The Department also is the designated agency for the collection of court-ordered restitution and surcharges¹ for probation and nonprobation cases. The Director manages the Department's day-to-day operations and oversees 27 staff members. The Director also is responsible for developing policies and procedures to guide Department staff in properly enforcing the collection of court-ordered financial obligations, reporting to the courts repeated instances of noncompliance and accounting for, safeguarding and disbursing all moneys collected.

During 2014, the Department collected \$224,580 in restitution, surcharges and electronic home monitoring fees, and disbursed \$221,187 to victims and the County Treasurer. The Department actively supervises 799 cases² that were opened since January 1, 2010 and had outstanding balances. There were also 484 probation cases for Driving While Intoxicated (DWI) offenses.

Scope and Objective

The objective of our audit was to examine the Department's collections and disbursements processes for the period January 1, 2014 through September 18, 2015. Our audit addressed the following related question:

- Did the Department enforce, account for and safeguard the collection and disbursement of all money in a timely manner?

Audit Results

Due to a lack of oversight and adequate policy guidance, the Department's enforcement, collection and disbursement of court-ordered financial obligations was ineffective. As a result, delinquent accounts are prevalent, a proper accountability of receivables and payables could not be determined

¹ Surcharges include the 5 percent administration fee for collecting restitution and electronic home monitoring fees that are accounted for together because the Department's accounting system cannot handle them separately.

² The Department's case management database contains 1,769 restitution cases from February 5, 1982 to present that have outstanding balances. Because the Department does not close or inactivate all cases that have been transferred, we question the validity of this number. Cases in the database from January 2010 through January 2015 total 799.

and undisbursed restitution payments³ held by the Department were not paid in a timely manner. In addition, because the Legislature did not adopt a local law imposing a monthly administrative fee on probationers convicted of offenses under Article 31 of New York State Vehicle and Traffic Law, the County missed an opportunity to collect additional revenue totaling approximately \$215,000.

Probation officers did not effectively enforce the collection of court-ordered financial obligations. The officers did not report defendants to the court in a timely manner who were repeatedly in noncompliance with their payment terms. We reviewed 24 cases with outstanding balances totaling \$107,827 and found that 20 cases (83 percent) were in arrears totaling approximately \$62,100.

Although Department staff disbursed restitution payments to known victims and the County in a timely manner, there was no formal process for identifying the location of victims who moved after the initial attempt by the administrative assistant or restitution enforcement officer so that payment could be made. In addition, as of July 31, 2015, \$35,091 remains undisbursed for victim restitution payments going back as far as April 2012.

Because the Department's computerized software that recorded the amounts owed and paid by the defendants and owed and paid to the victims was limited in the types of reports that could be generated, the composition of the undisbursed funds is unknown. Furthermore, Department staff are unable to perform an accountability of the Department's assets (cash and receivables) and liabilities at any point in time.

Comments of Local Officials

The results of our audit and recommendations have been discussed with County officials, and their comments, which appear in Appendix A, have been considered in preparing this report. County officials generally agreed with our findings and indicated they plan to initiate corrective action.

³ Restitution payments held for a year because reasonable efforts to find the victim have not been successful

Introduction

Background

Chemung County (County) is located in the southern tier of New York State and has a population of approximately 88,000. The County is governed by the County Legislature (Legislature), which is composed of 15 elected members who represent its one city, 11 towns and five villages. The County Executive, who is elected for a term of four years, is the chief executive officer.

The Probation Department (Department) assists in reducing the incidence of crime by probationers in the community. The Department is the designated agency for the collection of court-ordered restitution, surcharges and administrative fees for probation and nonprobation cases. During 2014, the Department reported collections of \$224,580 in restitution, surcharges and electronic home monitoring fees (EHM) and disbursements of \$221,187 to victims and the County Treasurer. The Department currently has 799 cases⁴ that were opened since January 1, 2010 and have outstanding balances. There were also 484 probation cases for Driving While Intoxicated (DWI) offenses.

The Department Director (Director) is responsible for developing policies and procedures for enforcement and accounting of collections, reporting noncompliance to the court and managing the Department's day-to-day operations. The Department is staffed by three probation supervisors, five senior probation officers, 12 probation officers, one restitution enforcement officer⁵ and six support staff.⁶

Objective

The objective of our audit was to examine the Department's collections and disbursements processes. Our audit addressed the following related question:

- Did the Department enforce, account for and safeguard the collection and disbursement of all money in a timely manner?

Scope and Methodology

We examined the Department's collections and disbursements processes for the period January 1, 2014 through September 18, 2015.

⁴ The Department's case management database contains 1,769 restitution cases from February 5, 1982 to present that have outstanding balances. Because the Department does not close or inactivate all cases that have been transferred, we question the validity of this number. Cases in the database from January 2010 through January 2015 total 799.

⁵ The restitution enforcement officer, who works part-time, is responsible for overseeing restitution cases where the defendant is not under a term of probation supervision.

⁶ One administrative assistant, four principal account clerks and one clerk typist.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix B of this report. 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.

**Comments of
Local Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with County officials, and their comments, which appear in Appendix A, have been considered in preparing this report. County officials generally agreed with our findings and indicated they plan to initiate corrective action.

The Legislature has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded 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 County Legislature to make this plan available for public review in the Clerk to the Legislature's office.

Collections and Disbursements

The Department is responsible for collecting court-ordered financial obligations, including restitution, surcharges and EHM fees, for probation and nonprobation cases. The Department's timely collection and distribution of fees, restitution and surcharges⁷ helps ensure that crime victims receive their court-ordered compensation and helps finance County operations. The Director is responsible for establishing controls, including written policies and procedures, to enforce the timely collection and distribution of these financial obligations and ensure the safeguarding of all moneys.

Department staff are not consistently and effectively collecting payments of court-ordered financial obligations from defendants. We reviewed 24 cases with outstanding balances totaling \$107,827 and found that 20 cases (83 percent) were in arrears totaling approximately \$62,100. In addition, Department staff do not report defendant nonpayment delinquencies to the court in a timely manner as required by law. Further, the Department did not charge applicable defendants Driving While Intoxicated (DWI) or Driving While Ability Impaired (DWAI) administrative fees totaling approximately \$215,300 that were allowed by law.

Department staff have not disbursed victims' trust fund money since April 2012 and lack a process to locate victims that should receive payments after initial contact by mail. Therefore, the Department potentially had \$35,091⁸ in undisbursed restitution payments as of July 2015. Because the Department's computerized software that recorded the amounts owed and paid by the defendants and owed and paid to the victims was limited in the types of reports that could be generated, the composition of the undisbursed funds is unknown. Finally, Department staff are unable to perform an accountability of the Department's assets (cash and receivables) and liabilities at any point in time. The Director has not adequately segregated the administrative assistant's duties in the collection and disbursement process or provided compensating controls, which increased the risk that Department funds could be misappropriated without detection.

⁷ Surcharges include the 5 percent administration fee for collecting restitution and EHM fees. They are accounted for together because the Department's accounting system cannot handle them separately.

⁸ Undisbursed restitution is defined as restitution collected and that has been held for a year because the victim cannot be located. The Department was unable to provide us with a report showing details of what portion of the cash balance has been held for at least one year. Therefore, this amount represents the current cash balance.

Enforcement of Collections

New York State Penal Law provides that, in all cases where restitution is imposed as part of a sentence, the court directs the defendant to pay a 5 or 10 percent surcharge to the official or organization responsible for the collection and administration of restitution payments. New York State Criminal Procedure Law and New York Codes, Rules and Regulations (NYCRR) require timely reports to the court regarding any defendant's repeated failure to remit restitution payments and surcharges. The enforcement and timely collection of court-ordered financial obligations from defendants helps ensure that crime victims receive their compensation and helps finance Department operations.

Probation officers (POs) are tasked with enforcing court-ordered financial obligations for probationers. The restitution enforcement officer handles collection for all other cases, such as conditional discharge and incarcerated defendants. The POs' responsibility begins by providing input to the court at time of sentencing regarding the amount of monthly collections necessary to repay victims. The POs typically calculate the monthly restitution amount by totaling the restitution and applicable surcharge fees for the probation period. POs allocate these charges over the probation period, with payment usually starting 30 days after sentencing. When calculating restitution payments, POs do not take into account whether the individual has the financial means to make the required payments. However, probationers can apply to the court for resentencing at any time if they cannot make the payments.

To assess the effectiveness of the Department's enforcement procedures, we randomly selected 25 of the 799⁹ (3 percent) cases with court-ordered financial obligations totaling \$118,964. One of these cases had a court-ordered payment of \$5,791 due to the County's Department of Social Services and was turned over to this department for enforcement and collection. The Department also received payments totaling \$5,346 as of August 15, 2015 for the remaining 24 cases, leaving outstanding balances totaling \$107,827. We found that 20 cases (83 percent) were in arrears totaling approximately \$62,100. This amount included two conditional discharge defendants who were in arrears. The defendants in nine of these cases had not made any payments and the remaining 11 cases were between three and 34 payments behind.

⁹ Because the Department classifies every case as active until the case is paid in full, regardless of the status of the case (i.e., case has been transferred to another county or state, defendant is incarcerated or the period of the Department's supervision had reached its maximum expiration date), there was no way to determine the population of cases that were actually active in order to select a sample for audit testing purposes. Therefore, cases with a court date between January 2010 and January 2015 were used for the sample.

The ineffective enforcement of arrears occurred because the Department's procedures do not require staff to report to the court when a defendant repeatedly fails to make payments in a timely manner. Instead, the procedures only require Department staff to review the status of payments prior to the maximum expiration date of the defendant's court order. POs stated that as long as a defendant was making payments when they could, even though it was not the full amount owed, they would not report the probation violation to the court. By not reporting nonpayment of restitution and surcharges to the court as required by law, the court cannot determine what action, if any, should be taken to address the issue of nonpayment. As a result, victims are not receiving restitution payments to which they are entitled and the County is losing revenue.

DWI Administration Fees

New York State Executive Law allows counties to adopt a local law requiring individuals convicted of a crime under Article 31 of New York State Vehicle and Traffic Law (VTL) who are sentenced to probation supervision to pay an administrative fee to the Department of \$30 per month to offset the administrative costs of related probation services. The law also requires probation departments to waive all or a portion of the fee due to indigence, if it would create an unreasonable hardship on the probationer, the probationer's immediate family or other dependents. The Legislature currently has not enacted such a law.

The Department reported 484 individuals who were convicted of DWI or DWAI and sentenced to probation supervision from January 2010 through July 2015. We performed an analysis to determine the potential amount of revenue that the Department could have realized during our audit period for these individuals if the County had enacted the local law. Assuming that all were on probation supervision for the specific months identified in the analysis and paid the \$30 monthly fee, the Department could have received approximately \$215,300 in potential revenue.

Because the County has not passed a local law that would allow the Department to collect this monthly administration fee, it has forfeited potential revenue that would help offset the cost of these operations for taxpayers.

Victims' Trust Fund

Restitution payments, along with interest, must be carefully tracked and promptly remitted to the appropriate party. However, at times, collected restitution cannot be disbursed to an intended victim because the victim cannot be located using reasonable efforts. New York State Criminal Procedure Law defines undisbursed restitution as payments that were remitted by a defendant but not disbursed to the intended victim and have remained unclaimed for one year. Restitution that remains undisbursed for one year should be transferred to a separate

account, commonly referred to as the victims' trust fund, and designated for the payment of restitution orders, beginning with those that have remained unsatisfied for the longest period of time.

NYCRR requires local probation departments to establish written procedures for handling undisbursed restitution payments, including any interest earned, and to maintain a current list of unsatisfied restitution orders¹⁰ that identifies victims who have remained unpaid for the longest period of time. To facilitate the timely distribution of undisbursed restitution, the Department must maintain an adequate and updated record of all undisbursed restitution being held. This record must identify the defendant who made the payments being held, the date and amount of the payments, a detailed accounting of how much money was disbursed, if any, to the intended victim and documentation of attempts to locate the victim.

Although the Department has written policies and procedures for handling undisbursed restitution payments, the policy lacks details regarding how often they should be disbursed. As a result, the Department's last major disbursement of these payments was in April 2012. The Director also has not established any formal process for identifying the location of victims who moved after the administrative assistant's or restitution enforcement officer's initial contact attempt. Instead, future attempts to try to locate victims whose current addresses were unknown through various means such as the Internet, phone directories, post office, etc., were made only as time permitted. The administrative assistant stated that, since her promotion to a new position in December 2014, she no longer has the time necessary to try and locate victims. As a result, victims whose restitution orders have remained unsatisfied for the longest period of time have waited longer than necessary to receive payments while \$35,091 remains in the Department's bank account.

Further, the Department has not established a separate bank account for these funds and is unable to determine the composition of the undisbursed restitution being held at any given point in time. Although the administrative assistant prepares a monthly bank reconciliation that Department officials review and compare to the administrative assistant's manual cash receipts and disbursements log, they are unable to perform a proper accountability analysis for undisbursed restitution payments being held at any given point in time. While the Department maintains adequate and updated records of the undisbursed restitution payments being held in individual subsidiary ledger accounts in its computerized system, the system

¹⁰ Unsatisfied restitution orders are those for which the last scheduled payment is at least 60 calendar days overdue.

currently cannot generate a report that consolidates and summarizes the information from all the subsidiary accounts. Without the ability to generate a report for accountability purposes, the Department has no control in place to prevent errors or irregularities from occurring and going undetected.

Segregation of Duties

The Director is responsible for establishing controls, including written policies and procedures, to properly account for and safeguard Department funds. Proper segregation of duties over cash receipts and disbursements ensures that the same individual does not control all phases of these processes. Further, if a signature stamp is used to sign checks, appropriate controls should be in place to ensure it is safeguarded when not in use.

The administrative assistant's duties were not adequately segregated. The administrative assistant collected all payments received by mail, had custody of all payments received by the principal clerks each day and prepared and made bank deposits. She also prepared disbursement checks, maintained control of the Director's signature stamp and provided it to a principal clerk, and prepared the monthly bank reconciliations without any oversight. In addition, she administered the Department's computerized database software that tracked cases, receipts and disbursements. As administrator, she created user accounts and assigned their passwords and initiated all new cases. Although the system automatically prepared and maintained change logs, no one reviewed them. Due to these weaknesses, there is an increased risk that cash receipts could be misappropriated and inappropriate checks could be written and go undetected.

Because of these weaknesses, we randomly selected a three month period in 2014 and determined whether the 481 cash receipts collected by Department staff totaling \$50,192 were properly accounted for and deposited intact.¹¹ We also reviewed for the same three month period 385 cash disbursement checks totaling \$50,192 listed on the computerized monthly cash disbursement reports to determine if they were appropriate. We found that all of these cash disbursements were properly accounted for and paid to the intended victims or the County Treasurer in the correct amounts and were made in a timely manner. Although we found no discrepancies in the months that we tested, allowing one individual to be responsible for all aspects of the financial process and have physical control over the Director's signature stamp increases the risk that fraudulent checks could occur and go undetected.

¹¹ Intact means in the same amount and form (cash or check) as collected.

In addition, the Department's policy conflicted with the County's cash handling policy in regards to when deposits should be made. The Department's policy requires that bank deposits be made at least once a week, while the County's cash handling policy requires that deposits be made either daily or when collected cash and checks exceed \$1,000. Although we found that deposits were made at least once a week,¹² the deposits were not made when accumulated cash exceeded \$1,000, as required by the County's policy. The administrative assistant should have made between 10 and 12 deposits each month instead. Even though we found no discrepancies in the three months tested, the longer that money remains undeposited, the greater the risk that loss or theft can occur.

Recommendations

The Director should:

1. Establish and consistently enforce written policies and procedures for enforcing timely collections of restitution, designated surcharges and EHM fees. Policies and procedures should include specific and appropriate procedures in compliance with State Law for notifying the court when a defendant has not complied with payment of court-ordered financial obligations.
2. Formally establish a time frame, at a minimum annually, to disburse undisbursed restitution payments. In addition, the Director should make a disbursement of undisbursed restitution payments as soon as possible.
3. Seek assistance from the County's IT Department to determine if a report of undisbursed restitution payments can be generated from the Department's computerized financial system. If not, the Director should work with IT to develop an alternative type of report and maintain it with adequate detail to support the amount of undisbursed restitution payments being held.
4. Ensure that financial duties are adequately segregated or implement supervisory or other compensating controls, such as reviewing the audit change log.
5. Ensure that bank deposits are made when accumulated cash reaches \$1,000, in compliance with the County's cash policy.

¹² The deposits ranged from \$1,960 to \$7,428.

The Legislature should

6. Consider adopting a local law that would allow the Department to collect a monthly administrative fee from probationers convicted of a crime under Article 31 of the VTL.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The Local officials' response to this audit can be found on the following page.



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May 26, 2016

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Mr. Edward V. Grant, Jr.
Chief Examiner
Division of Local Government and School Accountability
110 State Street
Albany, NY 12216

Dear Mr. Grant:

Chemung County has reviewed the draft audit report (2016M-010) entitled "Chemung County Probation Department-Collections and Disbursements" for the period covering January 1, 2014 to September 18, 2015.

Chemung County appreciated the opportunity to provide clarifications to the preliminary draft report and to respond to your agencies recommendations. We concur with the recommendations made by your agency.

As the audit was being conducted and issues were identified, the County undertook the necessary corrective actions. Along with the responsibilities and duties of the Probation Department to promote offender rehabilitation and protection of the community, the collection and disbursement of restitution has been, and will remain, a priority. Our commitment to this issue can be seen by the fact that in 2014 the Department collected over \$190,000 in restitution and designated surcharges and disbursed over \$215,000.

In regards to adopting a local law to impose a DWI Administrative fee, we recognize that this is a potential source of revenue and will be exploring this for consideration.

We appreciate the work of the Comptroller's office to help us improve our financial operations and revenue. If you have any questions or need further information, please feel free to contact my office.

Sincerely,

Thomas J. Santulli
Chemung County Executive

Printed on Recycled Paper

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to examine the Department's collections and disbursements processes for the period January 1, 2014 through September 18, 2015. To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed Department staff to gain an understanding of the Department's financial operations related to the enforcement, collection and disbursement of court-ordered financial obligations.
- We reviewed relevant laws, regulations and County and Department policies and procedures that were applicable to the enforcement, collection and disbursement of court-ordered financial obligations.
- We selected a sample of 50 cases, using an Excel random macro, from the population of 799 cases totaling over \$3.1 million with open dates between January 2010 and January 2015 who owed balances on court-ordered financial obligations. We eliminated cases that were paid in full on the old database, transferred or owed minimum amounts until we had 25 cases to review. We reviewed the 25 cases totaling \$118,964 to determine if the Department was properly enforcing collections and reporting defendants who were repeatedly in arrears to the court in accordance with law.
- We performed an analysis to determine the potential amount of revenue that the Department could have realized if the County had adopted a local law requiring individuals convicted of a DWI or DWAI offense who were sentenced to a period of probation supervision to pay an administrative fee of \$30 per month from January 2014 to August 2015.
- We accounted for all cash receipt numbers issued from January 2014 through June 2015 to determine if all receipt numbers were accounted for.
- We accounted for all cash disbursement check numbers from January 2014 through May 2015 to determine if all check numbers were accounted for.
- We used an Excel random macro to select a three-month period (July, August and September 2014) from the scope period to verify whether all cash receipts were properly recorded, verify whether deposits were made intact and to determine if deposits were made in compliance with County policy. We traced all the receipts that were issued to the monthly cash receipts reports, then to composites of bank deposits requested from the bank. We also selected, without any known bias, cash receipts that were associated with 43 accounts and traced the receipts to the individuals' payment history reports to verify whether the Department's financial software automatically posts cash receipt transactions to individuals' subsidiary accounts.
- We used the same three-month period used in cash receipt testing to verify whether cash disbursements were properly recorded and made to intended victims in a timely manner

and for the correct amounts. We traced all cash disbursements recorded on the monthly cash disbursement reports to either check composites obtained from the bank or to photocopies of the actual checks maintained by the Department to determine if the amounts and victims' names matched the monthly cash disbursement reports. We also used the same 43 accounts that were used in the cash receipt testing to verify whether the Department's financial software automatically posts cash disbursement to individuals' accounts at the time that the cash disbursement checks are generated.

We conducted this performance audit in accordance with GAGAS. 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.

APPENDIX C

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