



# **Report #2020-06**

## **County Probation Financial Operations**

**Department of Inspector General**  
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Clerk of the Circuit Court and County Comptroller  
Polk County, Florida

November 17, 2020

**INSPECTOR GENERAL AUDIT REPORT**  
**Report 2020-06 County Probation Financial Operations**

The Honorable Board of County Commissioners

We have completed an audit of Polk County Probation Financial Operations. The audit was conducted as part of our 2020 Annual Audit Plan. The purpose of the audit was to determine the adequacy of controls over collection and enforcement of court-ordered financial obligations as condition of probation, and disbursement of restitution payments to victims. We also examined compliance with applicable regulatory laws, rules, and policies. This report presents our audit conclusions and recommendations. County Probation management was receptive to our conclusions and has provided an action plan to implement our recommendations.

We appreciate the cooperation and assistance provided by the County Probation Division and the Clerk's Court Payments & Compliance team. We hope you find this report useful in ensuring Polk County government provides the best possible services to our residents.

Respectfully submitted,

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Lita McHugh, CPA, CIG, CIGI  
Inspector General

Approved:

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Stacy M. Butterfield, CPA  
Clerk of the Circuit Court and County Comptroller

# EXECUTIVE SUMMARY

This audit addressed Polk County Probation processes for enforcing and administering financial obligations imposed on probationers in the sentencing court. The result of our audit procedures was that, overall, controls provided reasonable assurance that financial obligations imposed on probationers were properly enforced and administered. Restitution payments collected from probationers were properly and timely disbursed to the applicable victims. Generally, processes ensured compliance with applicable rules, laws, statutes, ordinances, and policies. Our audit found a few exceptions to compliance with standard policies and procedures.

1. A probation officer's delay in submitting a modification request to court for consideration and approval caused the division and the court to lose jurisdiction of the case after it expired.
2. A payment received from a probationer for cost of supervision was inappropriately refunded to the probationer as overpayment.
3. Prior to the expiration of their probation, two probationers defaulted on payment for their costs of supervision. The affidavits for violation of probation filed with the Court did not disclose the defaulted payments.

Our audit disclosed certain policies, procedures and practices that could be improved. Our audit was neither designed nor intended to be a detailed study of every relevant system, procedure or transaction. Accordingly, the recommendations presented in this report may not be all-inclusive of areas where improvement may be needed.

In response, County Probation management has developed a corrective action plan to address our recommendations.

# BACKGROUND

The Polk County Probation Division (County Probation) is responsible for the supervision of probationers by monitoring and enforcing compliance with the terms and conditions imposed on them by the sentencing court. A majority of County Probation cases result from misdemeanor or traffic violation charges. To enable effective administration, County Probation operates from three branch offices (Winter Haven, Bartow, and Lakeland). County Probation is also responsible for overseeing offenders that were placed on home electronic monitoring.

County Probation performs various supervisory and monitoring functions which, in aggregate, provide the court with sentencing alternatives to incarceration for county and public benefit. Part of those functions (which are the focus of this audit) include the collection of court-ordered financial obligations for probation sentencing, and disbursement of received restitution payments to victims. Typically, all monetary obligations (court costs, cost of supervision, victim restitution, fines/surcharges, and any other fee) are imposed as part of probation sentencing as condition for probation. Accordingly, County Probation is solely responsible for collecting payments, remitting received payments to the Clerk, enforcing compliance, and notifying the sentencing court of non-payment. These responsibilities and procedures consigning monetary obligations were changed effective May 1, 2016 pursuant to the agreement reached between the 10<sup>th</sup> Judicial Circuit Court, County Probation, and the Clerk. Specifically, fines/surcharges, court costs, and other related fees were no longer a condition for probation, to be collected by the Clerk. Cost of supervision (COS) and victim restitution remained as condition of probation and continue to be collected by County Probation.

**Victim Restitution** –Section 775.089, Fla. Stat., provides that the court shall, in addition to any other punishment, order the defendant to make restitution to the victim for (1) damage or loss caused directly or indirectly by the defendant’s offense; and (2) damage or loss related to the defendant’s criminal episode. The State Attorney Office is responsible for determining the amount of loss sustained by the victim, to be paid by the probational. The statute requires the court to make restitution payment a condition of probation and that all monies collected be first applied to restitution.

**Cost of Supervision** –Section 948.09, Fla. Stat., requires each probationer to pay a \$40 monthly fee for COS during the duration of their probation. That statute also required those offenders placed on electronic monitoring to pay an additional amount determined by the sentencing court. In Polk County, the additional cost for monitoring service is \$40 per week.

During fiscal year 2019, County Probation processed and supervised a total of 2,454 probation cases. The division collected and disbursed \$40,728.98 in victim restitution to the applicable victims. The division also collected \$670,074.14 for probation COS and \$133,415.00 for electronic monitoring supervision. Additionally, County Probation assisted the Clerk by collecting \$82,641.94 in surcharges/fines and court costs.

## SCOPE AND METHODOLOGY

The **objectives** of this audit were to determine whether:

- County Probation financial operation processes ensured compliance with applicable regulations, rules, laws, statutes, ordinances, and policies and procedures.
- Adequate controls and processes were established and implemented for assessment, collection, enforcement, and documentation of the financial obligations imposed by the sentencing court as a condition of probation.
- Payments received from probationers for victim restitution were properly and timely disbursed to the applicable victims.

### Scope:

The audit focused on the financial operation aspect of County Probation from January 2019 through March 2020, and any related activities occurring through the end of our audit fieldwork.

We conducted various audit procedures to address our stated audit objectives and scope including, but not limited to:

- Reviewing applicable regulations, rules, laws, statutes, ordinances, Policies, and policies and procedures
- Interviewing County Probation Director, selected staff responsible for administering and managing probation operations, and knowledgeable Clerk personnel
- Testing a sample of cases from the population of active and closed cases
- Obtaining and examining court records for each sampled case to identify receivables imposed as condition of probation
- Verifying and analyzing records of each receivable for evidence of proper and timely payment
- Reviewing records for evidence that nonpayment was otherwise addressed and/or reported to court
- Verifying records for evidence that restitution payments received were properly and timely disbursed to the applicable victims

We conducted this audit in accordance with the *International Standards for the Professional Practice of Internal Auditing* and with *Principles and Standards for Offices of Inspector General*. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# FINDINGS AND RECOMMENDATIONS

Overall, we found that County Probation has adequate and appropriate processes in place to ensure (1) court-imposed financial obligations were properly enforced, collected, accounted for, processed, and documented, (2) restitution payments received from probationers were properly and timely disbursed to the applicable victims, and (3) compliance with applicable rules, laws, statutes, and policies. Some of the noteworthy controls that we found to be in place included:

- ✓ Probationers were instructed not to make cash payments. Except in the rare instances where some probationers may send cash through the mail, the division does not accept cash payments.
- ✓ Incompatible duties and responsibilities are properly segregated among different employees where practicable. For instance, key functions pertaining to receipt and recording were performed by, separate County Probation staff.
- ✓ Negotiable instruments such as money orders or cashier's checks received from probationers are restrictively endorsed at the point of receipt by staff. Those endorsements specified that the item is to be deposited only to the county's bank account.
- ✓ While payments are collected from probationers by County Probation staff or the Clerk's Court Payments & Compliance team, the Clerk Comptroller Division is responsible for preparing bank deposits and recording collection activities in the county's general ledger.
- ✓ Probation cases are assigned to probation officers on a rotation basis in accordance with the probationer's place of residence and location of the officer.
- ✓ Changes or modifications of the terms of probation may be initiated by probation officers, but must be approved by a judge or Probation program manager.
- ✓ Probation officers are required produce monthly reports that show probation caseloads, the status of assigned cases, and collection activities. These reports are used to generate performance statistics for management's use.
- ✓ To help provide direction and guidance to staff, Probation management prepared a policy and procedure manual.
- ✓ Adequate forms and records are maintained to account for and track collection activities.

We selected a random, statistical sample of 72 criminal cases out of 2,805 total criminal cases for the time period from January 1, 2019 through March 30, 2020 for testing. The purpose of selecting a random, statistical sample was to project the errors found to the entire population of cases for the time period. This would be a very accurate method of projecting dollar errors if all criminal cases were consistently assigned the same dollar amount for fines, fees, victim restitution, and violation of probation.

However, court cases and the charges vary, and fees may be waived by the court. It would not be possible to project the dollar amount of any projected errors. Therefore, we are reporting only

the number of errors for each type of error found, as compared to the total population, and projecting the potential number of similar errors based on our sampling.

Type of exception	# of errors	Projected Errors
Delayed modification request	1	39
Improper refunds	1	39
Defaulted costs of supervision	2	78
Victim restitution not prioritized	1	39

We commend County Probation management for establishing and implementing appropriate controls designed to ensure effective and efficient operation of County Probation. The few exceptions we identified during our testing pertain primarily to lack of compliance with established procedures and regulatory State Statutes. We have provided recommendations for management’s consideration to address the exceptions and improve operations.

**Finding #1 – A probation officer’s delay in submitting an affidavit of violation caused the division and the court to lose jurisdiction of the case after it expired.**

Under the division’s procedure manual, the primary responsibility of the division is to ensure the compliance with court-ordered conditions, and report any noncompliance to the judge while the court still has jurisdiction. Court loses jurisdiction on a case when the case expires before the probationer fully complies with all conditions of the probation.

For one of our sampled cases, the sentencing court imposed a \$25 administrative fee as part of a 6-month probation sentencing on a probationer. The fee was not collected from the probationer, and the case terminated when the probation period was over. Management explained that the probation officer had completed an affidavit in a good faith effort to maintain jurisdiction. Due to oversight, the affidavit was not submitted to the court for approval or filed with the Clerk of Courts prior to the scheduled exit date. When the 6-month probation was over, the Senior Probation Officer petitioned to terminate the case. As a result, the court lost jurisdiction of the case while the fee was unpaid, and community service was not performed.

We recommend management take proactive measures to assure compliance with court-ordered conditions and obligations. In response to our recommendation, Probation management initiated corrective actions to prevent similar instances in the future.

**Management response:**

Management agrees.

We have set up several additional internal controls to ensure compliance. The first control was to require all Senior Probation Officers to submit documents on their cases to a Program Manager or Division Director for approval. We also established the requirement for random file audits in all levels of supervision.

**Finding #2 – A payment received from a probationer for cost of supervision was inappropriately refunded to the probationer as overpayment.**

For one of our sampled probation cases, the probationer had a \$40 balance due for COS prior to the date his case was terminated. The payment was received from the probationer after the case was terminated. However, staff inappropriately refunded the \$40 to the probationer as an overpayment. The request for refund was initiated by the probation officer and subsequently reviewed and approved by three separate individuals including the supervisor, yet the error was not detected.

We recommend that management assures that a thorough review is conducted before issuing refunds. In response to our recommendation, Probation management initiated corrective actions to prevent similar instances in the future.

**Management response:**

Management agrees.

Current policy requires refund requests be made and justified by the officer. The Fiscal Specialist reviews justification and enters refund request. Request is reviewed by the supervisor and signed prior to the refund. Going forward, we will do random audits to ensure accuracy and compliance.

**Finding #3 - Prior to the expiration of their probation, two probationers defaulted on payment for their costs of supervision. The affidavits for violation of probation filed with the court did not disclose the defaulted payments.**

Cost of supervision is one of the two financial obligations imposed on probationers by the sentencing court as condition of their probation. Per Probation policy, probation officers are responsible for ensuring any non-compliance is timely disclosed to the court before jurisdiction of the case is lost. Probationers are provided with affordable options for making payment. For probationers who willfully refuse to make payments, the assigned probation officer must file an affidavit for violation of probation (VOP) with the sentencing court.

During our audit, we identified instances where two separate probationers defaulted on their payment for COS in the amounts \$40 and \$440 respectively. The VOP that was filed with the court omitted the defaulted payments, and addressed only other violations by the probationers. In response to our inquiry, probation management indicated that the omission was an oversight by the two probation officers. In one case, an addendum was filed to address the outstanding COS. The defendant paid the outstanding COS in the other case prior to court. While the timeliness was not in accordance with policy, the outstanding amounts were addressed.

We recommend that management take proactive measures to assure defaults are handled properly. In response to our recommendation, County Probation management initiated corrective actions to prevent similar instances in the future.

**Management response:**

Management agrees.

The Program Manager of the Lakeland office reviewed outstanding documents. She ensured that COS was documented on Violation Affidavits and provided retraining of staff to ensure compliance in the future. All supervisors are to pay particular attention to this issue when they review documents.

## **OTHER OBSERVATIONS**

Listed below are items we observed during the audit that were outside the scope of our audit, but worthy of being brought to the attention of management.

### **PRIORITIZATION OF PROBATIONER PAYMENTS**

In one of our selected cases, a fee was paid to the Clerk by the probationer to set up a payment plan. This collection fee is not a court-ordered payment at adjudication. This was not a finding.

In reviewing this case, County Probation and the Clerk's Court Payments & Compliance team agreed it would be beneficial for Clerk and County Probation to collaborate regarding coordination of payments made on a case, regardless of where the payment is made.

# MANAGEMENT ACTION PLAN

Recommendation	Responsible Employee	Target Date
<p><b>Recommendation #1</b> - We recommend management take proactive measures to assure compliance with court-ordered conditions and obligations.</p>		
<p><b>Management action plan</b> - We have set up several additional internal controls to ensure compliance. The first control was to require all Senior Probation Officers to submit documents on their cases to a Program Manager or Division Director for approval. We also established the requirement for random file audits in all levels of supervision.</p>	<p>Procedures established by Director, T. Michelle Thurner and performed by all supervisors.</p>	<p>New policy established August 18, 2020. Future reviews and audits ongoing.</p>
<p><b>Recommendation #2</b> - We recommend that management assures that a thorough review is conducted before issuing refunds.</p>		
<p><b>Management action plan</b> - Current policy requires refund requests be made and justified by the officer. The Fiscal Specialists reviews justification and enters refund request. Request is reviewed by the supervisor and signed prior to the refund. Going forward, we will do random audits to ensure accuracy and compliance.</p>	<p>New audit procedure established by Director, T. Michelle Thurner</p>	<p>Established August 28, 2020. Audits ongoing.</p>
<p><b>Recommendation #3</b> - We recommend that management take proactive measures to assure defaults are handled properly.</p>		
<p><b>Management action plan</b> - The Program Manager of the Lakeland office reviewed outstanding documents. She ensured COS was documented on Violation Affidavits and provided retraining of staff to ensure compliance in the future. All supervisors are to pay particular attention to this issue when review documents.</p>	<p>Program Manager, LaShanda Salters reviewed documents and provided training to Lakeland staff. Future reviews performed by all supervisors.</p>	<p>Document Review completed by September 30, 2020. Future reviews ongoing.</p>