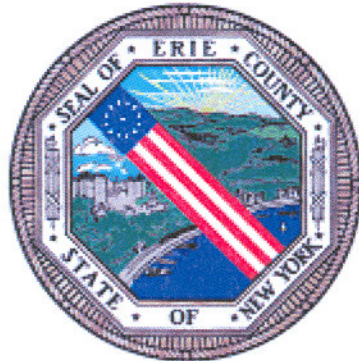

REPORT TO THE ERIE COUNTY LEGISLATURE
92 FRANKLIN STREET
BUFFALO, NEW YORK 14202

February 2009

ERIE COUNTY DEPARTMENT OF PROBATION
AUDIT OF CASH RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD JANUARY 1, 2006 – SEPTEMBER 30, 2008

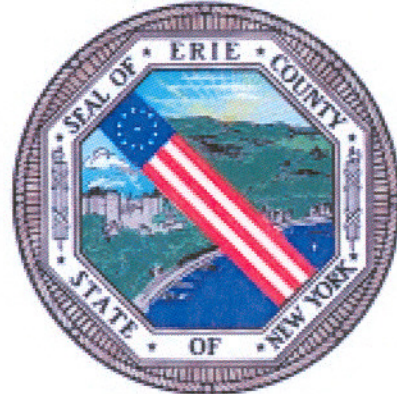


MARK C. POLONCARZ

ERIE COUNTY COMPTROLLER

Michael R. Szukala
Deputy Comptroller - Audit & Control

**HON. MARK C. POLONCARZ
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202**



February 26, 2009

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed an audit of cash receipts and disbursements at the Erie County Department of Probation ("Probation"), for the period January 1, 2006 through September 30, 2008.

We conducted this audit in accordance with 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our objectives were to determine whether adequate internal controls exist over cash receipts and disbursement transactions concerning Probation's handling of County-imposed probation fees and court-ordered payments. In addition, we examined whether payouts due to persons and entities owed monies pursuant to court orders were timely and were made in accordance with applicable laws, rules, and regulations.

The scope of our audit included (1) tests of cash receipts from probationers; (2) tests of pay-outs to victims; (3) a review of related court documents and probationer records; (4) the preparation of a bank reconciliation; (5) an evaluation of the various computer systems used by Probation; and (6) the disposition of undistributed funds on hand.

We believe that the daily procedures in use by Probation provide adequate control over the actual receipt and disbursement of funds. However, we believe that the lack of adequate supervision and ongoing oversight over the operations of Probation's Cashier's Office together with the failure to implement prior Comptroller audit recommendations has, in part, resulted in significant findings which are detailed below.

BACKGROUND:

Probation is tasked with the monitoring of individuals on probation, the preparation of certain reports for Family Court and responsibility for monitoring and collecting County-imposed and court-ordered restitution and court-imposed fees from certain probationers.

Probation officers monitor, oversee and control whether the probationers are actively paying their County-imposed probation fees or court-ordered fines and fees as well as refraining from further criminal activity and otherwise adhering to the terms of their probation. These fees can include restitution to the victims of the probationer's crimes. The different types of fees that a probationer may be required to pay are listed below:

| | |
|----------------------------|---|
| Restitution: | The amount is determined by each individual judge. |
| Mandatory Surcharge: | Set by the court for incurred costs. |
| 10% Surcharge: | 10% of restitution ordered by the court. |
| Probation Supervision Fee: | \$35.00 per month (composed of two fees – DWI and Probation), and imposed by the County. |
| Drug Testing Fee: | \$50.00 one time charge, imposed by the County |
| Electronic Monitoring Fee: | \$3.00 per day of monitoring, (length of electronic monitoring is determined by the court). |

A number of the County-imposed probation fees were imposed or increased by the County following the 2005 “red and green budget” situation as a means of developing additional revenue for the benefit of Probation operations.

A probationer cannot be removed from probation if any court-ordered restitution is outstanding, unless a judge concurs. However, a probationer cannot be held on probation if he/she does not pay his/her County-imposed fees. In this central point, the court-ordered payments and County-imposed fees differ radically.

In 2006, following the creation and recommendations of the Erie County Charter Revision Commission, the Erie County Legislature and County Executive approved of revisions to the Erie County Charter (“Charter”), and voters ultimately approved those changes at a public referendum in November 2006. Among the changes which formally took effect on January 1, 2007 was the transfer of revenue recovery/collection responsibilities from the County Executive’s Division of Budget and Management and Probation to the Comptroller’s Office’s Division of Accounting. This included the County jobs and positions associated with revenue recovery functions, including one Billing Account Clerk title budgeted and located in Probation.

Functionally, the transfer of the title and responsibilities for probation fee delinquent collection from Probation to the Comptroller’s Office took effect in May 2007 when the incumbent in the title resigned to take a different title in Probation and the Comptroller’s Office hired a new employee into that title from a Civil Service list.

Under the probationer fee levy and payment process, Probation and the Comptroller's Division of Accounting maintain separate but related responsibilities. Probation, through its probation officers, probation supervisors, and Cashier's Office maintains full responsibility for establishing, levying and tracking probationer fees and payments until the time the probationer completes and departs their probation period. This includes determining amounts owed, and by whom, deadlines for payment, granting fee waivers, and tracking of all collections. This includes the closing of probationary periods, even if probationers have failed to pay their required fees.

The Comptroller's Office Division of Accounting, through its Billing Account Clerk employee located at Probation maintains responsibility for pursuing payment from probationers who fail to pay their fees after their probation period ends and Probation closes their cases. At that time, responsibility shifts to the Division of Accounting as a collection and revenue recovery matter.

It is important to note that under the law, the County cannot hold a probationer on probation for failure to pay their County-imposed fees. And in fact, many closed cases have existing unpaid probation fees and balances that were not collected on by Probation during the probation period.

In December 2007, the Erie County Comptroller's Division of Accounting ¹ became aware of certain issues associated with Probation's collection of court-ordered restitution payments and County-imposed probation fees. Chief among these issues was the fact that Probation had not been adequately releasing restitution payments to victims for many years. Additionally, Probation was maintaining a very large balance in the restitution bank account. Concerns were also raised that probation officers and other Probation employees were not adequately tracking or enforcing the terms of County-imposed probation fees on probationers. Former Probation Director Anne Martin requested the Division of Accounting's assistance in resolving these issues.

The Division of Accounting convened a meeting in January 2008 with Director Martin which began a nearly-year-long process of identifying issues at Probation and addressing them. This included new procedures between Probation employees and the Comptroller's Division of Accounting, which maintains a billing account clerk based at Probation, to effectuate the recovery of probation fees in conjunction with Probation employees. This year-long dialogue included significant discussions and meetings regarding (1) the lack of payments from and reconciliation of a HSBC bank account controlled by Probation for the payment of restitution; (2) issues in internal controls in Probation's Cashier's Office; (3) a lack of probation officer support in pursuing the timely collection of County-imposed fees on probationers; and (4) multiple computer systems at Probation, none of which interface with one another or the County's SAP system.

¹ Under the County's Administrative Code, the Erie County Comptroller's Division of Accounting is a separate unit from the Division of Audit and Control.

Eventually, at the request of the Comptroller's Office, the County's Division of Information and Support Services ("DISS") became actively involved in attempting to develop an interface between Probation's computer systems and SAP.²

SUMMARY:

- 1) On December 12, 2008, with the knowledge and concurrence of Probation, the Erie County Comptroller took over control of the Probation restitution bank account. This included signatory authority and the reconciliation process but does not entail any part of the process determining the amounts, or which parties are paid from that account. That process continues to be solely under the control of Probation. As part of our audit, we reconciled the bank account through October 31, 2008 to give the Comptroller's Division of Accounting a viable bank account balance to enter into SAP and to provide reconciliation adjustments needed for reconciling the account starting with the month of November 2008.
- 2) The restitution bank account carries an unusually large balance as a result of payments being received but not being paid out as required. We were not able to determine the source of or pending disposition for \$337,693 of the \$744,519.94 in cash on hand at November 30, 2008.
- 3) We found that as of November 30, 2008 there were 488 outstanding checks from years 2000 through 2007 totaling \$138,233 still being carried as reconciling items in the restitution bank account.
- 4) Fully paid restitution and surcharge orders of \$93,547 remained on the books as amounts accrued instead of being paid to the beneficiaries and courts as required. These monies represent collected amounts due victims that Probation has yet to pay.
- 5) Probation underpaid the County \$1,120 for 2008 in monthly checks sent to the Comptroller for fines.

² Upon the direction of Probation, DISS weekly prints checks payable to victims from the restitution account. This process is presently off-line and does not involve entries or notations in SAP. Eventually, the Office of the Comptroller plans to transition this process to SAP and to the Comptroller's accounts payable unit, similar to a conversion of the Department of Senior Services' Protective Services for Adults program in 2008.

FINDINGS AND RECOMMENDATIONS:

1. Excess Balance In Bank Account

Historically, the balance in the Probation restitution account has been excessive. Since 2005, the balance in the account has increased forty-one percent (41%). The causes of the increasing available balance are uncashed checks paid to victims and beneficiaries, accrued payments not being made, and Probation's inability (or lack of attempt) to locate beneficiaries resulting from the disconnect between the various record-keeping systems used by Probation to account for the cases.

While our audit examines the period January 1, 2006 through September 30, 2008, for illustrative purposes we utilized more recent financial data to make the numbers used in our calculations current.

| | |
|--|-------------------|
| Ending bank balance at November 30, 2008 | \$744,519.94 |
| Less: Accrued payments received at December 12, 2008 | 406,827.09 |
| Plus: Outstanding checks at November 30, 2008 | <u>138,233.36</u> |
| Adjusted balance available at November 30, 2008 | \$475,926.21 |

The adjusted balance available at November 30, 2008 represents payments received from probationers but not paid out. The \$138,233.36 is the total of outstanding checks that should be voided and added back to the balance (see Finding #2 "Bank account not reconciled and lack of daily supervision"). For the most part, unless addresses for those who are owed these funds have changed, the location of these beneficiaries should be determinable and the entire amount payable. However, for the remaining balance of \$337,692.85 we were unable to determine who initially made these payments and to whom these payouts should go.

| | |
|---|-------------------|
| Adjusted balance available at November 30, 2008 | \$475,926.21 |
| Less: Repayment of outstanding checks | <u>138,233.36</u> |
| Remaining balance unpaid | \$337,692.85 |

WE RECOMMEND that Probation determine the source and disposition of the remaining balance and take the appropriate action necessary to disburse these funds on hand to the victims/beneficiaries as required by law. **WE FURTHER RECOMMEND** that Probation management request an opinion from the Department of Law as to whom these payments should be made if not clearly determinable.

As part of our audit, we requested the Department of Law research various legal concerns regarding payments to victims/beneficiaries. This research has been provided to Probation.

2. Bank account not reconciled and lack of daily supervision

The restitution bank account had not been reconciled since the 1980's and when coupled with the absence of regular supervision since 2004 ongoing problems have been masked or ignored.

The Erie County Comptroller's Office has previously made formal audit recommendations in 1995, 1998, and 2000 that Probation reconcile the restitution account. For whatever reasons, these prior audit recommendations were ignored. The absence of regular and timely reconciliations increases the risk that errors or irregularities could occur and go undetected (see finding #4 "Underpayment of monthly checks to the County").

While daily tasks appear to be performed appropriately by the cashiers, other tasks do not receive the attention needed. As a result, we found that the unreconciled restitution account had 488 uncashed checks totaling \$138,233.36 from 2000 to 2007 that continued to be carried as reconciling items month after month. Lack of action prevented these monies from being paid out in a timely manner and may make it difficult to locate the whereabouts of some of these beneficiaries after such an extended period of time. In addition, we found that accrued payments for restitution and surcharges were not paid (see Finding #3 "Unpaid accruals").

Duplicate checks for both escrow fines and County fines were issued for four consecutive months until the corrections could be made by DISS. While the error was recognized and no excess payments were made, these duplicate checks were reconciling items for a four month period.

During the period of the audit, and presently, Probation's Cashier's Office is staffed by two cashiers (one job group 6 and the other a job group 5) and a job group 6 employee who maintains other responsibilities associated with the probationer fee payment and waiver process. There was no higher-level daily supervisory or management oversight of the Cashier's Office by Probation officials.

WE RECOMMEND that Probation management take action to employ an appropriate higher-level employee whose responsibilities would minimally include the daily review of cashier's transactions to provide an improved internal control.

3. Unpaid accruals

Fully paid restitution and surcharge amounts are not paid out to the victims in a timely manner. This was an unimplemented recommendation in our last audit report from July 2000. A fully paid accrued balance means that there is no more money to be collected from the probationer on that restitution or surcharge order. We found that there were 293 accrual balances in the amount of \$93,547.17 that had not been paid. Of these unpaid

accruals, 240 were from 2007 and 2008 while the remaining 53 unpaid accruals were from the years 1988 through 2006.

Recognizing that these accruals should be paid out immediately, the ability to locate the victim and make the appropriate payment could be hampered by Probation's inaction.

WE AGAIN RECOMMEND that Probation take the steps necessary to ensure a timely review of all fully collected restitution orders and surcharges and make the appropriate payments to the victims as directed by the court orders.

In response to IAM #3 issued during our audit, the subject of which was unpaid accruals discovered during the course of our audit, Probation has begun to address his issue.

4. Underpayment of monthly checks to the County

The monthly check to the County for fines (SAP account 421500) has been understated each month since April 2008. The monthly bank deposit transmittal received from Probation supported by the monthly financial report (DLA248-R3) is not currently in agreement with the daily journal of receipts and disbursements (DLA220-R2). We noticed that this problem started in April 2008 and has continued through December 2008. We believe this is the result of the negative accrual balances carried in the weekly status reports for two probation officers. For 2008, the underpayment to the County was \$1,120.

Neither Probation nor DISS appears to have been aware of this problem and so corrective action has not been taken. As a result, a \$125 underpayment will continue each month in 2009 until the reason(s) for the discrepancy have been identified and addressed.

WE RECOMMEND that Probation forward a check in the amount of \$1,120 to the Comptroller's Office to address the underpayment of fines and forfeited bail for 2008. In addition, **WE RECOMMEND** that Probation contact DISS for their assistance in identifying and correcting this error. Lastly, **WE RECOMMEND** that until corrected, Probation forward to the County an additional \$125 each month starting with January 2009 to address the ongoing underpayment of fines and forfeited bail.

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5. Prior Audit Recommendations

Below is a table describing the status of recommendations that have appeared in previous audits of Probation.

Develop and implement procedures necessary to reconcile the bank balance and establish supervisory review to ensure timely preparation.

NOT IMPLEMENTED
(As of December 12, 2008, the bank reconciliation has been performed by the Comptroller's Office.)

Develop and implement procedures to timely update detail of undisbursed restitution payments and to appropriately redesignate funds for payment.

NOT IMPLEMENTED
(Corrections have begun since the close of audit fieldwork.)

Clearly define the responsibility to monitor and followup payment of fully collected restitution orders and surcharges.

NOT IMPLEMENTED
(Corrections have begun since the close of audit fieldwork.)

Review feasibility of system enhancements or implementation of a new system to address the shortcomings in the existing system over address changes and history of payments received and disbursed.

In the process of being IMPLEMENTED with the Erie County Fiscal Stability Authority's (ECFSA) February 4, 2009 approval of a Probation request to provide an efficiency grant for Caseload Explorer

Reschedule hours of operation so that payment can be accepted throughout the day.

IMPLEMENTED

Increase surcharges in accordance with the law.

IMPLEMENTED

AUDITOR COMMENTS:

County Imposed Fees

As previously noted, in 2005, the County imposed administrative fees for general probation supervision, DWI supervision, electronic monitoring, and drug testing. The intent of these fees was to generate revenue for the County and enable Probation to retain existing staff and hire new staff as necessary and appropriate.

Since that time, there have been problems in collecting revenues due to the County through County-imposed fees which have been the subject of many meetings and dialogue throughout 2008 between the Comptroller's Division of Accounting and Probation, as well as including representatives from Budget and DISS. For several years, some probation officers have declined to pursue fee payments by probationers, while others have engaged in minimal efforts to compel their probationers to pay their required supervision or related fees. In other instances, probation officials have not updated records to reflect probationer waivers, thus leading to inaccurate account receivables for probationers who will not, and are not expected to pay probation fees. That said, working with Probation, the Division of Accounting has reported significant progress in 2008 in identifying those probationers who owe the County for their user fees, encouraging or directing probation officers to assist in that process, as well as in collecting on those fees or providing waivers to those probationers who cannot pay.

There remain underlying issues, including the need for ongoing support and cooperation by probation officers in identifying and pursuing those probationers who refuse to pay, as well as timely identifying those probationers who are unlikely or unable to pay due to a lack of financial means. Probation management has been supportive of Division of Accounting efforts to pursue current and past due fees and has endeavored to facilitate greater efforts by Probation employees, including officers, to receive these fees.

While we did not audit these figures, at November 30, 2008, we noted that for open probationer cases where there were no court-ordered fees outstanding, approximately \$892,000 was due but had not been collected by Probation officials. In addition, 830 closed probationer cases totaling \$374,884 were deemed to be currently uncollectible due to the lack of current contact addresses for individuals who had not paid their fees but whose cases had previously been closed by Probation.

Probationers made fee overpayments of \$5,540 that must be repaid.

WE RECOMMEND that Probation initiate renewed efforts to collect all fees outstanding on open cases, timely process and record probationer fee waiver requests, and repay all fees for open or closed cases that were improperly collected. Probation's eventual purchase and installation of a new system entitled 'Caseload Explorer,' described in the next section, may assist in this task. These measures will help ensure accurate and timely accounts receivable are established for probation fees and probationers.

WE FURTHER RECOMMEND that Probation continue to work with the Comptroller's Office Division of Accounting to identify closed cases that can be pursued for collection efforts.

Computer Systems in Use at Probation

Probation maintains five separate computer systems to track probationers as well as County-imposed fees and court-ordered payments. The process and systems for taking

payments and recording probationer activity is unwieldy, unreliable and should be replaced. The payment function is composed of a data entry module, and two payment systems. One payment system is written in Microsoft Disk Operating System (“MS DOS”) and is over 25 years old. The system is so old and complex that it could not be modified to take new types of payments. Therefore, Probation hired a consultant to develop a second system to take payments the first would not. It was Probation’s goal to have this second system supplant the first, but when the funding for this second system ran out, the consultant did as well. The second system takes payments the first does not, but duplicates none of the first system’s capabilities. A third system is a data entry module needed to add new probationer data to the first two payment systems. None of the payment systems communicate with one another, thus the same information needs to be entered twice to be recorded on both systems. Thus, three systems are needed to do the work of taking payments and basic information from probationers. DISS does not have the resources needed to maintain the myriad of systems.

The fourth system, used solely by Probation Officers, that records probationer activity is also in need of replacement. Newer systems connect payment processing, the court system and probation records, giving a probation officer a one-screen view of a probationer’s criminal history, restitution history and such key issues as outstanding warrants or public benefits claims. The current system performs none of these functions and is woefully inadequate for monitoring probationers. This fourth system does not connect to SAP or any of the systems described above.

The fifth system is also DOS based. This system records the history of all probationers – both open and closed cases.

None of these systems interfaces with SAP.

Probation has been examining a replacement computer system called Caseload Explorer. Caseload Explorer not only would address problems with the current payment systems, it would increase the efficiency of probation officer’s as they meet with their clients. Caseload Explorer allows a probation officer to view a client’s history, including criminal and public benefits history, all on one screen. The Caseload Explorer system also would connect with the New York State corrections system, the County’s SAP accounting system, as well as the systems of certain other county probation departments in New York State. Such a computer system would allow probation officers to be more efficient and effective by focusing their attention on those clients most at risk of further violations. Significantly, a new system could eliminate a continuing drain on DISS resources, saving the County money.

During the course of our audit, Probation requested approval from the ECFSA for an efficiency grant request to purchase and deploy Caseload Explorer. On February 4, 2009, the ECFSA approved the request.

WE RECOMMEND that Probation expeditiously purchase and deploy a replacement computer system to eliminate the five current systems.

RESULTS OF EXIT CONFERENCE:

An Exit Conference was held on February 25, 2009 with the Acting Director of Probation and the Commissioner of Central Police Services. The contents of this report were discussed. The Acting Director and the Commissioner were generally in agreement with our findings. The Acting Director and Commissioner requested that several details be amplified in the Audit and we agreed to do so in order to reflect certain actions undertaken by Probation after we began our fieldwork and informed Probation of our preliminary findings. Probation also requested that an explanation be added regarding the lack of internal controls in their Cashier's Office. We made substantially all of these changes.

In August 2008, the current Acting Director of Probation assumed her role. At the Exit Conference she stated that shortly after she assumed her current responsibilities, she became aware of concerns with the cashiers operation. She stated that she attempted to address these concerns through the hiring of additional staff. Probation's proposed 2009 Budget included requests to create a new JG 13 Principal Probation Officer title and a new JG 10 Billing Collections Specialist title.³ During the 2009 budget process, the Erie County Legislature declined to approve these new positions.

In accordance with the County's Audit Response System and Procedures, we request that the Acting Director prepare a written response to our office and the County Executive concerning the findings and recommendations. The final written response should be submitted to our office and the County Executive by March 25, 2009.

We also request that the Director forward copies of the response to the Erie County Legislature and ECFSA by March 25, 2009.

ERIE COUNTY COMPTROLLER'S OFFICE

cc: Peter M.Vito, Commissioner, Erie County Department of Central Police Services
Rachelle J. Cybulski, Acting Director, Probation
Hon. Christopher C. Collins, County Executive
Gregory G. Gach, Director, Division of Budget and Management
Erie County Fiscal Stability Authority

³ A separate Billing Collections Specialist title exists in the Office of Comptroller's revenue recovery unit and was one of the positions that transferred to this office in 2007 due to the Erie County Charter amendments.