

Victim's Restitution

The Judicial Branch
Department of Corrections

Performance Audit
April 2014



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April 23, 2014

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of Victim's Restitution and the Judicial Branch and Department of Corrections. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Judicial Branch and Department of Corrections.



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Glossary of Terms and Abbreviations

CICJIS – The Colorado Integrated Criminal Justice System links the individual legacy information systems from four state and one quasi-state criminal justice agencies—the Colorado Bureau of Investigation, Judicial Branch, Department of Corrections, Division of Youth Corrections, and the Colorado District Attorneys Council—into one virtual criminal justice system.

DCIS – The Department of Corrections’ Information System for case management and administration

Department – The Department of Corrections

FTE – Full-time-equivalent staff

ICON/Eclipse – The Colorado State Judicial Branch’s case management software system

Joint and Several Liability Cases – Cases in which multiple offenders are convicted of committing a crime together and therefore, the offenders are held jointly responsible for paying the victim restitution.

jPOD – The case management software system that the Colorado State Judicial Branch plans to implement

Victim’s Restitution – A court-ordered amount that a convicted offender pays the victim to compensate him or her for monetary losses resulting from the crime.

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VICTIM'S RESTITUTION

Performance Audit, April 2014

Report Highlights



Dianne E. Ray, CPA
State Auditor

The Judicial Branch
Department of Corrections

PURPOSE

Assess whether the Colorado State Judicial Branch and Department of Corrections (Department) have effective methods for ordering, collecting, and disbursing victim's restitution consistently, timely, and in accordance with statutory requirements.

BACKGROUND

- Victim's restitution is a court-ordered amount that a convicted offender pays the victim to compensate him or her for monetary losses resulting from the crime and to hold the offender financially responsible for the harm he or she caused.
- The Judicial Branch is responsible for assessing offenders' restitution through court orders and collecting most restitution.
- The Department collects restitution from all offenders under its supervision or sentenced to a correctional facility by garnishing offenders' pay or bank deposits.
- The State collects an average of about \$26 million in court-ordered victim's restitution from offenders annually.

OUR RECOMMENDATIONS

The Judicial Branch should:

- Assess interest on all court-ordered victim's restitution and ensure offenders in joint and several liability cases pay restitution jointly, as required by statute.
- Ensure that restitution payments are distributed to victims in compliance with statute, equitably, and consistently.

The Department of Corrections should:

- Establish processes to collect all restitution owed by offenders under its supervision, regardless of the sentence imposed.
- Coordinate with the Judicial Branch in order to collect restitution from parolees ending their supervision rather than sending the accounts to collections agencies.

The Judicial Branch and Department agreed with all of the recommendations.

AUDIT CONCERN

The Judicial Branch and the Department should improve policies, processes, and systems for collecting court-ordered restitution from offenders and disbursing restitution payments to victims of crime.

KEY FACTS AND FINDINGS

- The Department only collects restitution from offenders for cases that resulted in a sentence to Department custody. The Department does not collect the restitution that offenders in its custody owe on all of their criminal cases, such as prior criminal cases that did not result in a sentence to Department custody, as required by statute. As a result, offenders supervised by the Department who owe victim's restitution on prior cases may not pay restitution until they are released from custody.
- The Department has not explored options for handling offenders' delinquent restitution accounts to improve restitution collection. The Department also sends all restitution accounts of parolees who are within 60 days of completing their parole directly to the State's collection agency, Central Collections, regardless of whether the offenders have been making timely payments.
- Judicial districts do not add statutorily required interest to all restitution orders consistently or accurately. In 95 (99 percent) of the 96 sampled cases, the judicial districts had not added interest to the amount of restitution that the offenders owed.
- Judicial districts do not consistently require the offenders in joint and several liability cases to jointly pay victims the restitution ordered, as required by statute.
- The Department's DCIS system does not have accurate and up to date information on the amounts of restitution offenders owe. For 14 (50 percent) of the 28 cases we reviewed, the restitution and court cost balances on file at the Department did not match the correct balances tracked by the Judicial Branch.
- In six (15 percent) of the 41 sampled cases with multiple victims, the judicial districts either did not distribute restitution payments to victims in the sequence required by statute or did not distribute payments equitably and consistently. In the six cases, 29 victims did not receive \$9,635 in restitution payments, as of November 2013, when they should have.

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RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	21	The Department of Corrections (Department) should work with the Judicial Branch to obtain Judicial Branch data on all outstanding victim's restitution for each offender under Department supervision in order to collect restitution from offenders on all criminal cases, as required by statute.	Department of Corrections	Agree	July 2015
			Judicial Branch	Agree	July 2015
2	22	Ensure victim's restitution is collected from offenders in a timely manner on all criminal cases, as required by statute, by implementing a policy and procedure for collecting restitution from all offenders under the Department of Corrections' supervision.	Department of Corrections	Agree	July 2015
3	30	The Department of Corrections should work with the Judicial Branch to ensure more effective collection of victim's restitution by providing the Judicial Branch the parolee information needed to collect restitution from offenders ending parole supervision and implementing policies and procedures as appropriate.	Department of Corrections	Agree	July 2015
			Judicial Branch	Agree	July 2015
4	31	Improve processes for collecting delinquent victim's restitution by (a) assessing the benefits and costs of contracting with private collection agencies to collect on delinquent cases and (b) contracting with one or more of the private collection agencies if sending delinquent cases to private agencies would improve collection.	Department of Corrections	Agree	July 2015

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
5	39	Ensure policies, systems, and processes are sufficient to collect victim's restitution in compliance with statute by implementing (a) policies and procedures requiring court staff to calculate interest on all cases in which a judge orders restitution; (b) policies and procedures that ensure offenders in joint and several liability cases jointly pay restitution; (c) an information system plan and system improvements for automatically assessing interest on restitution cases; and (d) an information system plan and system improvements that ensure offenders in joint and several cases jointly pay the full amount of restitution ordered.	Judicial Branch	Agree	a. December 2015 b. July 2015 c. December 2015 d. June 2018
6	44	Improve the accuracy of restitution information in systems by developing an efficient method to routinely update inmates' restitution and court fee balances, making programming changes to systems that would automatically upload updated restitution information from CICJIS, or other applicable systems, and implementing risk-based processes to review offenders' restitution balances for accuracy.	Department of Corrections	Agree	July 2015
7	52	Ensure that the sequence and disbursement of restitution to victims are equitable, consistent, and comply with statute and court orders by (a) implementing policies and procedures for staff to follow when sequencing restitution payments for cases with multiple victims; (b) training court staff on statutory requirements for restitution sequencing; (c) implementing a review process to ensure compliance with policies, procedures, statute, and court orders; and (d) investigating the six cases in which restitution payments were not sequenced and disbursed in line with statute, or equitably, and revising the payment sequencing in ICON/Eclipse, as appropriate.	Judicial Branch	Agree	July 2015

Overview of Victim's Restitution

Chapter 1

Victim's restitution is a court-ordered amount that a convicted offender pays the victim to compensate him or her for monetary losses resulting from the crime and to hold the offender financially responsible for the harm he or she caused. Statute (Section 18-1.3-603, C.R.S.) requires the court to consider the need for restitution for victims when imposing an offender's sentence. A victim is defined in statute as any person or entity, including the victim's immediate family members, aggrieved by the offender and who sustained financial losses due to the crime [Section 18-1.3-602(4)(a), C.R.S.]. Financial losses sustained by the victim can include, but are not limited to, out-of-pocket expenses, such as medical expenses, lost wages, loss of support for dependants, property damage, and funeral expenses; interest; and anticipated future expenses [Section 18-1.3-602(3)(a), C.R.S.].

The restitution that an offender pays to the victim of the crime is intended to promote the victim's financial recovery; restitution does not include compensation for pain and suffering or punitive damages. Once the court orders restitution, it is usually a lifelong obligation that becomes a condition of the offender's sentence, meaning that, in order for the offender to complete his or her sentence successfully, he or she must pay restitution to the victim in full.

Administration

The Judicial Branch is the primary entity that oversees victim's restitution in Colorado. The Judicial Branch is centrally administered by the Chief Justice of the Supreme Court who promulgates rules governing practices and procedures in all civil and criminal cases. To assist the Chief Justice, the Supreme Court appoints the State Court Administrator who oversees the State Court Administrator's Office and provides courts administrative support and services, including guidance on the administrative aspects of handling restitution.

In addition, the Department of Corrections (Department) assists in collecting restitution from inmates and offenders under its supervision. The Department is responsible for managing and operating 19 secure prison facilities, the Youthful Offender System, and the Division of Adult Parole and Community Corrections, which is used to oversee offenders on parole or who are transitioning from a secure facility to a community corrections program.

Restitution Process

The restitution process involves three steps: (1) court-ordered assessment, (2) payment collection, and (3) disbursement of funds to victims, as described in the following sections.

Restitution Assessment

The Judicial Branch oversees court proceedings and the assessment of victim's restitution. Colorado's 22 judicial districts hear criminal, civil, domestic relations, juvenile, probate, mental health, and county court cases. Restitution is one of many fines, fees, and costs that a court may assess against convicted offenders. Statute states, "Every order of conviction of a felony, misdemeanor, petty, or traffic misdemeanor offense, except any order of conviction for a state traffic misdemeanor offense issued by a municipal or county court... shall include consideration of restitution" [Section 18-1.3-603(1), C.R.S.].

Statute requires the court to base its determination for the amount of restitution on information that the prosecuting attorney presents to the court prior to or during sentencing or within 91 days of conviction [Section 18-1.3-603(2), C.R.S.]. The prosecuting attorney compiles and presents information, such as the amount of financial losses incurred by the victim and proof that such losses occurred, through victim impact statements, victim testimony at sentencing or a restitution hearing, and receipts for medical bills or insurance claims. The sentencing judge either enters an order specifying the amount of restitution to be paid to the victim or issues a finding that there is no assessment of restitution because the victim did not suffer financial loss [Section 18-1.3-603(1)(d), C.R.S.].

Table 1 shows the number of cases in which victim's restitution was court-ordered and the total dollar amounts ordered annually during Fiscal Years 2009 through 2013.

Table 1. Court-Ordered Victim's Restitution in Colorado Fiscal Years 2009 Through 2013					
	2009	2010	2011	2012	2013
Number of cases in which the court ordered restitution ¹	12,450	11,632	10,642	10,431	10,110 ²
Total amount of restitution ordered (in millions)	\$96.6	\$106.3	\$166.5 ³	\$77.1	\$77.9
Source: Office of the State Auditor's analysis of data provided by the Judicial Branch.					
¹ This does not include joint and several cases because the restitution amounts are assessed to all offenders in those cases, and are therefore duplicated.					
² According to the Judicial Branch, between 2009 and 2013 there was a downward trend in the number of cases ordered restitution because criminal caseloads have declined in Colorado due to factors such as changes in crimes committed and the manner in which local law enforcement and district attorneys handle crimes.					
³ Restitution assessed in 2011 is significantly higher compared to the other years shown in the table because one case in 2011 totaled \$74.2 million.					

The judicial districts operate under the policies and procedures developed by the State Court Administrator's Office which guide case management and fiscal management. Each district also has an administrator who supervises court staff, oversees case flow and docket management, and develops and maintains the budget, among other administrative duties.

Restitution Collection

Statute [Section 16-18.5-104(1), C.R.S.] specifies that restitution is due on the day that it is ordered; however, between Fiscal Years 2009 and 2013, offenders in less than 5 percent of cases were able to pay the full amount of restitution when ordered or before sentencing. As such, the State has developed processes to collect restitution from offenders both while they serve their sentences, and after completing their sentences.

As shown in Table 2, the entity responsible for collection differs based on the sentence imposed by the court.

Table 2. Statutory Requirements for Victim's Restitution Collection	
Offender's Sentence	Entity Responsible for Collection
Supervised or unsupervised probation	Judicial Branch staff work with the offender to set up a payment plan and monitor payments, as required by Section 16-18.5-105, C.R.S.
Incarcerated at the Department	The Department of Corrections ¹ automatically garnishes 20 percent of all income received by the offender, as required by Section 16-18.5-106, C.R.S.
On parole and under Department supervision	Department of Corrections parole officers require the offender to pay 20 percent of all deposits, as required by Section 16-18.5-106, C.R.S.
Source: Office of the State Auditor's analysis of agencies responsible for collecting restitution.	
¹ For some offenders incarcerated at community correctional facilities, the facility assists in collecting restitution payments and forwards them to the Department.	

The Judicial Branch's and the Department's processes for collecting restitution are described below.

Judicial Branch's Collection Process

The Judicial Branch collects restitution payments from offenders sentenced to supervised probation (i.e., offenders supervised by a probation officer typically in lieu of incarceration), and unsupervised probation (i.e., offenders whose sentence does not include monitoring or supervision by the court). Each of the 22 judicial districts collects restitution from offenders who submit payments directly to the district.

When an offender is unable to pay the full amount of restitution on the day it is ordered, the court refers the case to a Judicial Branch collections investigator. The collections investigator is responsible for investigating the offenders' finances and financial obligations, including, but not limited to, child support and offender treatment programs; working with the offender to create a payment plan; monitoring the case for compliance with outstanding monetary obligations; and enforcing collection methods in order to receive payments from offenders. Collections investigators also work with the Department of Revenue to intercept state tax refunds, gaming winnings, and lottery winnings to maximize restitution payments to victims. If an offender owes child support in addition to restitution, statute [Section 24-35-605(2)(b)(IV), C.R.S.] requires the state to intercept and apply an offender's gaming winnings to pay the child support debt before paying restitution debt. When intercepting an offender's tax refund, statutes [Sections 39-21-108(3)(a)(I)(A) and (3)(b), C.R.S.] requires the state to use the funds to pay all outstanding state-owed debts, including child support and restitution, at the same time on a percentage basis.

According to Judicial Branch staff, when an offender does not pay restitution according to his or her payment plan, the Judicial Branch assesses late fees or garnishes the offender's wages or bank deposits when applicable. When an offender is delinquent in making payments, statutes [Sections 16-18.5-104 and 16-18.5-105, C.R.S.], allow collections investigators to take a variety of remedial actions such as placing a lien on the offender's property, sending the delinquent balance to a professional private debt collector, or requesting a court to revoke the offender's probation.

When an offender is sentenced to a period of supervised probation, a probation officer monitors compliance with the terms of probation, including treatment programs, drug testing, and payment of restitution and other court costs. If an offender does not comply with the terms of probation, his or her supervision could be extended or revoked.

Judicial Branch collections investigators and probation officers often coordinate to monitor payments on cases and many judicial districts have collections investigators within their probation departments to facilitate communication between the courts and those who supervise offenders. For example, if a probation officer learns that an offender that he or she supervises has become employed, the probation officer notifies the collections investigator on the case so the payment plan can be revised to increase payments for restitution and other court costs.

Department of Corrections' Collection Process

Statute requires the Department to collect restitution payments from offenders sentenced to incarceration or parole under Department supervision [Section 16-18.5-106(2), C.R.S.]. The responsibility for collecting restitution is transferred from the Judicial Branch to the Department when an offender is sentenced to a correctional facility because the Department has authority over inmate banking deposits, withdrawals, and transfers. At the time of incarceration, the Judicial Branch provides the Department the offender's sentencing orders showing the amount of restitution, court costs, and other financial obligations the offender owes.

In accordance with statute, [Section 16-18.5-106(2), C.R.S.], the Department withholds 20 percent of the inmate's earnings and bank deposits from outside sources, such as family members, to satisfy restitution and financial obligations. At the end of each month, the Department transfers the offender's payments to the appropriate judicial district that has jurisdiction over the case.

When an offender completes his or her incarceration and is paroled, a parole officer monitors restitution collection as one of the terms of the offender's parole. The parole officer investigates the offender's finances and obligations and determines a payment schedule for restitution and other costs. Parolees pay

restitution electronically through a third party, such as Western Union, and provide proof of payment to their parole officer. If a parolee is found in noncompliance with the terms of parole including restitution payments, the Department may revoke parole and return the offender to a correctional facility.

Restitution Collected by Victims

Although state agencies typically facilitate the restitution collection process, as described above, statute permits victims to attempt to collect restitution owed to them when the offender is not incarcerated [Section 16-18.5-107(1), C.R.S.]. If a victim notifies the court of his or her intent to collect restitution on his or her own, the court will cease its own attempts to collect the restitution. Statute also requires the victim to report any payments that he or she receives to the court so it may apply the payments to the offender's balance in the case [Section 16-18.5-107(4), C.R.S.].

Victims may choose to withdraw from attempting to collect restitution on their own at any time by notifying the court, at which time the court will resume collecting restitution from the offender [Section 16-18.5-107(4), C.R.S.]. According to staff in the Judicial Branch, victims infrequently decide to attempt restitution collection themselves, and insurance companies are the most likely victims to attempt collection on their own.

Crime Victim Compensation Program

Victims can also apply for compensation for their monetary losses resulting from a crime through Colorado's Crime Victim Compensation Program (Program). The Program compensates the victim of a crime for up to \$20,000 in out-of-pocket expenses related to the crime committed, including medical and mental health expenses, lost wages, loss of support to dependants, funeral expenses, and some residential property damage (Section 24-4.1-102, C.R.S.). Victims may apply by filing a victim compensation claim in the judicial district where the crime occurred. Victims may request compensation from the Program within 1 year after the crime. If a victim receives compensation from the Program, he or she is not eligible to receive the same money for restitution; however, the victim may request restitution for losses that were not covered by the victim compensation claim.

The Program is primarily funded by surcharges collected from offenders convicted of a felony, misdemeanor, and some traffic offenses. The Program also receives funds from donations, interest earned on state dollars collected, and unclaimed restitution payments that judicial districts have held for a minimum of 2 years. According to the Victim Compensation Annual Report, as of September 2012, the most recent data available, Colorado's Program awarded a total of about \$13.6 million to crime victims for about 7,800 claims.

Restitution Collection Rates

The State collects an average of about \$26 million in restitution annually, which includes restitution that was court-ordered in the current year and in previous years.

Between Fiscal Years 2009 and 2013, the State collected the full amount of restitution due in 23,631 out of 55,265 (43 percent) of the cases in which offenders were ordered to pay restitution. Table 3 shows all cases for which the courts ordered restitution in Fiscal Years 2009 through 2013, and for which the State collected restitution payments from offenders, as of October 2013; however, restitution collection on these cases is ongoing, and therefore, the State is expected to collect more over time.

Fiscal Year Assessed	Number of Cases with Restitution Assessed²	Total Amount of Restitution Assessed	Restitution Payments Collected	Percentage Collected as of October 2013
2009	12,450	\$96,627,445	\$16,502,792	17.1%
2010	11,632	\$106,264,054 ³	\$13,371,924	12.6%
2011	10,642	\$166,456,009 ⁴	\$12,044,949	7.2%
2012	10,431	\$77,093,945	\$8,780,173	11.4%
2013	10,110	\$77,874,961	\$5,760,563	7.4%

Source: Office of the State Auditor's analysis of Judicial Branch data.

¹Amounts collected are the combined collections rates of the Judicial Branch and its private collections agencies, and the Department of Corrections and its collection agency, Central Collection Services (within the Department of Personnel & Administration), for all restitution cases sentenced between Fiscal Years 2009 and 2013, as of October 2013. The amounts collected are lower in 2012 and 2013 because the State has had less time to collect on the cases from those years.

²This does not include joint and several cases because the restitution amounts are assessed to all offenders in those cases, and are therefore duplicated.

³Restitution assessed in 2010 is higher than 2009, 2012, and 2013 because one case totaled \$21.6 million.

⁴Restitution assessed in 2011 is significantly higher compared to the other years shown in the table because one case in 2011 totaled \$74.2 million.

Distribution of Restitution Payments

The judicial districts are primarily responsible for distributing offenders' restitution payments to victims. Specifically, when an offender submits a payment for restitution or court costs directly to a judicial district, the district has automated methods to distribute payments to the victims. Similarly, when the Department of Corrections automatically withholds 20 percent of an inmate's

income and deposits from their inmate bank account, the Department's Inmate Banking Office submits the funds to the appropriate judicial district to cover restitution and other court costs; the district then distributes the restitution payment to the victim.

Statute [Section 16-18.5-110(1), C.R.S.] requires that, when a judicial district receives a payment to cover an offender's restitution and other court costs, the district must apply the payment toward the offender's debts in the following order of priority:

1. The payment is applied toward the amount that the offender owes for the Crime Victim Compensation Fund until that amount is paid in full. The amount that the court levies for the Crime Victim Compensation Fund is \$163 for felonies, \$78 for misdemeanors, \$46 for a class 1 misdemeanor traffic offense, and \$33 for class 2 misdemeanor traffic offenses [Section 24-4.1-119(1)(a), C.R.S.].
2. The payment is applied toward the surcharge that the offender owes for the Victim's Assistance Fund until that surcharge is paid in full. The Victim's Assistance Fund provides funding for victim and witness services and programs. The surcharge that the court levies for the Victim's Assistance Fund is 37 percent of the fine imposed for each felony, misdemeanor, or class 1 or 2 traffic offense or \$163 for felonies, \$78 for misdemeanors, \$46 for class 1 misdemeanor traffic offenses, and \$33 for class 2 misdemeanor traffic offenses, whichever is greater [Section 24-4.2-104(1)(a)(I), C.R.S.].
3. The payment is applied toward the court-ordered restitution amount that the offender owes the victim. At this point, the victim receives restitution payments until he or she is paid in full. The victim in the offender's oldest restitution case is paid first unless the court orders otherwise. Statute also designates the sequence of payments to victims on the same case based on the type of victim affected by the crime (Section 16-18.5-110, C.R.S.).
4. The payment is applied toward all other court costs and fees that the offender owes until they are paid in full.

Key Information Systems

The key information systems used by the Judicial Branch and the Department to administer restitution assessment, collection, and distribution are as follows:

- **The Judicial Branch's ICON/Eclipse System.** Since 1997, the Judicial Branch has utilized a statewide information system, known as ICON/Eclipse, for its electronic case management. ICON/Eclipse

centralizes court, probation, and financial case management and allows for data exchanges between other state and federal agencies. Among its various functions, ICON/Eclipse keeps a record of case sentencing information; amounts of restitution, court fines, and fees owed and payments made; victim information; payments disbursed to victims; and court staff's monitoring of payments. When a judicial district receives an offender's payment for restitution or other court costs, ICON/Eclipse automatically applies the payment to various funds in the order of priority, discussed previously. ICON/Eclipse also has automated methods to distribute restitution payments to the victims on the case. Currently, the Judicial Branch is undergoing a transition to a new information system, Judicial Paper on Demand (jPOD); however, at the time of our audit, this system had not been fully implemented and the judicial districts were utilizing the ICON/Eclipse system for financial and case management.

- **The Department of Corrections Information System (DCIS).** DCIS was implemented in 1992 and is the central repository for information that the Department maintains on all inmates and parolees sentenced to state corrections. DCIS is designed to provide current "point in time" information such as restitution and other court-ordered debts that offenders owe, inmate payroll, and release dates. Department staff use DCIS for a variety of purposes, including monitoring the restitution owed, determining parole eligibility, and monitoring release dates.
- **The Colorado Integrated Criminal Justice Information System (CICJIS).** The process of recording and tracking criminal activity, cases, and sentencing orders in Colorado involves the work of multiple state and non-state entities such as law enforcement, the Judicial Branch, and the Department. In order for information to be communicated efficiently and across all criminal justice departments and agencies, the Colorado Integrated Criminal Justice Information System (CICJIS) was created to facilitate information sharing between each department and their respective information systems.

Funding for Restitution Collection

Funding for the administrative costs of assessing, collecting, and distributing restitution varies among the different agencies responsible for restitution as follows:

- **Judicial Branch funding.** The Judicial Branch has staff and resources to administer the restitution process and received an appropriation of \$4.3 million and 83.2 FTE for Fiscal Year 2014 for administrative costs and collections investigators who collect all court fines and fees assessed to offenders, as well as restitution, in the State's 22 judicial districts. In

addition to the restitution assessed between Fiscal Years 2009 and 2013, which is shown in Table 3, judges assessed an average of \$117 million each year in court fines and fees.

- **Department of Corrections funding.** The Department does not receive an appropriation specifically for administering the restitution collection process. However, the Department does receive \$36,800 from the Judicial Branch for processing restitution within the inmate banking office.

Audit Purpose, Scope, and Methodology

We conducted this audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government. The audit was conducted in response to a legislative request that raised concerns over the collection rates for victim's restitution in the state. Audit work was performed from October 2013 to April 2014. We acknowledge and appreciate the cooperation and assistance provided by the management and staff of the Judicial Branch and the Department of Corrections during this audit.

We conducted this performance 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 based on our audit objectives.

The audit objectives were to assess whether the Judicial Branch and the Department have effective processes, policies, and systems for ensuring the consistent and timely ordering, collection, and distribution of victim's restitution, in accordance with applicable laws and requirements. This audit also included a review of the Judicial Branch's compliance with the SMART Government Act. The audit did not review the State's processes for collecting restitution from youthful offenders or for collecting for, and distributing funds to, the victim compensation funds described previously.

To accomplish our audit objectives we performed the following audit work:

- Reviewed relevant state laws and agency policies and procedures governing the ordering, collection, and distribution of victim's restitution.
- Analyzed restitution data from all 55,265 cases where restitution was ordered by the courts in Fiscal Years 2009 through 2013.
- Reviewed restitution orders, court data, payment information, victim information, and collection records from seven of the 22 judicial districts.

- Reviewed and compared case information for the Judicial Branch's ICON/Eclipse system and the Department's DCIS system.
- Reviewed information on restitution collection that the Judicial Branch reported to the judicial districts and the public in Fiscal Years 2009 through 2013.
- Reviewed national standards and best practices for restitution collection.
- Interviewed Judicial Branch, judicial district, and Department of Corrections' management and staff, as well as victims' advocates, district attorneys and their staff about victims' restitution ordering, collection, and disbursement processes and policies.

We relied on sampling techniques to support our audit work when determining how restitution was ordered and comparing hardcopy case information to electronic records. Specifically, we selected a non-statistical sample of 96 case files for seven judicial districts where restitution was ordered between Fiscal Years 2009 and 2013. The seven districts were selected because they had processed a higher percentage of restitution cases compared to the remaining 15 districts between Fiscal Years 2009 and 2013, and the seven districts provided a representative sample of policies and practices that occur for the majority of victims' restitution cases in the state.

The case file sample was selected to ensure coverage of various types of restitution cases, location of cases throughout the state, as well as cases for which the state has begun restitution collection and payments had been distributed to victims. These 96 cases included 41 cases in which there were multiple victims and 20 cases that were joint and several liability cases in which multiple offenders jointly owed restitution. We designed our sample to help provide sufficient, appropriate evidence for the purpose of evaluating the consistency of restitution orders, the preciseness of the orders entered electronically, and the distribution methods for paying victims.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in the audit findings and recommendations. We noted certain other operational matters at the Judicial Branch that were not significant to the audit objectives and therefore, do not require a response from management and are not included in this audit report. We reported those other matters to Judicial Branch management in a separate letter dated April 9, 2014.

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Victim's Restitution Collection and Disbursement

Chapter 2

The Judicial Branch and Department of Corrections (Department) are responsible for developing processes and systems to ensure that offenders pay restitution in accordance with court orders and those payments are disbursed to victims consistently, equitably, and in compliance with statutory requirements. There are a variety of factors outside the control of the State that affect an offender's ability to pay victim's restitution. However, the State should have effective methods to actively collect from offenders who owe restitution and enforce payment when offenders willfully fail to pay the amounts owed.

This chapter presents our findings related to restitution collection and disbursement in the State. Overall, we identified areas where the Department needs to improve processes and systems for collecting restitution from offenders under its supervision to better ensure offenders pay the restitution amounts they owe. In addition, we identified areas where the Judicial Branch needs to improve procedures and systems for collecting restitution and disbursing the payments to victims to ensure they receive statutorily required and court-ordered compensation for their losses.

Corrections' Collection of Restitution

In 2002, a new provision of statute (Section 16-18.5-106, C.R.S.) was implemented giving the Department the authority to collect court-ordered restitution from offenders while they are state inmates in a Department correctional facility. The Department is also responsible for collecting restitution from paroled offenders in its custody who are conditionally released from prison to serve their remaining sentence in the community with parole officer supervision. In accordance with statute, the Department collects restitution from offenders by garnishing 20 percent of their monthly income or deposits made into their inmate bank account (Section 16-18.5-106, C.R.S.).

The Judicial Branch collects restitution from offenders who are released from the Department's custody without supervision or who are not sentenced to Department supervision, such as when offenders are sentenced to probation and supervised in the community.

What audit work was performed and what was the purpose?

The purpose of the audit work was to determine whether the Department has sufficient processes to accurately collect court-ordered restitution from the offenders under its supervision in a timely manner in accordance with statutory requirements. To determine how court-ordered restitution is collected, we interviewed Department staff responsible for inmate banking and accounting, judicial district staff from a sample of seven out of the 22 judicial districts in Colorado, and State Court Administrator's Office staff who oversee the collection of restitution. We also reviewed statutes, Department policies and procedures, and Judicial Branch policies and procedures to determine how the Department and the Judicial Branch collect the restitution amounts ordered.

How were the results of the audit work measured?

We applied the following criteria when evaluating the Department's processes for collecting restitution from offenders:

- **Statute requires the Department of Corrections to collect the restitution its inmates and offenders owe on criminal cases.** While the Judicial Branch collects restitution from offenders who are not sentenced to Department supervision or who are released from Department supervision, Section 16-18.5-106(2), C.R.S., requires the Department to collect restitution payments from its offenders who owe restitution on criminal cases. According to Section 18-1.3-602(2), C.R.S., a criminal conviction is broadly defined as a conviction for a felony, misdemeanor, petty offense, traffic misdemeanor, or adjudication for an offense that would constitute a criminal offense if committed by an adult.
- **The General Assembly intended the state to collect restitution in a timely manner.** In Section 18-1.3-601, C.R.S., et seq., the General Assembly outlines the importance of establishing programs and procedures to collect full restitution for victims of crime in the most expeditious manner. Further, Section 16-18.5-104(1), C.R.S., states that orders for restitution shall be due and payable at the time that the order of conviction is entered; if the offender alleges that he or she cannot pay the full amount due, a collections investigator should work with the offender to begin a payment plan.
- **The General Assembly intended for state agencies, including the Judicial Branch and the Department, to cooperate when collecting restitution.** Section 18-1.3-601(g)(II), C.R.S., states, "The effective and timely assessment, collection, and distribution of restitution requires the cooperation and collaboration of all criminal justice agencies and departments."

- **The Department is responsible for overseeing inmate banking and assisting in debt collection.** The Department's administrative policies and procedures, Regulation 200-02-IV(A), specify that all inmate monies shall be under the control of the Department. The Department collects restitution and other court-ordered debt from offenders under its supervision because it oversees inmate banking.

What problem did the audit work identify?

We found that the Department is not in full compliance with statute because it does not collect court-ordered restitution from all offenders under its supervision who owe restitution on criminal cases. Specifically, the Department does not collect the restitution its offenders owe for prior crimes that did not result in a sentence to Department custody. Department staff reported to us that they use the offender's sentence on a case to determine whether to collect the court-ordered restitution owed on that case. If an offender was sentenced to the Department for prior crimes, the Department garnishes the offender's pay or bank deposits to collect the restitution he or she owes on those prior cases, as well as the current case; if the offender was not sentenced to Department custody for the prior crimes, the Department does not collect restitution for those cases.

According to Department and judicial district staff we interviewed, many offenders serving sentences at the Department have prior criminal convictions, such as misdemeanor or traffic cases, for which they owe court-ordered restitution, but the Department does not collect restitution in these cases unless the offenders were sentenced to Department supervision for their crimes. For example, if an offender commits theft, is sentenced to probation, and is court-ordered to pay restitution to the victim, the Judicial Branch supervises the offender during probation and the judicial district collects the restitution the offender owes. However, if that same offender is convicted of another crime and sentenced to a Department correctional facility, the Department does not collect the restitution the offender owes on the prior theft case that did not have a Department sentence. The Department only collects the restitution that an offender owes as a part of his or her Department-related sentence.

Further, in the example above, the Judicial Branch also does not collect restitution from the offender on the prior theft criminal case while he or she is in Department custody because the Department is statutorily responsible for collecting all court-ordered criminal restitution from offenders in its custody, even if the Judicial Branch initiated the restitution collection process on the case before the offender was incarcerated.

The Department and judicial district staff we interviewed stated that it is not uncommon for offenders under Department supervision to have prior criminal convictions that did not include a sentence to the Department but for which the

offenders owe restitution that is not collected while they are inmates or under Department supervision. However, we were unable to determine how often the Department does not collect in these cases because it and the Judicial Branch do not maintain data on the number of cases for which restitution collection is temporarily halted while offenders are under Department supervision.

Why did the problem occur?

The Department is not in compliance with statute requiring it to collect court-ordered criminal restitution from all offenders under its supervision for the following reasons:

- **The Department was not aware that it has the statutory authority to collect restitution on all types of criminal cases and therefore, does not have policies or procedures in this area.** Prior to the audit team bringing this problem to the Department's attention, the Department interpreted statute [Section 16-18.5-106(2), C.R.S.] to only allow it to collect restitution from offenders under its supervision if their cases resulted in a sentence to the Department of Corrections. The Department is responsible for collecting restitution from offenders on all of their criminal cases while they are under Department supervision and for managing all inmate income. The Judicial Branch does not have the jurisdiction to collect restitution from offenders under the Department's supervision.
- **The Department lacks the data on court orders it needs to collect all criminal restitution from the offenders it supervises.** The Judicial Branch only sends the Department court-ordered restitution information, such as the amount the offender owes at the time the individual is incarcerated, if the criminal case resulted in a sentence at the Department. The Department does not receive data for its offenders' criminal cases if the court sentenced the offenders to probation or Judicial Branch supervision. Further, the Department does not obtain or request that the Judicial Branch provide the data that it maintains on all court-ordered restitution that the offenders under Department supervision owe for their criminal cases.

Why does this problem matter?

The problems we identified with the Department not collecting restitution from all offenders under its supervision who owe it is important for the following reasons:

- **The State is delaying holding offenders responsible for their crimes and reducing the likelihood that restitution will deter future crime.** The Department and the Judicial Branch staff stated that the payment of

restitution is one mechanism for rehabilitating offenders, teaching them responsibility, and discouraging further illegal activity.

- **Victims of crime may not be compensated for their losses in a timely manner and may be treated inequitably.** When the Department does not ensure all inmates and offenders sentenced under its supervision pay restitution on all cases for which they owe it, some victims of crimes are treated inequitably. Specifically, in cases for which the offender owes restitution but is not sentenced to Department supervision, the crime victims do not receive restitution while those offenders are incarcerated for subsequent crimes. As a result, these victims' restitution payments can be delayed for long periods of time, depending on the offender's sentence length, and payments do not commence until the offender is released from Department supervision and the Judicial Branch resumes collecting payments.

Recommendation No. 1:

The Department of Corrections (Department) should work with the Judicial Branch to ensure the Department has the data it needs to collect restitution from offenders on all criminal cases by establishing and implementing a method for the Department to obtain Judicial Branch data on all outstanding restitution orders and restitution owed for each offender under Department supervision.

Department of Corrections Response:

Agree. Implementation date: July 2015.

Upon consultation with Judicial Branch representatives, the Department will actively participate in a work group comprised of representatives from the State Court Administrator's Office and the Department. In addition, it will be determined if representatives from other agencies should be included. It is anticipated that the work group representatives will be identified and have their initial meeting by no later than June 30, 2014. They will coordinate efforts and begin determining methods of identifying and obtaining data needed for more efficient restitution collection on all cases for offenders under the Department's supervision. It is anticipated that, by December 31, 2014, the work group will have determined how it can identify the criminal cases with restitution which the Department does not currently have information for and how to transfer that information between ICON/Eclipse and DCIS, with gradual implementation through July 2015. During this process, any problems with identifying these criminal cases or information sharing will be included in future design and

development of new systems for the Judicial Branch and the Department within the next 5 years from April 2014.

Judicial Branch Response:

Agree. Implementation date: July 2015.

The Judicial Branch takes the responsibility for restitution assessment and collection very seriously and believes that the cooperation and coordination of all criminal justice agencies is critical to a successful process. The Judicial Branch agrees to work with the Department of Corrections to create a work group of interested parties to address the items discussed in the audit. The work group will begin the process of identifying methods to provide the Department with the most reliable data available to collect restitution on all criminal cases. Given the limitations of the identification data received and maintained by the Judicial Branch, we will work with the Department to develop the most efficient process to ensure it has the most complete restitution financial data available.

Recommendation No. 2:

The Department of Corrections (Department) should ensure restitution is collected from offenders in a timely manner on all criminal cases, as required by statute, by establishing and implementing a policy and procedure for collecting restitution from all offenders under Department supervision for all criminal cases regardless of the sentence imposed.

Department of Corrections Response:

Agree. Implementation date: July 2015.

The Department and Judicial Branch are establishing a work group by no later than June 30, 2014 to coordinate efforts and begin determining methods of identifying and obtaining data needed for more efficient restitution collection of all cases in which offenders are under the Department's supervision. As a result of this coordinated work group's outcomes, the Department's internal policies and procedures will be updated. The Department's policy and procedure were noted as operating effectively with regard to timely restitution collection for those offenders who only owe restitution on cases that resulted in a sentence to the Department. However, the Department's current system is not capable of receiving any restitution court-orders for those offenders supervised by the Department whose prior cases did not result in a sentence to the Department. The Department has been tentatively funded to replace the system and hopes to address this deficiency using the new system.

Corrections' Collection of Delinquent Restitution

Generally, full payment of restitution takes an extended period of time because payment amounts and frequency are based on the offender's ability to pay. National studies of restitution collection report that states often cannot collect court-ordered restitution because of the financial circumstances of the offender. Some national studies have reported that approximately 35 percent of all restitution that is ordered is "uncollectable." In Colorado, the court's consideration of restitution is dependent on the crime committed; the court does not consider an offender's ability to pay when ordering victim's restitution. Between Fiscal Years 2009 and 2013, the amount of court-ordered restitution for which offenders in Colorado were fully delinquent, or had not made any payments, totaled \$115 million, or about 20 percent of restitution ordered by the courts. The general process for ensuring offenders pay court-ordered restitution is as follows:

- **Restitution collection and payment plans.** The Department collects restitution from inmates by garnishing their wages and bank deposits. Once an offender is released from incarceration and is on parole under Department supervision, the Department's parole officers work with the offender to develop a payment plan to pay any remaining restitution owed. All offenders who are not sentenced to incarceration, such as those sentenced to probation, must report to the court if they cannot pay the full amount of court fees, fines, and restitution owed immediately upon sentencing, and must work with the Judicial Branch's collections investigators to create a payment plan [Section 16-18.5-104(1), C.R.S.].

Each offender's payment plan specifies the monthly amounts due, payment dates, and consequences if he or she fails to follow the plan. If an offender cannot follow his or her payment plan due to extenuating or unforeseen circumstances, such as the loss of employment, then collections investigators, probation officers, and parole officers often work with the offender, as appropriate, to restructure the payment plan.

- **Enforcement of court-ordered restitution.** To help enforce payment of restitution and other court-ordered debts, the Department and Judicial Branch intercept any state tax refund and unclaimed property that are due to the offender, as well as the offender's winnings from the Colorado Lottery and gambling. If offenders, who are not serving a sentence in a secure Department correctional facility, repeatedly and willfully fail to pay restitution when they are able to pay, the Department and Judicial Branch may employ the following methods to collect payment from offenders:

- Issue warning letters and make phone calls to the offender to notify him or her of the balances due and consequences for failure to pay
 - Issue additional court fees or costs
 - File liens on real property owned by the offender
 - Suspend the offender's driver's license (for traffic-related cases)
 - Garnish up to 25 percent of the offender's wages or bank account deposits
 - Request a warrant for the offender's arrest, or ask the court to extend or revoke an offender's probation or parole based on nonpayment; revocation results in the offender being incarcerated or having supervision extended
- **Delinquent accounts and collection agencies.** Statute allows collections investigators and parole officers the discretion to determine when to send delinquent accounts to a collection agency. According to the Department and Judicial Branch, all willful delinquencies that have not been resolved after 90 days of nonpayment are typically sent to a collection agency. The Department uses Central Collections, the State's collection agency, whereas the Judicial Branch contracts with seven private collection agencies to collect on delinquent accounts.

When the Department or Judicial Branch sends an account to a collection agency, a penalty fee is added to the account. The fee compensates the applicable collection agency for its work collecting the restitution. Central Collections adds an 18 percent fee to the total amount owed by the offender; the private collection agencies under contract with the Judicial Branch add a 25 percent fee to the total amount owed by the offender. In Fiscal Year 2013, the Judicial Branch reported that the judicial districts sent private collection agencies about 70,500 delinquent cases in which offenders owed court costs or restitution. The Department reported that it sent the outstanding balances for about 5,000 offenders to Central Collections in Fiscal Year 2013.

Further, according to Section 24-30-202.4(2), C.R.S., if Central Collections has not been able to collect on an account assigned by a state agency within 180 days, it must assign the account to a private collection agency. According to staff at Central Collections, it contracts with five private collection agencies and if a private agency is not able to collect restitution from an offender after attempting for 1 year, Central Collections recalls the account and sends it to a different private agency.

Central Collections staff reported to us that if the second collection agency is unable to collect restitution after 1 year, staff recall the account and retain it indefinitely. If the Department sends an offender's delinquent account to Central Collections, the offender commits another crime, and the courts return the offender to Department of Corrections' supervision while the account is at Central Collections, the offender's account is transferred back to the Department when the offender is re-incarcerated.

What audit work was performed and what was the purpose?

The purpose of the audit work was to determine whether the state has sufficient processes to collect restitution when offenders are delinquent in making restitution payments. We reviewed data on the collection rates for the private collection agencies used by the Judicial Branch for collecting delinquent restitution and other court costs for the entire caseload of about 734,400 delinquent cases between Calendar Year 2002 and September 2013, and the collection rates for Central Collections for collecting delinquent restitution and other court costs from about 24,100 offenders whose account balances the Department sent to Central Collections between Calendar Year 2002 and August 2013. We interviewed Department staff responsible for overseeing restitution collection, as well as Judicial Branch collections investigators from the sampled seven judicial districts to identify areas for improvement in the collections process. We also reviewed statutes governing Central Collections, the Judicial Branch's collection of fines, fees, and restitution, as well as the Department's collection of fines, fees, and restitution.

How were the results of the audit work measured?

We applied the following criteria when evaluating processes for collecting delinquent restitution from offenders:

- **The General Assembly intended restitution to be collected in an adequate and consistent manner.** In its legislative declaration regarding restitution, the General Assembly found that "procedures for restitution assessment, collection, and distribution were inadequate and inconsistent from case to case" [Section 18-1.3-601(1)(f), C.R.S.] and statute was meant to ensure restitution is collected effectively [Section 18-1.3-601(1)(g)(II), C.R.S.].
- **Statute allows the Department to use private collection agencies to collect delinquent court-ordered restitution.** Statute, Section 24-30-202.4, C.R.S., requires most state agencies to use Central Collections to collect state-owed debts, but exempts the Judicial Branch. Sections 16-11-101.6 and 16-18.5-105(3)(e), C.R.S., allow the Judicial Branch to collect past-due court fines or fees by assigning such accounts to private

collection agencies. Because the Department assists the Judicial Branch in collecting restitution, statute allows the Department other options than exclusively using Central Collections to collect court-ordered debts. Specifically, Section 16-18.5-106(4), C.R.S., authorizes the Department to “enter into a memorandum of understanding with the Judicial Branch or contract with a private collection agency for the collection of court-ordered costs, surcharges, [and] restitution...from defendants sentenced to the Department of Corrections or released on parole.”

What problems did the audit work identify?

The Department has not ensured that restitution collection is as effective as possible, and in compliance with statutes. Specifically, we identified the following two issues:

- **The Department sends some restitution accounts to Central Collections that are not delinquent.** The Department sends all restitution accounts of parolees who are within 60 days of completing their parole directly to Central Collections, regardless of whether the offender has been making timely payments. According to the Department, these offenders are often not delinquent. However, neither the Department nor Central Collections could provide a breakdown of the types of cases or court-ordered debt that the Department has sent to Central Collections, so we could not determine how much of the \$343.6 million sent to Central Collections between Calendar Year 2002 and August 2013 was for outstanding delinquent restitution or how much was owed by non-delinquent parolees.
- **The Department's collection rates for outstanding balances sent to Central Collections are lower than the collection rates of the Judicial Branch.** As shown in the following table, Table 4, the state collection agency used by the Department, Central Collections, has a lower collection rate for outstanding restitution and other court costs compared to the private collection agencies used by the Judicial Branch. Although statute allows the use of private collection agencies to collect delinquent restitution, the Department has not explored using this option.

Table 4. Comparison of Collection Rates From 2002 Through 2013			
Collection Agency	Total in Outstanding Balances Sent to Collection Agency (in millions)	Total Collected by Collection Agency (in millions)	Collection Rate or Percentage Collected
Central Collections	\$253.7 ¹	\$8.2	3.3%
Contracted Private Collection Agencies	\$486.4 ²	\$57.1	11.7% ³
Source: Office of the State Auditor's analysis of Department of Corrections and Judicial Branch data.			
¹ The cumulative amount for all outstanding balances that the Department sent to Central Collections, which it was responsible for collecting between Calendar Year 2002 and August 2013.			
² The cumulative amount for all outstanding balances that the Judicial Branch sent to its seven private collection agencies, which the agencies were responsible for collecting between Calendar Year 2002 and September 2013.			
³ The average collection rate of the seven private collection agencies that contract with the Judicial Branch.			

According to the Judicial Branch, Department, and Central Collections staff, the following primary factors hinder restitution collection:

- Offenders who are incarcerated often have limited funds.** Offenders sentenced to a Department correctional facility have limited ability to pay restitution. As of March 2014, about 14,700 of the 19,100 offenders (77 percent) in Colorado's correctional facilities had some type of employment in a facility. However, offenders who hold employment in a correctional facility typically earn between \$0.23 cents and \$2.00 per day, or a maximum of about \$60 per month. Although the Department automatically garnishes 20 percent of the wages and incomes of incarcerated inmates, the Department is typically only able to collect approximately \$12 per month from offenders who earn the maximum amount for payments toward restitution and other financial obligations.
- Some offenders are indigent.** Based on our interviews with staff at the Judicial Branch, the Department, and staff in district attorney offices, many offenders who are not incarcerated have limited opportunities for gainful employment, and therefore, have a limited income to pay restitution and other court-ordered costs. When offenders cannot make payments because they are indigent, the tools of collections investigators and collections agencies, such as wage garnishment, levies on real property, or the suspension of a driver's license, are often ineffective in collecting court ordered costs. Further, according to statute [Section 16-18.5-105(3)(d), C.R.S.], if an offender can prove indigence to the court, the court may not revoke or extend probation for nonpayment of restitution.

- **Some offenders owe debts and court costs that must be paid prior to restitution.** According to statutes, [Sections 18-1.3-204(2) and (2.5), C.R.S.], when the court grants probation the offender may be required to pay certain debts, such as child support and court fees assessed for the Crime Victims Compensation Program, before making restitution payments. The older the case, the more likely that the offender has had an opportunity to pay these debts and fees and has started paying restitution. In addition, as part of their sentences offenders are often required to participate in treatment programs, such as drug treatment or sex offender treatment. These treatment programs require tests and other costs that the offender is responsible for paying. For example, if an offender charged with possession of an illegal substance is required to undergo drug testing as part of his or her probation conditions, the offender must pay for the drug tests. The Judicial Branch reports that it tries to balance the costs of offender treatment programs and restitution obligations when working with offenders to set up restitution payment plans.

Why did the problems occur?

The Department has not been able to ensure that restitution collection is as effective as possible and compliant with statutes for the following reasons:

- **The Department has not developed methods to transfer the accounts of parolees finishing their required supervision back to the Judicial Branch.** The Department reported that it programmed its computer systems to send most accounts of offenders leaving Department supervision back to the Judicial Branch so it can begin collecting restitution on the cases, but as a matter of policy, did not send the accounts of offenders ending parole to the Judicial Branch. Because of this policy, the Department also has not worked with the Judicial Branch to identify methods for transferring the accounts of parolees finishing their required supervision to the judicial districts.
- **The Department of Corrections was not aware it could use private collection agencies.** The Department contracts solely with Central Collections to collect on delinquent cases and Department staff were not aware that statute, Section 16-18.5-106(4), C.R.S., allows the Department to use private collection agencies to collect restitution and other court-ordered debt. Department staff who oversee the collection of restitution and send the delinquent cases to Central Collections believed that statute, [Section 24-30-202.4(2), C.R.S.], required the Department to use Central Collections to collect on all delinquent cases, without considering the provision in Section 16-18.5-106(4), C.R.S., allowing the Department to use private collection agencies. Further, because the Department was not aware it could contract with private collection agencies, it has not

reviewed the collection rates of private agencies or assessed whether any private agencies, such as those used by the judicial districts, may be able to improve restitution collection.

The collection rate for delinquent restitution, court fines, and fees for Central Collections' cases originating from the Department is lower than collection rates of the Judicial Branch and private collection agencies for the following reasons:

- **Offenders on parole are often less able to pay restitution compared to unincarcerated offenders.** According to the Department, offenders released from the Department of Corrections to parole typically have difficulty finding employment, or receive modest incomes, and as a result, do not have the funds available to make timely restitution payments. Therefore, the restitution collection rate for offenders on parole is typically lower than the collection rate for other offenders, such as those who are on probation.
- **Offenders ending parole can be more difficult to contact compared to unincarcerated offenders.** According to Central Collections staff, some of the delinquent cases they receive from the Department are difficult to collect on because the former parolees do not provide accurate or current personal contact information. Central Collections staff stated that it is difficult to collect on delinquent cases when they cannot locate the offender.
- **Some offenders submit payments to judicial districts, rather than Central Collections, so the collection rates may not reflect the collection efforts of Central Collections.** According to Central Collections staff, some offenders, or people making debt payments on their behalf, send the payments to the judicial district where the offender was originally sentenced, rather than submitting payments to Central Collections which is collecting on the delinquent case. In these instances, Central Collections does not report that its staff collected these delinquent payments, although the State receives the offenders' payments that reduce the offenders' debt balance.

Why do these problems matter?

The problems we identified with the effectiveness of the Department's restitution collection efforts are important for the following reasons:

- **Restitution may not be collected.** If private collection agencies perform better at collecting restitution on delinquent cases, and the Department does not use them, then restitution may remain uncollected when it could be collected.

- **Victims may not receive compensation for their losses.** In part, the intent of restitution is to make the victim of a crime whole by repaying pecuniary losses. If victims do not receive restitution payments, they are not compensated for losses and may lose confidence in the State's ability to enforce court-ordered restitution.
- **Offenders may not be held accountable.** Part of offender rehabilitation is to repay damages to victims, and if offenders are not making payments and are not held accountable, it can erode the integrity of restitution sentencing as a rehabilitation tool for offenders or as a deterrent to future criminal activity.
- **Parolees may be penalized unnecessarily.** Sending the accounts of offenders ending parole supervision directly to Central Collections results in offenders having to pay an 18 percent collection fee. Requiring all offenders who satisfactorily end parole supervision to pay an additional 18 percent fee may reduce the amount of funds that an offender has available to pay restitution. According to Department staff, the offenders are accustomed to making regular restitution payments while they are on parole. If offenders ending parole were not required to pay the additional 18 percent fee, they may be more likely to pay victims the restitution owed more quickly.

Recommendation No. 3:

The Department of Corrections should work with the Judicial Branch to ensure more effective collection of court-ordered victim's restitution by providing the Judicial Branch the parolee information needed to collect court costs and restitution from offenders ending their parole supervision, and implementing policies and procedures as appropriate.

Department of Corrections Response:

Agree. Implementation date: July 2015.

We anticipate being able to send parolee information to the judicial districts the same way that offenders discharging their sentences without parole supervision have been handled. An additional report has already been created by Department of Corrections Office of Information Technology personnel to capture additional data on offenders ending parole supervision which can be sent to the Judicial Branch collection investigators on a monthly basis. The Department will work with the Judicial Branch to determine and implement the most feasible method of transferring both current and delinquent accounts for offenders and

parolees not incarcerated back to the Judicial Branch for restitution collection. The Department's Inmate Banking Office and Parole are working on revising Administrative Regulation 250-18 and the corresponding Parole directive to clarify that the Judicial Branch has jurisdiction of offenders discharging from Parole.

Judicial Branch Response:

Agree. Implementation date: July 2015.

The Judicial Branch currently works with the Department of Corrections to coordinate restitution recovery efforts on individuals released directly from custody. As part of the work group discussed earlier, the Judicial Branch will cooperate with the Department to recover restitution from individuals successfully released from parole. The Judicial Branch will work with the Department to reduce the inefficiency in the referral process and maximize the recovery of restitution for victims.

Recommendation No. 4:

The Department of Corrections (Department) should improve processes for collecting delinquent court-ordered victim's restitution by:

- a. Assessing the benefits and costs of contracting with private collection agencies to collect restitution on delinquent cases.
- b. Contracting with one or more private collection agencies if the Department determines that sending delinquent cases to private collection agencies would improve restitution collection.

Department of Corrections Response:

- a. Agree. Implementation date: July 2015.

The Department will assess the costs and benefits of contracting with private collection agencies to collect restitution on delinquent cases.

- b. Agree. Implementation date: July 2015.

The Department will use its statutory authorization [Section 16-18.5-106(4), C.R.S.] and work with the Judicial Branch to utilize its current methods and/or private collection agencies to aggressively pursue restitution collections. The work group between the Judicial Branch and the Department, discussed previously, will establish a

memorandum of understanding for transferring parolee cases from the Department to the Judicial Branch for restitution collection.

Restitution Collection and Judicial Branch Information Systems

ICON/Eclipse is the Judicial Branch's automated and centralized case management system, and contains the database used for numerous data exchanges between the courts and other government entities. ICON/Eclipse allows each of the 22 judicial districts to track information on each case such as restitution court orders and other court fines and fees that the offender owes; the offender's payments; the Judicial Branch's disbursements of restitution payments to victims; and other non-financial information, such as the offender's sentence.

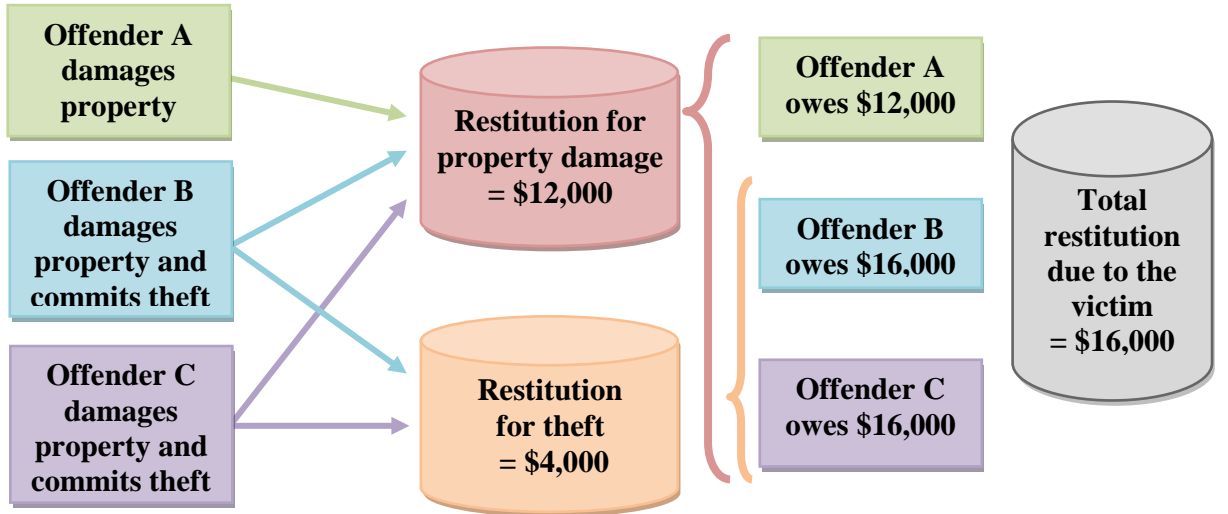
Judicial Branch staff record restitution orders in ICON/Eclipse. Statute requires offenders to pay annual interest on all restitution owed [Section 18-1.3-603(4)(b)(I), C.R.S.]. In addition, Judicial Branch staff must specify in ICON/Eclipse whether the case involves one offender who owes restitution, or whether multiple offenders committed the crime and owe restitution. In Colorado, when a case involves multiple offenders and the judge finds that all are responsible for paying restitution, the offenders are joint and severally liable, meaning all offenders on the case are responsible for paying the entire amount of restitution ordered until the victim receives the full amount. The Judicial Branch refers to this as "joint and several" restitution. Statute [Section 18-1.3-603(5), C.R.S.] requires that restitution owed on cases by multiple offenders for the same monetary losses is a joint and several obligation. Therefore, all of the offenders are required to pay toward the restitution ordered until the victim is paid in full. The intention of joint and several liability is to increase the likelihood that a victim will receive the entire sum of court-ordered restitution by holding all offenders sentenced to a crime responsible for all of the damages.

Chart 1 illustrates how the courts should process joint and several restitution cases based on statutory requirements. Chart 1 is a hypothetical example of a case with multiple offenders who have been court-ordered to pay different amounts of restitution based on their crimes. According to Judicial Branch staff, the courts commonly hear cases, similar to the hypothetical example shown in Chart 1, in which a group of offenders cause property damage or commit theft together and are ordered to pay joint and several restitution. In the example, three offenders, A, B, and C, committed a crime together, each was convicted of breaking and entering, and each was ordered to pay \$12,000 in joint and several restitution for property damages. In addition, Offenders B and C stole items during the crime, were convicted of theft, and were ordered to pay \$4,000 in additional joint and several restitution to the victim to replace the stolen items. The total restitution

due to the victim is \$16,000. To work properly, ICON/Eclipse should link all offenders on the case so that when one of the offenders makes a restitution payment, the other offenders' restitution balances are updated, as appropriate.

Chart 1. Example of Joint and Several Restitution Collected as Ordered by the Court

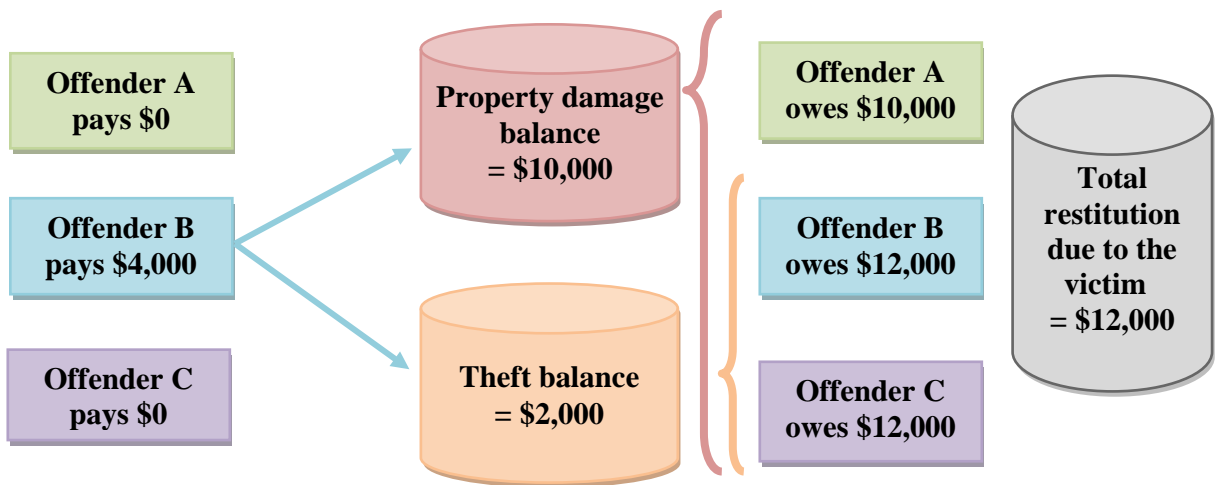
Crime Restitution Ordered and Owed



Below, Offender B has made a \$4,000 payment, the court staff split the payment between the property damage amount due and the theft amount due, and the balances of each offender should be reduced as follows:

Restitution Payments

Restitution Balance Owed



Source: Office of the State Auditor's analysis of Judicial Branch information.

What audit work was performed and what was the purpose?

The purpose of our audit work was to assess the effectiveness of the Judicial Branch's ICON/Eclipse system for assessing and collecting interest on court-ordered restitution, and managing the collection and disbursement of restitution payments in joint and several liability cases that have multiple offenders. We interviewed 12 judicial district accounting staff, including court clerks and accounting supervisors, and 11 collections investigators from the seven judicial districts to determine how staff input all restitution orders into ICON/Eclipse and use the system to collect and disburse restitution payments.

To assess the processes for determining and collecting interest, we judgmentally sampled 96 cases in which judges from seven judicial districts ordered offenders to pay restitution and reviewed each case to determine whether the Judicial Branch collected interest accurately. Further, 20 of the 96 sampled cases were joint and several restitution cases that we reviewed to determine whether the restitution orders had been implemented jointly, as required by statute.

How were the results of the audit work measured?

We used the following criteria to evaluate the Judicial Branch's system and processes for tracking restitution court orders, and collecting and disbursing restitution payments:

- **Statute requires offenders to pay interest to the victim.** According to Section 18-1.3-603(4)(b), C.R.S., any order for victim's restitution shall order the offender to pay interest from the date of the order at a rate of 12 percent annually. In addition, case law has clarified that all orders for restitution entered on and after September 1, 2000, must be assessed at the 12 percent interest rate [People v. Garcia, 55 P.3d 243, (Colo. App. 2002)] and that the statutory purpose of assessing interest on the restitution amount is to encourage speedy payment [Roberts v. People, 130 P.3d 1005, Colo. 2006 and People v. Cardenas, 262 P.3d 913, (Colo. App. 2011)].
- **The Judicial Branch should have an accurate system for tracking and processing restitution ordered in joint and several liability cases.** Statute, [Section 18-1.3-603(5), C.R.S.], specifies that if more than one offender commits a crime and owes restitution to the same victim, the orders for restitution shall be "joint and several obligations" assessed to all offenders in the case. According to written guidance on the Judicial Branch's website, offenders in joint and several restitution cases are liable for making payments toward the entire amount of restitution owed until the victim is paid in full. According to the National Center for State Courts' *Current Practices in Collecting Fines and Fees in State Courts: A*

Handbook of Collection Issues and Solutions, courts should have the ability to collect and record payments correctly in cases with more than one offender when the court orders joint and several payment towards restitution.

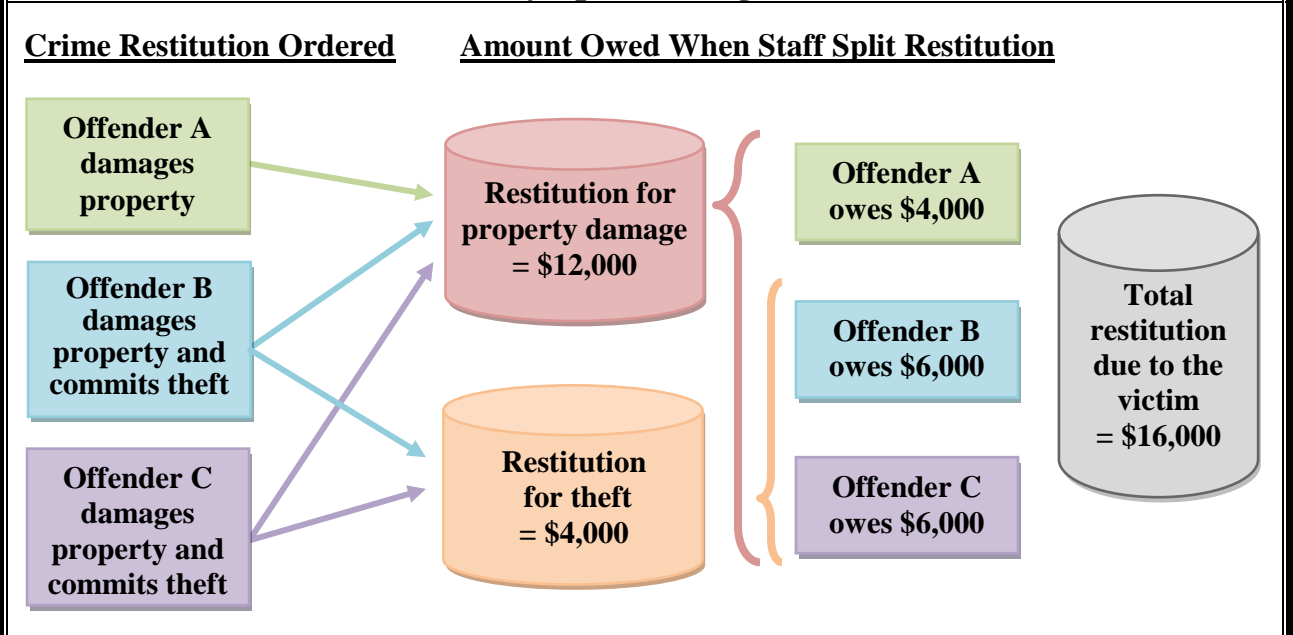
What problems did the audit work identify?

The Judicial Branch has not fully complied with the statutory requirements related to: (1) collecting interest on restitution orders and (2) ensuring offenders in joint and several restitution cases pay toward the full amount of restitution owed until the victim is paid in full. Specifically, we found:

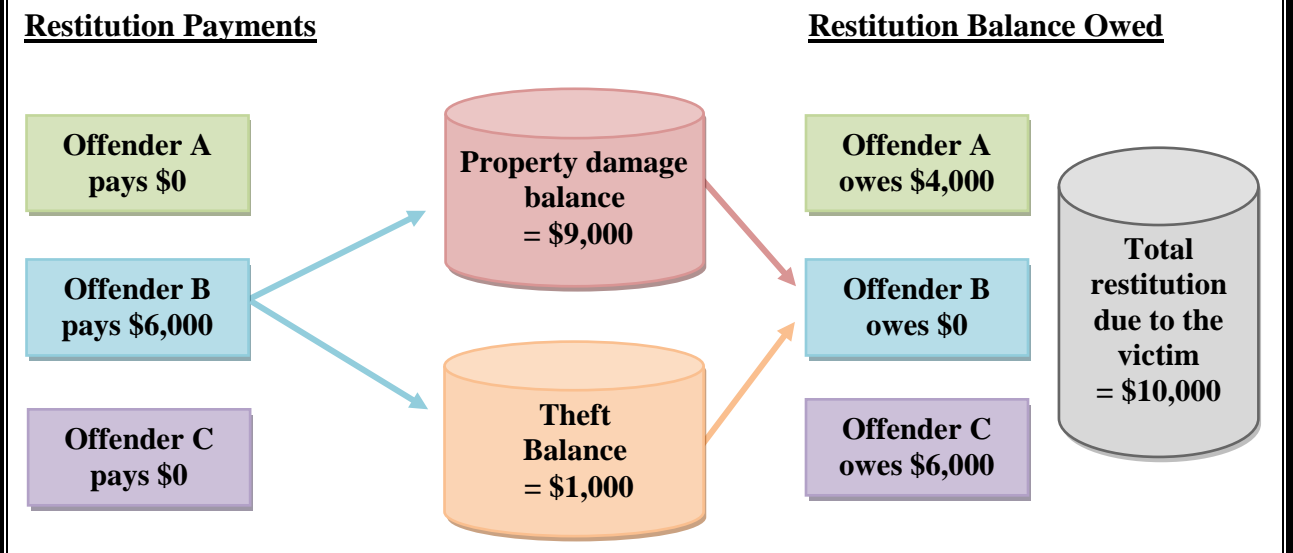
- **Judicial districts do not add statutorily required interest to all restitution orders consistently or accurately.** We found that in 95 of the 96 sampled cases (99 percent), the judicial districts had not added interest to the amount of restitution that the offender owed. Further, in 26 of the 96 sampled cases (27 percent), a judge had issued a specific court order for interest to accrue on the amount of restitution owed, but judicial district staff had not added interest in 25 of those 26 cases. For the one case in which staff had added interest, we found that staff had not correctly assessed the amount of interest due. Specifically, the offender was court-ordered to pay \$270,051 in restitution and 12 percent interest, the rate statute requires, but judicial district staff miscalculated the interest due by \$165; staff calculated that the offender owed \$32,241 in interest when it should have been \$32,406. In addition, in this case staff did not assess interest annually, as required by statute; staff only assessed interest on the restitution owed in the first year it was owed.
- **Judicial districts do not collect restitution on some joint and several liability cases in accordance with statutory requirements.** Staff in seven judicial districts reported to us that for the more complex joint and several liability cases, the districts do not consistently require the offenders on the case to jointly pay toward the full amount of restitution ordered, as statute requires. Complex cases include those with multiple offenders who owe joint and several restitution in varying amounts, for multiple offenses, or to multiple victims. For the most complex cases, the court staff stated that they often split the total restitution amount due to the victim among all of the offenders when entering the cases into ICON/Eclipse; in these cases each offender is only required to pay a percentage of the total restitution ordered by the court.

Chart 2 shows a hypothetical example of what occurs when court staff do not follow statute on a joint and several restitution case and split the total amount of restitution owed to the victim among multiple offenders.

Chart 2. Example of Joint and Several Restitution Incorrectly Split Among Offenders



Below, Offender B makes a \$6,000 restitution payment and court staff apply one-half of the payment toward the property damage and one-half of the payment toward the theft. Since Offender B paid his or her balance, the court staff do not require Offender B to pay any more restitution on the case, even though the victim is still owed \$10,000 and statute requires all offenders on the case to pay toward restitution until the victim is paid in full.



Source: Office of the State Auditor's analysis of Judicial Branch information.

Why did these problems occur?

Judicial districts did not add statutorily required interest to all restitution orders consistently or accurately for the following reasons:

- **ICON/Eclipse lacks the functionality to automatically calculate and add interest to court-ordered restitution.** Overall, the Judicial Branch staff reported that the ICON/Eclipse system is a legacy computer system that does not have the functionality needed to add interest to restitution orders. As a result of the system limitations, the Judicial Branch established a policy that court staff should only add interest to a restitution balance when specifically requested by the victim and ordered by a judge.
- **The Judicial Branch lacks procedures for court staff to calculate interest on restitution orders.** Judicial Branch staff stated that when a victim requests interest and the court orders it, the courts require the victim to manually calculate the interest due. Judicial district staff reported to us that they were unsure of the method used to calculate interest in the one case in which we identified an error. However, staff in three of the seven judicial districts we interviewed reported that manually calculating interest on restitution is complicated; they did not know whether they should calculate interest as compound or simple interest; and they were unsure how to calculate interest correctly.

Further, judicial districts did not collect restitution on some joint and several liability cases in accordance with statutory requirements for the following reason:

- **ICON/Eclipse does not have an automated method to manage complex joint and several restitution cases in compliance with statute.** For complex joint and several restitution cases, such as those involving multiple offenders who owe different amounts of restitution for their crimes, ICON/Eclipse does not have the functionality to link each offender to one another. Chart 1, shown previously, is an example of how the courts and ICON/Eclipse should process these cases. However, because the offenders owe different amounts, ICON/Eclipse cannot connect the balances of the offenders even though they are jointly and severally responsible for the restitution due to the victim.

When the ICON/Eclipse system does not allow court staff to set up the case as joint and several so that each offender owes the entire restitution amount due until the victim is paid in full, as required by statute, some court staff divide the amount of restitution owed among all of the offenders, as shown previously in Chart 2. According to the Judicial Branch, some court staff have developed a manual process to comply with statute by tracking the restitution amounts that each offender owes in a

spreadsheet and manually updating each offenders' restitution balance in ICON/Eclipse. However, some court staff do not use a manual process and those who do reported that it is inefficient.

At the time of our audit, the Judicial Branch staff reported that the ICON/Eclipse system needs updating and the State Court Administrator's Office is in the process of converting to a new system called Judicial Paper on Demand (jPOD). According to the Judicial Branch, it is in the process of implementing jPOD in phases and has not yet implemented the functionality needed to manage restitution. Due to the complexity of the implementation, the Judicial Branch did not have an estimate for when it will fully implement jPOD.

Why do these problems matter?

The problems we identified are important for the following reasons:

- **Victims may not be treated consistently and equitably.** When the Judicial Branch does not have a method to add interest to all restitution ordered, as required by statute, victims may be treated inequitably. Further, when staff have inconsistent methods for collecting payments from offenders, with some offenders not being held jointly responsible for paying the victim restitution until the victim is paid in full while other offenders are held jointly responsible, the victims and offenders in these cases are treated inequitably.
- **Victims may not receive the full amount of restitution ordered by the court.** When judicial district staff cannot consistently link offenders in ICON/Eclipse, assign the full amount of restitution owed to each offender in joint and several cases, and track the concurrent payment of joint and several restitution, the victim may receive less in restitution and may not be made whole. Further, when the ICON/Eclipse system is not able to track joint and several liability for cases with multiple victims, the victims owed restitution by different offenders may be treated inequitably, or one victim may receive more restitution than another victim.
- **Joint and severally liable offenders are not held responsible for the full amount of restitution in compliance with statute.** When staff split the restitution amount due to the victim among the offenders in ICON/Eclipse and only require each offender to pay a percentage of the total ordered by the court, all offenders are not held responsible for paying the full amount of restitution owed, as required by statute. In these instances, collections investigators cannot continue to collect from an offender who has paid his or her portion of the restitution, even if the victim is still owed restitution.

- **Manual practices are often inefficient and can lead to errors.** When the Judicial Branch does not have clear policies and automated procedures, victims must calculate interest by hand and staff must manually manage cases on a spreadsheet; therefore, processes are often inefficient, and create a greater opportunity and likelihood for errors and inconsistent practices among cases and staff spread out across 22 different judicial districts.

Recommendation No. 5:

The Judicial Branch should ensure it has sufficient policies, systems, and processes to collect victim's restitution in compliance with statute by:

- a. Establishing and implementing policies and procedures that require court staff to calculate interest.
- b. Establishing and implementing policies and procedures that require court staff to ensure offenders in joint and several cases are jointly responsible for paying the restitution ordered.
- c. Establishing an information system plan and implementing system improvements that ensure the system used to manage restitution payments automatically calculates and assesses interest.
- d. Establishing an information system plan and implementing system improvements that ensure the system used to manage restitution payments links offenders in joint and several cases so that all offenders ordered to pay restitution in these cases are jointly responsible for the full amounts of restitution ordered.

Judicial Branch Response:

- a. Agree. Implementation date: December 2015.

The Judicial Branch acknowledges the importance of calculating and adding interest to restitution for victims of crime. The Judicial Branch will establish a policy and is in the process of developing procedures covering the calculation of interest on restitution. The Judicial Branch will coordinate this effort with other entities with which we share data and processes by December 2015.

- b. Agree. Implementation date: July 2015.

The current programming in ICON/Eclipse for joint and several cases allows the Branch to effectively manage joint and several restitution in the majority of cases. The issue identified in the audit relates to more complex joint and several cases that cannot be managed with current programming. Further, in April 2014, the Judicial Branch reached out to other states to identify possible improvements that could be utilized to enhance the current system. We found that the majority of other states do not have automated systems as robust as ICON/Eclipse system to manage joint and several restitution. The Judicial Branch is working towards developing a standardized policy and procedure for more complex cases by July 2015 to ensure that all offenders are responsible for the payment of joint and several restitution.

- c. Agree. Implementation date: December 2015.

The Judicial Branch has attempted to automate the calculation and assessment of interest on restitution in the past; however, the effort has not been successful for various reasons. In March 2014, the Judicial Branch renewed the process and dedicated resources toward developing the specifications for programming necessary to implement an automated process in ICON/Eclipse. We will coordinate this effort with other entities with which we share data and processes. This procedure will calculate and assess interest on restitution for those cases which do not include joint and several obligations by December 2015. Due to the complexity of joint and several cases, the process to assess interest automatically will be included in the development of jPOD planned for June 2018.

- d. Agree. Implementation date: June 2018.

The Judicial Branch is in the process of developing a new case management system (jPOD) that will allow for greater functionality and capability for managing joint and several cases. The Judicial Branch will ensure that enhancements necessary to manage all joint and several cases will be included in jPOD by June 2018.

Corrections' Restitution Collection and Information Systems

The Department uses its computer system, called the Department of Corrections Information System (DCIS), to track each inmate's activity; sentencing;

incarceration details; and financial obligations, such as restitution debt and balances. When an offender is sent to the Department to serve a sentence, the Department obtains information about the offender—such as the sentence and the court-ordered restitution, fines, and fees the offender owes—by querying the Colorado Integrated Criminal Justice Information System (CICJIS). When Department staff query CICJIS to obtain restitution information on an offender at the beginning of his or her sentence, CICJIS pulls the information from ICON/Eclipse, the Judicial Branch’s case management information system. The restitution information, such as the offender’s balance due, is then downloaded into DCIS.

After an offender begins his or her sentence, Judicial Branch staff sometimes revise the amount of restitution and court costs that an offender owes and then update the offender’s balance recorded in ICON/Eclipse. The Judicial Branch may revise or update an offender’s restitution or court cost balance on a case for a number of reasons, such as when:

- A case involves multiple offenders and one or more of the offenders submit a restitution payment directly to the judicial district.
- An offender requests to pay restitution over time, rather than all at once as ordered, and the court assesses a standard time payment fee to the balance due.
- The judge orders an offender to pay more restitution than originally ordered because the victim has additional monetary losses that were unknown at the time of sentencing.
- The court assesses the offender to pay interest on a case, as discussed in Recommendation No. 5.

What audit work was performed and what was its purpose?

The purpose of the audit work was to assess how the Department uses DCIS to manage restitution tracking and collection processes and ensure restitution is accurately collected from all offenders in Department facilities. We interviewed Judicial Branch and Department staff to determine the processes for collecting restitution, and whether there are any barriers preventing the State from collecting the full amount of court-ordered restitution from offenders and distributing those funds to victims.

As discussed previously, we sampled 96 cases in which judges from seven judicial districts ordered offenders to pay restitution. In 28 out of the 96 sampled cases, the offenders were serving sentences in Department facilities at the time of our audit. We assessed whether the Department collected the restitution and other

court costs that each of the 28 offenders owed, and tracked the offenders' payments and outstanding balances accurately in the Department's DCIS system. We also reviewed whether the restitution balances that the Department recorded in DCIS matched the balances recorded in the Judicial Branch's ICON/Eclipse system.

How were the results of the audit work measured?

We applied the following criteria to evaluate how the Department uses DCIS to manage restitution tracking and collection processes:

- **Statute requires the Department to collect restitution from inmates and offenders under its supervision.** Section 16-18.5-106(2), C.R.S. requires the Department to deduct at least 20 percent of all deposits from an inmate's bank account and distribute it toward any outstanding court-ordered debt, including the restitution, court fines and fees, and/or child support, that the offender owes.
- **In order for the Department to collect restitution, it must maintain accurate and complete restitution information in DCIS.** The Department collects restitution from inmates and offenders based on the information recorded in DCIS, which was originally transferred from ICON/Eclipse through CICJIS. The amount of restitution owed by the offender and recorded in DCIS should match the amount owed and recorded in ICON/Eclipse so that the Department can ensure it collects the correct amount of restitution from inmates and offenders.

What problem did the audit work identify?

Overall, we found that the Department's DCIS system did not have accurate information on the balances of restitution and other court costs that offenders owed. For 14 of the 28 cases we reviewed (50 percent), the restitution and court cost balances that offenders owed, which were recorded in DCIS, did not match the balances recorded in ICON/Eclipse. For these 14 cases, DCIS showed inaccurate restitution and court cost balances ranging from between \$5 and \$48,600. For these 14 cases, nine of the balances were overstated compared to the balances recorded in ICON/Eclipse and five of the balances recorded in DCIS were understated.

Why did this problem occur?

The Department did not have accurate restitution and court cost information for some offenders in the DCIS system for the following reasons:

- **The Department does not regularly update restitution and court cost information in DCIS to reflect the updates made in ICON/Eclipse.** The Department does not have a process to update DCIS in a timely manner when courts update or change restitution balances in ICON/Eclipse. For example, the Department does not have an automated process for uploading updated case information into DCIS when the court revises restitution orders. For the 14 cases we reviewed, the Department had obtained information on the restitution and court costs that offenders owed when they began their sentences, but the Judicial Branch had updated ICON/Eclipse with revised balances after the offenders began their sentence and the Department had not obtained the updated information. Specifically, in five of the 14 cases, court staff reduced the balances recorded in ICON/Eclipse because other offenders on the cases paid a portion of the restitution due. In three of the 14 cases, staff had reduced the balances because the offenders made payments directly to the judicial district instead of to the Department. In one case, the judge reduced the balance due to a change in victim monetary losses. In four cases, staff increased the balances in ICON/Eclipse because the court assessed a standard time payment fee in each case. In the remaining case, the judge ordered that the offenders pay additional restitution because the victim had additional monetary losses.

In a July 2003 performance audit, we recommended that the Department evaluate the feasibility of making programming changes to DCIS to automatically upload information, such as changes or amendments to restitution from CICJIS when changes occur in ICON/Eclipse. During our current audit, Department staff did not have knowledge of the actions taken by the Department to implement the prior audit recommendation and stated that the Department did not make programming changes to allow DCIS to automatically upload restitution information when changes are made in ICON/Eclipse.

- **The Department does not have a process to ensure all restitution balances in DCIS are accurate.** The Department does not periodically check restitution balances recorded in DCIS, such as by reviewing a risk-based sample of balances, to ensure they are accurate after an offender begins his or her sentence. Department staff informed us that they manually query CICJIS and update offenders' balances only if DCIS indicates that an offender has paid his or her balance in full. Department staff informed us that they manually update a few hundred inmate accounts monthly if it appears the inmates have fully paid their restitution and court cost balances, but the Department does not routinely check or update the balance information in DCIS for all other inmates who owe restitution and other court costs.

Why does this problem matter?

The problem we identified with the accuracy of restitution balance information in DCIS is important for the following reasons:

- **The Department could under-collect restitution.** When the Department is unaware of increases to restitution owed by an inmate, it may not collect the full amount due. For example, if the judge orders the offender to pay additional restitution or adds a standard time payment fee to the restitution balance and the Department is unaware of the addition, the Department may not know to continue to collect payments from the inmate and the victim may not receive the full amount of restitution due in a timely manner. Further, when the Department does not have updated and timely information on changes to restitution, the offenders under the Department's supervision may not be aware that the restitution they owe has changed and do not have accurate information on their debts.
- **The Department could over-collect restitution.** According to Department inmate banking staff, when the Department is unaware that an inmate's restitution balance has been paid off, such as in a joint and several liability case, the Department continues to collect money from the inmate and the inmate could overpay restitution beyond the amount he or she is required to pay. When this occurs it creates administrative inefficiencies and adds additional administrative work because the Judicial Branch has to refund overpayments and the Department has to credit the offender's account. Overpayments can also prevent or delay offenders from paying other debts like child support.
- **Manual processes are inefficient and may lead to errors.** Department staff who must manually update the inmate records of restitution stated that the process is very time consuming and resource intensive. Manually updating records rather than implementing an automated process is inefficient, takes time away from other staff duties, and increases the likelihood of errors.

Recommendation No. 6:

The Department of Corrections should improve the accuracy of restitution information in its system by developing an efficient method to routinely update the restitution and other court fee balances it tracks for all inmates. This should include making programming changes to its system that would automatically upload updated restitution information from CICJIS, or other applicable systems, and implementing risk-based processes to periodically review the accuracy of offenders' restitution balances.

Department of Corrections Response:

Agree. Implementation date: July 2015.

In order for this recommendation to be implemented, the Department and Judicial Branch have decided to create a work group that will include discussion and development for new system efficiencies for communicating and providing the Department real time data on restitution and other court fee balances it tracks for inmates. As both agencies are exploring new software options, it will be crucial for the work group to promote the ability to maintain complete and accurate restitution account balances through automation and information sharing. Currently, manual reviews are being conducted by the Department's Inmate Banking Office throughout the ordinary course of daily business from various sources of inquiry, which result in reviewing only a limited amount of restitution balance volume. In order to improve account balance accuracy in DCIS and promote efficiency, the Department will explore the feasibility of obtaining nightly automated information sharing which would include case modifications made by each agency, and will make programming changes as it is able. The Department will also implement a risk-based process to periodically review and assess the accuracy of offenders' restitution balances.

Sequence and Distribution of Restitution Payments to Multiple Victims

When a judge orders restitution on a case, it can often involve multiple victims to whom the offender owes restitution. This is because Colorado statute defines victims broadly as any person or entity aggrieved by the conduct of an offender, including any person or entity against whom the offense was perpetrated or attempted, who was harmed by the offender's criminal conduct, or who suffered losses because of a contractual relationship with or liability for a victim of the crime, such as an insurer [Section 18-1.3-602(4)(a), C.R.S.]. For example, in a reckless driving case in which the offender harmed multiple individuals and property in an accident, the court may order the offender to pay restitution to each individual injured, each individual whose property was damaged, the hospital providing medical care, and the insurer covering victim claims.

If victims in a case suffer financial loss due to the crime, the district attorney gathers victim information, including victim names and financial sums lost, and files a request or motion for restitution with the court. Based on the information on the restitution motion, the judge can issue an order for restitution. Per statute, the court has 91 days from the offender's conviction to order a specific amount of

restitution unless there are extenuating circumstances that extend that time period [Section 18-1.3-603(1)(b), C.R.S.].

Court clerks enter the information from the restitution order, such as the victims' contact information and the amount of restitution owed to each victim, into the Judicial Branch's ICON/Eclipse system. Court clerks use the ICON/Eclipse system to assign a specific code to each victim that determines the sequence in which the court will disburse restitution payments. If the district attorney requests a specific sequence of payment and the judge grants that sequence, then the clerk will set up the payment schedule in the ICON/Eclipse system as ordered by the judge. However, according to court clerks we interviewed, district attorneys often do not request a specific sequence of payments, and therefore, there is often not a specific order from the judge stating the sequence or order in which the victims should be paid restitution. In cases with no specific sequence stated in the court order, courts allow clerks to sequence payments to the victims at the clerk's discretion.

When an offender makes a payment on his or her case, the court clerk collects the money and records the payment in the ICON/Eclipse system. The system automatically disburses the restitution payment, via checks, based on the sequencing method selected by the clerk. Court clerks use the following automated payment functions in the ICON/Eclipse system to establish the sequence in which victims will receive restitution payments:

- **Sequential payments.** The ICON/Eclipse system is able to disburse the full amount of restitution owed to the first victim before beginning to pay the second victim, and the sequence can be based on one or more of the following:
 - A specific order set by the judge.
 - Statute (Section 16-18.5-110, C.R.S.), which states that victims should be paid in the following order: (1) any person against whom a felony, misdemeanor, or petty offense has been perpetrated or attempted; (2) any person harmed by criminal conduct in the course of a scheme or conspiracy; and (3) any person harmed because of a contractual relationship, including an insurer.
 - The amount of money the offender owes each victim.
 - A different sequence determined by the court clerk.
- **Equal payments.** The ICON/Eclipse system disburses restitution payments made by the offender to victims in equal amounts. For example, if an offender makes a \$100 payment toward restitution, and there are five

victims on the case, the ICON/Eclipse system would disburse \$20 to each victim.

- **Percentage of total restitution ordered.** The ICON/Eclipse system disburses payments made by the offenders to victims simultaneously as a percentage of the total amount of restitution the victims were ordered to receive. For example, if the total amount of restitution ordered in a case is \$10,000, and the judge orders the first victim to receive \$7,000 (which is 70 percent of the total) and the second victim to receive \$3,000 (which is 30 percent of the total), when the offender makes a payment, the ICON/Eclipse system would disburse 70 percent of the funds to the first victim and 30 percent of the funds to the second victim.

In addition to the automated system payment functions described above, the court clerk may also issue payments based on a manually entered sequence, meaning the ICON/Eclipse system disburses payments made by the offenders to victims only when a clerk manually specifies the payment amount or the victims' information. This setting may be used when the court cannot locate a victim, or a victim is not cashing restitution checks, to prevent the court from continuing to issue and then void the checks. The manual setting in ICON/Eclipse also allows the clerk to put a hold on restitution payments to specific victims, disburse payments to alternate victims, when applicable, and to rotate the sequence of payments to victims. For example, courts generally do not disburse small restitution payments to victims simultaneously, such as when there are multiple victims and the offender pays \$5 in restitution each month. In this example, the clerk would apply the restitution payment received one month to one victim, then apply the second month's payment to the second victim, and so forth.

What audit work was performed and what was the purpose?

The purpose of the audit work was to assess the Judicial Branch's procedures for collecting and distributing restitution payments to victims in cases with multiple victims. Specifically, we evaluated whether the sequence of payments to victims complies with statute and whether judicial districts have consistent processes for determining the sequence of payments to victims when the payment sequence is not specified in the request by the district attorney or on the restitution order.

To determine the Judicial Branch's general procedures for collecting and distributing restitution payments, we interviewed 12 court accounting staff, including clerks and accounting supervisors, from our sample of seven of the 22 judicial districts. We judgmentally selected the seven sampled districts because they had a higher number of court cases and were responsible for processing a greater number of restitution cases compared to the other districts. We also reviewed the Judicial Branch's policies and procedures related to cash

management, fiscal reporting, and conformance with applicable laws, fiscal requirements, and policies of state courts.

To determine how the courts order restitution for multiple victims of crimes and how the courts use the ICON/Eclipse system to sequence the payments to victims, we reviewed hardcopy documentation and electronic data for a sample of 96 cases in which restitution had been court-ordered at the seven sampled districts between Fiscal Years 2009 and 2013. We selected the 96 sampled cases based on the amount of restitution that was ordered to be paid, the amount that had been paid as of the date of the audit, and the entity, either the judicial districts or the Department of Corrections, responsible for collecting from the offender. In 41 of the 96 sampled cases there were multiple victims, and for each of these 41 cases we reviewed the restitution order, court minutes, and the data on the sequence of payments to victims that were recorded in ICON/Eclipse.

How were the results of the audit work measured?

When assessing the Judicial Branch's procedures for sequencing restitution payments made in cases with multiple victims, we applied the following criteria:

- **Statute specifies the sequence of restitution payments when there are multiple victims.** According to statute, [Section 16-18.5-110(1)(c), C.R.S.], when there are multiple victims of a crime, the Judicial Branch shall distribute the offender's restitution payments to the victims in the following sequence:
 1. To any person (including a business) who was a victim of a felony, misdemeanor, petty, or traffic misdemeanor offense.
 2. To any person (including a business) harmed by an offender's criminal conduct.
 3. To anyone, such as an insurance company, that suffered losses because of a contractual relationship with the victim(s).

In addition, Section 18-1.3-602(4)(a)(IV), C.R.S., specifies that any victim compensation board that has paid a claim, such as through the Crime Victim's Compensation Program discussed in Chapter 1, shall be paid after paying the victims in the three categories listed above.

Statute [Section 16-18.5-110(1)(c), C.R.S.] also requires the Judicial Branch to distribute restitution payments to individual victims prior to paying an insurance company. For example, the victims in a reckless driving case would be paid court-ordered restitution in the following sequence: (1) the individual victim(s) harmed in the accident, and (2) the

insurance company who provided coverage for the victim(s) and paid any claims resulting from the accident. This statute does not define the sequence of restitution for multiple victims within the same category, such as when a case involves multiple individuals directly harmed by the crime.

- **The General Assembly intended for victims to receive restitution payments in a timely manner.** The intention of restitution is to repay crime victims for their losses in order to make them whole. The legislative declaration regarding restitution, [Section 18-1.3-601(1)(e), C.R.S.], states that an effective criminal justice system requires timely restitution to victims of crime. In order to ensure restitution payments are timely for all victims of a case, the judicial districts should distribute payments consistently and equitably among victims in a case, unless directed differently by statute or a judge's orders.

What problems did the audit work identify?

We found that in six of the 41 sampled cases (15 percent) with multiple victims, the judicial districts did not sequence the order of restitution payments in compliance with statute or consistently, so the subsequent payments to victims were not appropriate. In each of the six cases, the court order did not specify the sequence in which the victims should have been paid, and therefore, the judicial districts should have disbursed restitution payments to the victims based on the sequencing requirements listed in statute, as applicable, or based on consistent and equitable procedures. We identified two problems that resulted in 29 victims not receiving \$9,635 in restitution payments, as of November 2013, when they should have. Specifically, we found:

- **In three cases, the judicial districts did not sequence restitution payments to victims in compliance with statute.** In these cases, managed by three different districts, the victims who should have been paid first based on statutory requirements were paid at the same time or after insurance companies or Crime Victim's Compensation Program claims. For example, in one case the victims, a business owner and the insurance company covering the business, were paid on a percentage basis and received restitution simultaneously; the insurance company received \$1,068 in restitution payments that, according to statute, should have been sent to the business owner. Altogether, the three districts had incorrectly disbursed \$5,997, as of November 2013, to insurance companies or to pay claims through the Crime Victim's Compensation Program before paying all restitution owed to four other victims who should have been prioritized for payments.

- **In three cases, the judicial districts did not distribute restitution payments to some victims equally, proportionally, or in a timely manner.** These cases involved multiple individual victims who should have been paid at the same time to ensure that all victims received timely restitution payment per the General Assembly's intent. The two districts that managed the three cases disbursed payments to individual victims unequally or disproportionately when the victims should have been paid at the same time, and therefore, some victims were not paid in a timely manner or paid at all. For example, in one case the offender owed 24 victims restitution, ranging from \$10,000 to \$1 million, and the court clerk determined and recorded in ICON/Eclipse that the victims would receive payments in a sequential manner based on the alphabetical order of their names. Due to the sequence, the high sum of restitution owed to each victim, and the small payments made by the offender, about \$50 per month over approximately a 4-year period, the district only disbursed the offender's payments to the first victim on the case. None of the other 23 victims in the case received restitution payments. Altogether, in these three cases the districts had not disbursed payments totaling \$3,638 to 25 victims as of November 2013.

Why did these problems occur?

The problems we identified with restitution payments that were not disbursed to multiple victims in compliance with statute or consistently occurred for the following reasons:

- **The Judicial Branch lacks policies, procedures, and guidance for court staff to follow when sequencing restitution payments.** The Judicial Branch's written guidelines for court staff do not include a policy, standard procedures, or guidance for the staff to follow when sequencing restitution payments to multiple victims. According to court staff we interviewed at seven judicial districts, the sequence of restitution payments to multiple victims is often left to the discretion of the clerks. The Judicial Branch staff reported to us that they monitor victim payment sequences as a regular part of their internal audit program. However, because the Judicial Branch does not have specific policies for court staff to follow regarding sequencing payments to multiple victims when the sequence required by statute does not apply, there are no reviews to ensure judicial district practices are consistent and equitable, and provide timely restitution to victims.

Further, staff at each district reported using different and inconsistent methods for sequencing restitution payments in cases where the sequencing of victims is not governed by statute, such as cases where there are multiple individual victims. Specifically, staff in three districts

always disburse payments to victims on a percentage basis; staff in two districts always disburse payments using a sequential method; staff in one district always disburse payments to victims on an equal basis; and staff in one other district reported applying different methods to sequence and disburse payments to victims on a case by case basis.

Districts also used the manual payment function in ICON/Eclipse inconsistently. Court clerks in all seven districts reported utilizing the manual payment function in ICON/Eclipse to override the ICON/Eclipse automatic payment disbursement function when offenders make payments too small to be evenly disbursed in reasonable amounts. However, only one district reported using manual payments to send checks to victims on a rotating monthly basis, while another district reported only using manual payments to prevent checks from being returned to the district when it could not locate the victim.

- **Some court staff were unaware of the statutory requirements for sequencing restitution payments.** One judicial district reported that it had begun disbursing restitution to all victims, including individuals and insurance companies, based on the equal or percentage payment method automated in ICON/Eclipse because it received complaints from insurance companies about being paid after individuals had been paid in full. The court staff were not aware that statute requires individual victims to be paid restitution in full before insurance companies receive payment.
- **Lack of supervisory review.** Judicial districts do not have a process to periodically review whether court staff comply with statute regarding the sequencing of restitution payments to victims. Based on our interviews at seven judicial districts, there was no supervisory review process to monitor the sequence of restitution payments for consistency among staff, equitability and timeliness for victims, or compliance with statute.
- **Court orders for restitution do not clearly specify the sequence of restitution payments to victims.** The Judicial Branch reported that districts should follow the sequence of payments to victims as ordered by the judge. However, in our review of the 41 case files with multiple victims, we did not find any indication that a judge had specified a particular payment sequence on the orders for restitution. When we interviewed seven judges from four judicial districts, we learned that they generally grant the district attorneys' request for restitution as submitted on the motion for restitution, and spend time reviewing the sums requested, but do not specify the sequence of payments to the victims. Further, when we interviewed staff responsible for compiling restitution orders at six district attorney offices, we learned that the attorneys do not

always request a specific sequence of payments to victims and instead rely on the court to determine the sequence of payments.

Why do these problems matter?

Overall, inconsistent sequencing and untimely disbursement of restitution payments results in inequitable treatment of victims in some cases with multiple victims. For example, when court staff are able to sequence the order of restitution payments based on their own discretion, one staff member could sequence payments so that the victims who are owed the lowest amount of restitution are paid first, while another staff member could sequence payments so that victims who are owed the highest amount are paid first. These inconsistencies lead to inequitable payment of restitution to victims depending on which staff record the restitution orders in ICON/Eclipse.

For the six cases, described above, that had problems with the sequence of restitution payments, we calculated that as of November 2013, there was \$9,635 in restitution that had not been paid to the victims who should have received the payments. In these cases victims either received less than their ordered share of the restitution paid by the offender, or did not receive any of the restitution paid by the offender.

Recommendation No. 7:

The Judicial Branch should ensure that the sequence and disbursement of restitution payments to victims in cases with multiple victims are equitable, consistent, and comply with statute and court orders by:

- a. Establishing and implementing written policies and procedures or guidelines for court staff to follow to consistently and equitably determine the sequence of restitution payments for cases with multiple victims. Policies and procedures should require court staff to sequence payments to victims in compliance with statute or the judges' order, when applicable, and outline the process when issues arise, such as when the judge's order does not specify the sequence or payments from an offender are too small to be disbursed simultaneously, to help ensure payments are disbursed to victims equitably and timely.
- b. Ensuring that court staff are trained on statutory requirements for restitution sequencing and the new policies and procedures established in part "a" above.
- c. Implementing a risk-based review process to ensure restitution disbursements to victims comply with the policies and procedures

implemented in part “a” and comply with statute and court orders, when applicable.

- d. Investigating the six cases we identified for which the judicial districts did not sequence and disburse restitution payments to victims in compliance with statute, or in an equitable manner when statute is not applicable, and revising the payment sequencing in ICON/Eclipse, as appropriate.

Judicial Branch Response:

- a. Agree. Implementation date: July 2015.

The order in which victims receive restitution payments is covered in statute and is intended to ensure that an individual victim receives restitution prior to an entity that has suffered a loss due to a contractual relationship, including an insurance company. However, statute does not direct the manner in which the Judicial Branch establishes the payment distribution sequence for individual victims. This process has been left to the discretion of the district attorney and the judge in the case, or, in the absence of case-specific direction, to the staff of the district to arrange the disbursement sequentially, equally, or on a percentage basis. In an effort to standardize methods of disbursement of restitution, the Judicial Branch is developing and implementing a policy that will be modifying the payment distribution method for all existing and future cases involving multiple individual victims statewide to the percentage of total amount ordered. Court staff will also be able to place individual victims, such as insurance companies, on a “manual” disbursement status to ensure that the order of crediting payments complies with statutory direction.

- b. Agree. Implementation date: July 2015.

The State Court Administrator’s Office will ensure that court staff are adequately trained on the new procedure and the statutory requirements covering the order for crediting payments.

- c. Agree. Implementation date: July 2015.

The Judicial Branch has utilized the internal audit function to review the statutory order for crediting payments to victims as part of the ongoing audits of the courts. The audit unit will include a risk-based approach to the audit program to review the sequencing of victims in cases. Given the new policy and procedures covering the payment distribution sequence, the likelihood of inequitable victim sequencing will be reduced.

- d. Agree. Implementation date: July 2015.

The Judicial Branch will review the cases identified to correct any statutory compliance issues. In addition, the Judicial Branch will be modifying the payment distribution method for all existing cases involving multiple individual victims statewide to the percentage of total amount ordered.

Appendix

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Appendix A

Office of the State Auditor Summary of Findings Related to the SMART Government Act Victim's Restitution Colorado State Judicial Branch April 2014

The SMART Government Act [Section 2-7-204(5)(a), C.R.S.] requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments. These audits may include, but are not limited to, the review of:

- The integrity of the department's audited performance measures.
- The accuracy and validity of the department's reported results.
- The overall cost and effectiveness of the audited programs or services in achieving legislative intent and the department's goals.

The Victim's Restitution performance audit was selected for focused audit work related to the SMART Government Act. The scope of the SMART Government Act audit work was limited to the Judicial Branch's oversight and administration of victim's restitution assessment, collection, and payment disbursement and the overall effectiveness of the Judicial Branch in achieving legislative intent related to restitution. This appendix presents our findings as responses to six key questions, relevant to the SMART Government Act, that can assist legislators and the general public assess the value received for the public funds spent by the Judicial Branch in administering restitution processes.

What is the purpose of this program/service?

Victim's restitution is a court-ordered amount that a convicted offender pays the victim to compensate him or her for monetary losses resulting from the crime and to hold the offender financially responsible for the harm he or she caused. The Judicial Branch is primarily responsible for overseeing the assessment and collection of court-ordered restitution and reporting on the State's restitution collection efforts. Judicial Branch staff track court-ordered restitution and payments; establish payment plans for offenders; monitor offenders' adherence to those plans; and enforce restitution collection when offenders willfully do not pay restitution. Between Fiscal Years 2009 and 2013, the Judicial Branch collected a total of \$56.5 million in offenders' restitution payments on over 55,000 cases.

What are the costs to the taxpayer for this program/service?

In Fiscal Year 2014, the Judicial Branch was appropriated a total of \$4.3 million and 83.2 full-time-equivalent (FTE) staff positions to collect all court-ordered costs, fines, and fees. The Judicial Branch reported that a portion of its appropriation and staff time are used to collect restitution. The Judicial Branch does not receive an appropriation for or have staff specifically dedicated to administering victim's restitution processes, nor does it track the administrative

costs of restitution collection, because restitution is one of many court fees and costs that the Judicial Branch collects.

How does the Judicial Branch measure the performance of this program/service?

According to the SMART Government Act, state agencies' performance plans should include performance measures related to their major functions, such as those programs that affect a significant number of Coloradans or require a significant amount of public funds to administer. The Judicial Branch's Fiscal Year 2014 SMART Government Act performance plan does not include specific performance measures related to victim's restitution because it is not a major function or substantial component of the Judicial Branch's overall responsibilities, duties, and operations. However, the Judicial Branch has internal processes to track and monitor the State's performance in collecting restitution and reports the amount of restitution collected in its Annual Statistical Report.

Is the Judicial Branch's approach to performance measurement for this program/service meaningful?

The Judicial Branch does not measure or report on restitution collection in its SMART Government Act performance plan because it is not a major function of the Judicial Branch's overall responsibilities, duties, and operations.

Are the data used to measure performance for this program/service reliable?

We reviewed the validity, reliability, and completeness of the court-ordered victim's restitution data that the Judicial Branch maintains and uses internally to monitor its performance in collecting restitution. Based on our audit work, the Judicial Branch has sufficient and reliable data for measuring its performance related to restitution collection.

Is this program/service effective in achieving legislative intent and the Judicial Branch's goals?

As discussed in Chapter 2 of this report, we found that the Judicial Branch can improve the effectiveness of restitution collection and distribution and compliance with statutory requirements. Specifically, as we discuss in Recommendation No. 5, the Judicial Branch should: (1) develop processes and system capabilities to collect interest on restitution as required by statute, [Section 18-1.3-603(4)(b)(1), C.R.S.], and (2) improve its information system to better manage restitution collection for complex joint and several liability cases according to statutory requirements. In addition, as we discuss in Recommendation No. 7, the Judicial Branch should improve policies, procedures, and systems for determining the sequence in which victims will receive restitution payments, to ensure payments are disbursed timely to victims in a consistent and equitable manner, and in compliance with statute [Section 18-1.3-601(1)(g), C.R.S.].

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