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**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN FEES AND BAIL OF THE
BARNSTABLE DIVISION OF THE
DISTRICT COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2008 TO DECEMBER 31, 2009**

**OFFICIAL AUDIT
REPORT
JANUARY 31, 2011**



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January 31, 2011

Dear Justice O'Neil,

Enclosed is an audit report for your review. This audit of Barnstable District Court covers the audit period of July 1, 2008 to December 31, 2009. This is one of a number of audits commenced and largely completed during the tenure of my predecessor, State Auditor A. Joseph DeNucci. Should you desire more information relative to this audit, please contact me.

I look forward to fostering a cooperative relationship between our respective offices. If my staff or I may be of assistance at any time, please do not hesitate to call upon us. I know we both share the goal of making government work better.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzanne M. Bump".

Suzanne M. Bump, Esq.
Auditor of the Commonwealth

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Massachusetts courts generate revenues from a variety of sources, and the amount of total revenues has increased over the years. Revenues are established by either a specific statute or a uniform fee schedule developed in accordance with Administrative Office of the Trial Court (AOTC) rules and regulations. Revenues are collected by local courts and are transmitted monthly to municipalities in the courts' jurisdiction and to the Commonwealth, through the AOTC. Although revenues are generally paid in cash, certain circumstances allow for the performance of community service (unpaid work at not-for-profit or governmental entities) in lieu of a cash payment.

Current law provides for courts to retain a portion of the revenues, which generally help offset funding shortfalls to the courts' appropriation accounts. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$20 million from certain named fees collected that exceed the amount of those fees collected for the base year of 2003 (the floor amount). Another section of the annual appropriations act allows the same Chief Justice to spend up to \$23 million of Probation Supervision fees collected and deposited by the courts not subject to a floor amount. These amounts are monitored and allocated to specific courts by a Trial Court Revenue Unit. The Administrative Office of the District Court Department (AODC) and the Office of the Commissioner of Probation have also increased monitoring of revenues by instituting additional reporting processes.

Revenues generated by the AODC have increased over the years. During the period fiscal year 2006 to fiscal year 2009, revenues increased 13%. This is attributable to a variety of reasons, including new fees enacted in accordance with legislative action, general fee increases, and increased monitoring and collection of fees. For the purposes of our audit, we selected three of the largest dollar value criminal case monetary assessment revenues for further examination at various district courts, specifically, the Probation, Indigent Counsel, and Victim Witness fees. Additionally, we chose to examine bail activity at the district court locations based on issues identified at previous court audits conducted by the Office of the State Auditor, as bail can also be a source of revenue if the defendant does not appear in court as required by the terms of their release from jail.

The Barnstable Division of the District Court Department (BDC) presides over civil and criminal matters falling within its territorial jurisdiction. Of the 62 district courts throughout the Commonwealth, BDC is one that we selected for further review of the above fees. The purpose of our audit was to review BDC's internal controls and compliance with state laws and regulations regarding certain fees and bail funds for the period July 1, 2008 to December 31, 2009.

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We found that BDC did not always document the granting of waivers of probation fees in accordance with state law and AODC guidance. A waiver of the probation fee allows the probationer to perform community service instead of paying the required monthly probation fee. As a result of the stipulated procedure for granting probation fee waivers not being followed, there is a breakdown in internal controls, BDC has inadequate assurance that probationers are complying with the terms of their conditions of probation, and the Commonwealth may not be receiving the funds to which it is entitled.

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We noted that although BDC has a system in place for collecting, disbursing, and accounting for partial payments of court-ordered assessments, its financial recordkeeping system does not have an accounts receivable component. Since this is a weakness at every district court location, the AOTC and the AODC should consider implementing an accounts receivable system to track collections rather than rely on the cash-based system currently in use. Without an accounts receivable system, courts lack control over a significant source of revenue and cannot readily identify the total amount to be collected, although detailed information is kept to identify what individuals owe. Of the total revenues of approximately \$78 million collected by all district courts during fiscal year 2009, over \$35 million of fees collected for all 62 district court locations in that year could have been processed through an accounts receivable system if the courts had one.

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BDC did not consistently charge the higher Administrative Probation Fee, which became effective July 1, 2009. As a result, the Trial Court and the Commonwealth did not receive all the funds to which they were entitled, which we estimated to be as much as an additional \$19,285 for the month of July 2009 alone.

INTRODUCTION

Background

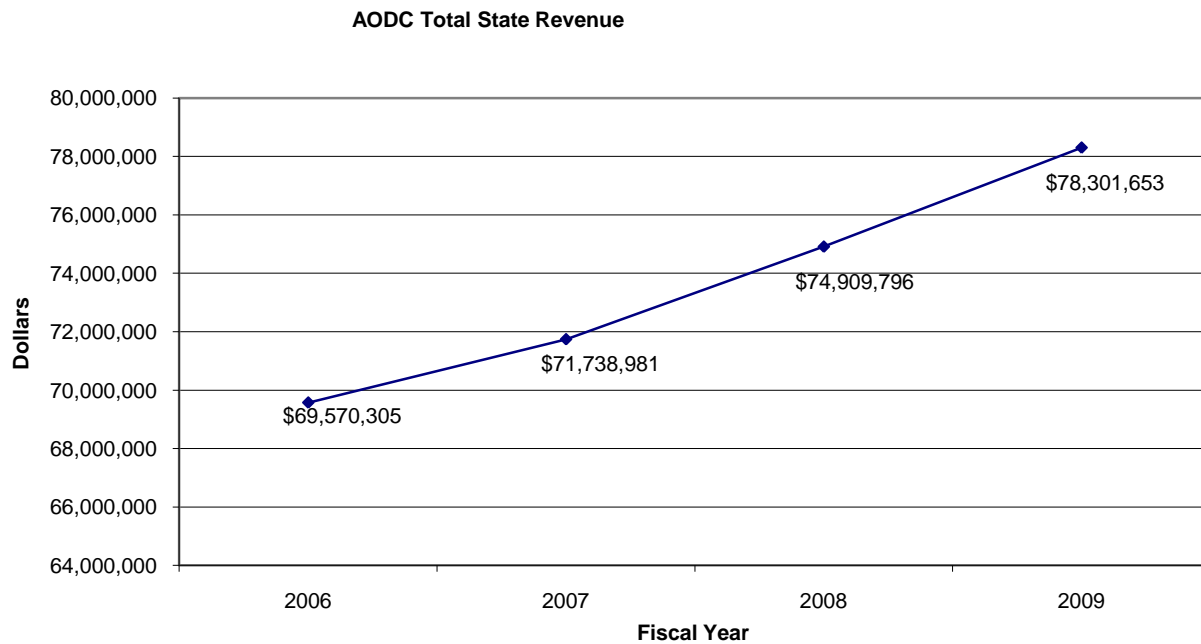
Massachusetts courts generate revenues from a variety of sources, and the amount of total revenues has increased over the years. Revenues are established by either a specific statute or a uniform fee schedule developed in accordance with Administrative Office of the Trial Court (AOTC) rules and regulations. Revenues are collected by local courts and are transmitted either directly to municipalities in the courts' jurisdiction or indirectly to the Commonwealth, through the AOTC, monthly. The court system classifies revenues into two categories: general revenue or criminal case monetary assessments. General Revenue is the largest source of revenues, consisting of such items as civil case filing fees, bail forfeitures, court costs, fines, and other general court revenue, all of which are deposited into the Commonwealth's General Fund. Criminal case monetary assessments are established by specific statute and can be deposited into either the General Fund or a specific fund. For revenue deposited into the General Fund, the Commonwealth's accounting system often identifies it as a specifically designated revenue source. Revenues are generally paid in cash, but certain circumstances allow for the waiving of fees or performance of community service (unpaid work at not-for-profit or governmental entities) in lieu of cash payment of certain fees.

Current law provides for the AOTC to retain a portion of the revenues. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$20 million from certain named fees¹ collected by the courts that exceed the amount of those fees collected for the base year of 2003 (the floor amount). Another section of the annual appropriations act allows the same Chief Justice to spend up to \$23 million of Probation Supervision Fees collected and deposited by the courts not subject to a floor amount. These amounts are monitored and allocated to specific courts by the AOTC Revenue Unit. The Administrative Office of the District Court Department (AODC) and the Office of the Commissioner of Probation (OCP) have also increased monitoring of revenues by instituting additional reporting processes. These revenues generally help offset funding shortfalls to the courts' appropriation accounts.

Revenues generated by the AODC have increased over the years. During the period fiscal year 2006 to fiscal year 2009, revenues increased 13%. This is attributable to a variety of reasons, including

¹ At district courts, the applicable fees would include civil entry fees and related surcharges, small claims entry fees and related surcharges, and civil motor vehicle infraction fees.

new fees enacted in accordance with legislative action, general fee increases, and increased monitoring and collection of fees. A chart of the AODC revenue collections during fiscal years 2006 through 2009 from the Commonwealth's accounting system and the AOTC Revenue Unit follows.



We further analyzed the above total revenues to determine the revenue sources. A table of this analysis, by fiscal year, listing revenue sources totaling \$1 million or more per item, is shown below.

Revenue Source	2006	2007	2008	2009
General Revenue	\$34,621,161	\$36,110,747	\$37,746,391	\$41,494,270
Probation Fees	18,214,139	18,766,141	19,335,234	18,533,157
Indigent Counsel Fees	6,393,010	6,634,205	7,088,134	7,278,272
Victim Witness Fees	3,189,071	3,033,415	2,994,960	2,910,873
Civil Surcharges	2,468,156	2,620,719	2,893,583	3,368,295
Alcohol Fees	1,834,424	1,801,824	1,991,220	1,958,131
Head Injury Fees	1,636,350	1,602,282	1,633,554	1,632,128
All Other	<u>1,213,994</u>	<u>1,169,648</u>	<u>1,226,720</u>	<u>1,126,527</u>
Total	<u>\$69,570,305</u>	<u>\$71,738,981</u>	<u>\$74,909,796</u>	<u>\$78,301,653</u>

As shown in the preceding chart, the largest revenue source category, General Revenue, consists of a wide variety of items, including state fines, costs, surcharges, civil entry fees, copy fees, etc., that are

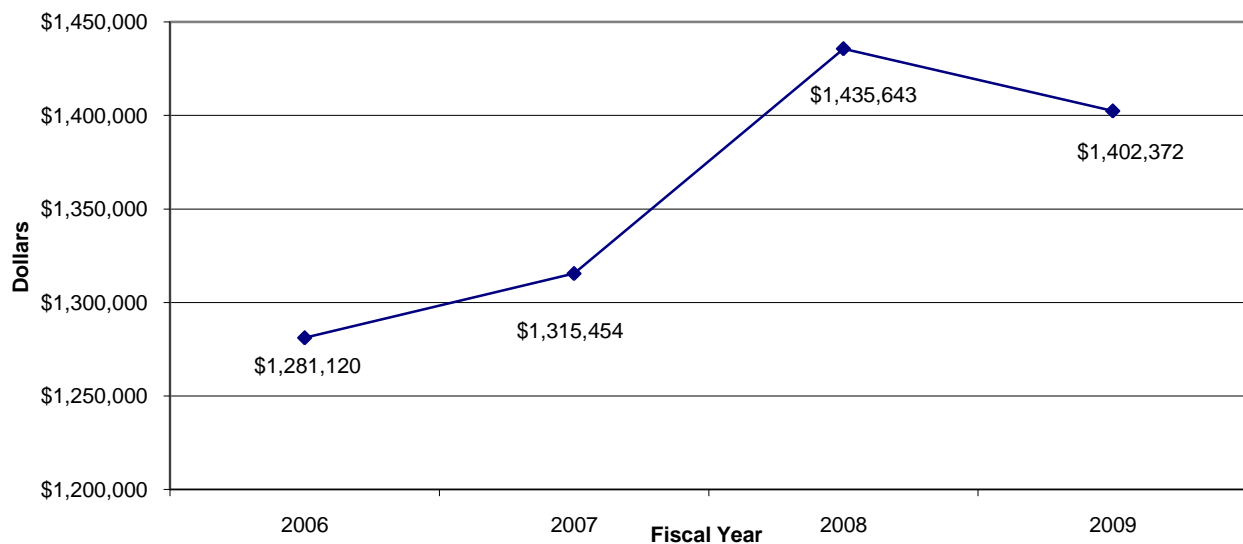
deposited into the Commonwealth's General Fund. The next five revenue sources (Probation fees through Alcohol fees) are separately identified in the Commonwealth's accounting system, but are all deposited into the Commonwealth's General Fund. We selected the three largest dollar value revenues (excluding General Revenue) for further examination at various district courts; specifically, Probation, Indigent Counsel, and Victim Witness fees. We excluded General Revenue since our previous audit work at district courts covered items comprising the General Revenue category. Additionally, we chose to examine bail activity at the district court locations based on issues identified at previous court audits conducted by the Office of the State Auditor, as bail can also be a source of revenue if defendants do not appear in court as required by the terms of their release from jail.

The fees we selected for further examination (Probation, Indigent Counsel, and Victim Witness) are established by various statutes and can have various fee amounts depending on the circumstances. An explanation of the fees follows.

- Probation Fee - Supervised Probation: Established in accordance with Chapter 276, Section 87A, of the Massachusetts General Laws, this is a required fee if a defendant is placed on either supervised probation or operating under the influence probation. If the defendant is found indigent, he or she must perform one day of community service work monthly. The amount of the fee is \$60 per month plus a \$5 per month Victim Services surcharge. The fee does not apply to nonsupport convictions where support payments are a condition of probation. The fee can be waived or reduced upon a court hearing if the payment of the fee would constitute an undue hardship on the defendant or his/her family, with the defendant required to perform some amount of community service. Additionally, the court hearing can result in the fee being offset by the amount of restitution payments (if applicable) against the defendant.
- Probation Fee - Administrative Probation: Established in accordance with Chapter 276, Section 87A, of the General Laws, this is a required fee if a defendant is placed on administrative supervised probation. If the defendant is found indigent, he or she must perform four hours of community service work monthly. Effective July 1, 2009, the amount of the fee is \$45 per month plus a \$5 per month Victim Services surcharge (prior to this date the amount of the fee was \$20 per month plus a \$1 per month Victim Services surcharge). The fee does not apply to nonsupport convictions where support payments are a condition of probation. The fee can be waived or reduced upon a court hearing if the payment of the fee would constitute an undue hardship on the defendant or his/her family, with the defendant required to perform some amount of community service. Additionally, the court hearing can result in the fee being offset by the amount of restitution payments (if applicable) against the defendant.

- **Indigent Counsel Fee:** Established in accordance with Chapter 211D, Section 2A, of the General Laws, this is a required fee when legal counsel is appointed for a defendant who is indigent or indigent but able to contribute to the cost of counsel. The amount of the fee is \$150 and can be waived at the court’s discretion if it is determined that the defendant will be unable to pay the fee within 180 days. If the fee is not waived, the judge may permit the defendant to perform 10 hours of community service for each \$100 owed. The amount can also be remitted (brought to zero) if the defendant is acquitted.
- **Indigent Counsel Contribution:** Established in accordance with Chapter 211D, Section 2, of the General Laws and Supreme Judicial Court Rule 3:10 (10)(c), this is a contribution the court can impose when legal counsel is appointed for a defendant who is indigent but able to contribute to the cost of counsel. The amount of the contribution is determined by the court as the “reasonable amount” required toward the cost of counsel, in addition to the above Indigent Counsel Fee. The amount can also be remitted (brought to zero) if the defendant is acquitted.
- **Victim Witness Assessment:** Established in accordance with Chapter 258B, Section 8, of the General Laws, this is a required fee if a defendant is either convicted or pleads to a finding of sufficient facts in a case. The amount of the assessment, which varies depending on the type of case involved, is not less than \$90 for a felony, \$50 for a misdemeanor, and \$45 for any delinquency (juvenile cases). If the defendant has numerous cases, there is no limit on cumulative assessments. By statute, this assessment has first priority for recording collections. The amount can be waived or reduced if the court determines that the payment would cause a severe financial hardship.

The Barnstable Division of the District Court Department (BDC) generated revenues that increased from \$1,281,120 in fiscal year 2006 to \$1,402,372 in fiscal year 2009, as shown in the following chart.



With respect to the three fees being examined, BDC generated the amounts of revenues detailed in the following chart.

Revenue Source	2006	2007	2008	2009
Probation Fees	\$378,578	\$367,158	\$377,671	\$349,288
Indigent Counsel Fees	99,696	95,785	129,718	131,588
Victim Witness Fees	<u>50,295</u>	<u>52,572</u>	<u>57,000</u>	<u>50,312</u>
Total	<u>\$528,569</u>	<u>\$515,515</u>	<u>\$564,389</u>	<u>\$531,188</u>

In addition to the above cash collections at BDC, probationers also performed community service in lieu of paying probation and indigent counsel fees. Based on our review of probation office documents and reports as well as interviews with probation officials, approximately 16% of the fee assessments were satisfied with community service. With respect to Victim Witness fees, state law requires either payment of the fee or waiver of the fee if it would cause a severe financial hardship. The district courts do not summarize information on the number of waivers of the Victim Witness fees, so we do not have information on the number of waivers of that fee that were granted. However, our observations while conducting audit fieldwork indicated that the fee was generally assessed and not waived.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls over certain operations of BDC. The scope of our audit included an examination of BDC's controls over administrative and operational activities, including certain fees and bail funds for the period July 1, 2008 to December 31, 2009.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included audit procedures and tests that we considered necessary under the circumstances.

Our audit objectives were to (1) assess the adequacy of BDC's internal controls over the assessment, collection, accounting, waiver, and community service in lieu of payment of certain fees and BDC's internal controls over bail funds and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding BDC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and AODC policies and procedures with respect to certain fees and bail funds.

Our review encompassed the activities and operations of BDC's Judge's Lobby, Clerk-Magistrate's Office, and Probation Office. We reviewed criminal case activity for the three named fees as well as bail activity. We also reviewed the fee waiver processes and community service in lieu of fees procedures to determine whether AODC policies and procedures were being followed.

To achieve our audit objectives, we performed analytical reviews of AODC revenues, conducted interviews with management and staff, and reviewed prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and BDC's organizational structure. In addition, we obtained and reviewed copies of statutes, policies and procedures, accounting records, and other source documents. Our assessment of internal controls over financial and management activities at BDC was based on those interviews and the review of documents.

Our recommendations are intended to assist BDC in developing, implementing, or improving its internal controls and overall financial and administrative operations to ensure that BDC's systems covering certain fees and bail funds operate in an economical, efficient, and effective manner and in compliance with applicable laws, rules, and regulations.

Based on our review, we determined that, except for the issues noted in the Audit Results section of this report, BDC (1) maintained adequate internal controls over certain fee and bail fund activity; (2) properly assessed, recorded, collected, deposited, and accounted for the fees examined; and (3) complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

1. INTERNAL CONTROL IMPROVEMENTS NEEDED TO COMPLY WITH PROBATION FEE WAIVER REQUIREMENTS

We found that the Barnstable Division of the District Court Department (BDC) did not always document the granting of waivers of probation fees in accordance with state law and Administrative Office of the District Court Department (AODC) guidance. A waiver of the probation fee allows the probationer to perform community service instead of paying the required monthly probation fee. As a result of not following the stipulated procedure for granting probation fee waivers, there is a breakdown in internal controls, BDC has inadequate assurance that probationers are complying with the terms of their conditions of probation, there is a lack of assurance that an undue financial hardship exists, and the Commonwealth may not be receiving the funds to which it is entitled. State law and AODC guidance require the local courts to document certain steps when waiving cash payment of monthly probation fees and imposing community service to be performed.

State law requires the imposition of a designated fee, depending on whether the probationer is placed on supervised probation or administrative probation. The fee can be waived and community service performed, upon order of the court, as provided by Section 87A of Chapter 276 of the Massachusetts General Laws, as amended:

The court shall assess upon every person placed on supervised probation, including all persons placed on probation for offenses under section 24 of chapter 90, a monthly probation supervision fee, hereinafter referred to as "probation fee", in the amount of \$60 per month. Said person shall pay said probation fee once each month during such time as said person remains on supervised probation. The court shall assess upon every person placed on administrative supervised probation a monthly administrative probation supervision fee, hereinafter referred to as "administrative probation fee", in the amount of \$20 per month. Said person shall pay said administrative probation fee once each month during such time as said person remains on administrative supervised probation. The court may not waive payment of either or both of said fees unless it determines after a hearing and upon written finding that such payment would constitute an undue hardship on said person or his family due to limited income, employment status or any other factor. Following the hearing and upon such written finding that either or both of said fees would cause such undue hardship then: (1) in lieu of payment of said probation fee the court shall require said person to perform unpaid community work service at a public or nonprofit agency or facility, as approved and monitored by the probation department, for not less than one day per month and (2) in lieu of payment of said administrative probation fee the court shall require said person to perform unpaid community work service at a public or nonprofit agency or facility, as approved and monitored by the probation department, for not less than four hours per month.

AODC guidance was provided in a September 1, 2006 memorandum from the Chief Justice of the District Court Department to District Court Judges, Clerk-Magistrates, and Chief Probation Officers. The memorandum reiterated the statutory requirements and suggested the use of a form, Assessment or Waiver of Moneys in Criminal Case, as a way to document compliance with the statutory requirements, as follows:

- a. **First Justices.** *Please review with your respective Clerk-Magistrate and Chief Probation Officer your court's comprehensive approach to implementing the various legislative mandates for fines, fees, costs and assessments. You will also want to communicate that policy to the judges who sit from time to time in your court. General Laws c. 276 87A is clear that judges have a duty to waive the probation fee if it "would constitute an undue hardship on said person or his family," but the statute also requires that such waivers may be granted only "after a hearing and upon [a] written finding" of hardship, "only during the period of time that said person is unable to pay his monthly probation fee," and only if the judge requires the probationer "to perform unpaid community work service" of at least one day (or 4 hours in lieu of an administrative probation fee) per month*
- b. **Judges.** *It is important that each judge routinely use the mandatory "Assessment or Waiver of Moneys in Criminal Case form **whenever the judge disposes of a criminal case that involves the assessment or waiver of any required financial amount.** The form has several functions. It serves as a reference checklist; it documents that the complex statutory requirements relative to assessments have been complied with; it avoids any omissions or errors in recording what the judge has ordered; and it offers a simple way for the judge to make the written finding(s) required when a judge waives the victim/witness assessment or probation supervision fee*

At BDC, when the court issues an order placing the offender on probation, the associated monetary assessment or waiver thereof is not always specifically written or consistently documented between the Clerk-Magistrate's Office and the Probation Office. Audit tests of 10 criminal case files noted seven instances (70%) in which the court order allowed the probationer to either pay the fee or perform community service, as subsequent circumstances dictate, without a modified court order. Also, there were another three instances (30%) in which there were inconsistencies between the court-ordered payment of probation fees (as reflected in the Clerk-Magistrate's Office records) and certain Probation Office records. In these cases, the Probation Office's Conditions of Probation forms were written to allow either the payment of the fee or the performance of community service rather than adhering to the court order citing payment of a monthly probation fee. These practices permit the Chief Probation Officer (or probation officer assigned to the case) to be responsible for determining whether the individual will pay a probation fee or perform community service.

As a result of BDC's not following the stipulated procedure for granting probation fee waivers, there is a breakdown in internal controls, inadequate assurance that probationers are complying with the terms of their court-ordered conditions of probation, and inadequate assurance that an undue financial hardship exists or that the Commonwealth is receiving all the funds to which it is entitled.

BDC personnel indicated that although they are aware of the statutory requirement, the process is too cumbersome to have the cases brought back before the court each time the probationer is unable to pay the monthly fee, as it delays other important court work. They also indicated that the Probation Office staff is the most knowledgeable of an individual's ability to pay and would therefore be the most qualified to make that determination. Therefore, the court delegates the responsibility to its probation officers in order to cut down on the amount of court time taken for such modifications. AODC officials noted that many persons whom the court has determined are indigent and would therefore qualify for community service in lieu of paying a probation supervision fee choose to pay the probation supervision fee rather than perform the community service. This results in increased revenue to the Commonwealth.

Recommendation

To improve internal controls and ensure compliance with state law and AODC guidance, BDC should modify its procedures to document, by court order, the specific terms each probationer is expected to comply with. The order should definitively state whether a probationer shall either pay a probation fee or, in the case of an undue hardship, definitively state that the probationer perform community service. If a probationer's status changes from either paying a fee or doing community service, such change should be as a result of a court order. Additionally, the Probation Office and the Clerk-Magistrate's Office should periodically compare case records to ensure that they contain corresponding information to eliminate the need to go before the court and retroactively adjust court orders

Auditee's Response

The First Justice provided the following response:

To improve internal controls over the granting of waivers of probation fees, the Barnstable District Court will actively utilize the "Assessment or Waiver of Money in Criminal Cases" form promulgated by the District Court and in the event the court waives the fee due to indigency

it will be documented on the waiver form and the case docket. This form will be readily available in all sessions and session staff will be reminded of its use and purpose. Additionally, a corresponding case docket entry and probation file entry will be made whenever the court orders a waiver, reduction or other modifications to the probation supervision fee assessment. In the summer of 2010, the Administrative Office of the Trial Court will begin installation of the full MassCourts case management system which will include as one of its features the electronic tracking of the assessment or waiver of court ordered payments.

The determination regarding whether a probation fee shall be waived in whole or in part will only be made by the court if it determines after a hearing with the above written finding that payment would constitute an undue hardship.

It should be noted that the majority of defendants appearing in the courts are indigent and have appointed counsel as a result of their indigency. Many indigent persons choose to pay a fee rather than perform community service. Therefore, when a judge issued an order to either pay the probation supervision fee or perform community service the judge was determining that the defendant was indigent but provided them the option of paying the probation supervision fee instead of performing community service. This has resulted in the collection of additional funds for the Commonwealth while allowing the indigent defendant the opportunity of performing community service. In FY2010 the Trial Court will collect approximately 26 million dollars in probation supervision fees.

2. CONSIDERATION SHOULD BE GIVEN TO ESTABLISHING AN ACCOUNTS RECEIVABLE SYSTEM

We noted that although BDC has a system in place for collecting, disbursing, and accounting for partial payments of court-ordered assessments, its financial recordkeeping system does not have an accounts receivable system. Since this is a weakness at every district court location, the Administrative Office of the Trial Court (AOTC) and the AODC should consider implementing an accounts receivable system to track collections rather than rely on the cash-based system currently in use. Without an accounts receivable system, courts lack control over a significant source of revenue. Of the total revenues of approximately \$78 million collected by all district courts during fiscal year 2009, over \$35 million in fees collected for all 62 district court locations in that year could have been processed through an accounts receivable system if the courts had one.

The accounting system used by Massachusetts courts is a cash-based system. There are two variations of the system used to collect probationers' money that are found depending on the specific court location: the Probation Receipt Account (PRA) system and the centralized cash system, which handles collections from the Clerk-Magistrate's Office as well as for people on probation. Although there are data elements captured in both the PRA and centralized cash systems that would be found in an accounts receivable system (e.g., total amount due and

amounts collected to date), this information is not used to control overall activity, and an accounts receivable control account is not used. Therefore, neither is a true accounts receivable system.

Sound business practices advocate the use of an accounts receivable system with a control account and supporting subsidiary detail accounts to control revenues. Such a system allows for the control of overall potential revenues as well as a summary of any adjustments made, such as expected cash receipts being reduced by either non-cash community service or adjustments in original amounts ordered by the court. An accounts receivable system would also be an important management tool to help age and analyze outstanding balances for further follow-up action and would provide an extra control feature to minimize risk of misstatement of court assets.

When the court system first established the PRA system over 25 years ago, computerization capabilities were at a much different level than they are now. The PRA system was established with more emphasis on meeting the needs of capturing information relating to the receipt of funds and subsequent payout and using this information to post to the cash receipts and disbursements journal. The centralized cash system was developed later, with an aim of minimizing redundancy between the Clerk-Magistrate's Office and the Probation Office as well as creating one secure cash collection point for the court.

As a result of the courts' use of the current cash-based system, a number of weaknesses exist. Specifically, the system does not properly establish accountability for and control over the approximately \$35 million in AODC revenues that would traditionally be processed through an accounts receivable system, and the total amount to be collected cannot be readily identified, although detailed information is kept to identify what individuals owe. Additionally, the courts do not have a central control point to highlight non-cash adjustments to receivable balances, such as for community service to be performed in lieu of the payment of fees. Lastly, the potential exists for unauthorized adjustments to be made in the system that would not be identified timely by employees in the normal course of their work.

The AOTC and the AODC have begun developing and testing a financial module to be added to the MassCourts system. This module should have an accounts receivable system incorporated into it and will be used to track probation fees and restitution.

Recommendation

The AOTC and the AODC should continue developing and testing the financial module for the MassCourts system. Once a determination is made that the module will work as expected, it should be implemented as part of the MassCourts system at the district courts.

Auditee's Response

The First Justice provided the following response:

The Barnstable District Court presently follows existing Trial Court fiscal procedures for the collection and disbursement of funds. The current policy does not require a court to maintain an accounts receivable component as part of its financial record keeping. The Barnstable District Court recognizes that enhanced collection methods which include an accounts receivable system would improve the court's ability to collect, record and account for court ordered assessments, however without an electric account management system, the Barnstable District Court presently has insufficient resources to assume the challenges of a manual system. In the summer of 2010, the Administrative Office of the Trial Court will have began installation of the full MassCourts case management system which will include as one of its features a computerized accounts receivable system.

3. IMPROVEMENTS NEEDED TO COMPLY WITH COLLECTION OF INCREASED ADMINISTRATIVE PROBATION FEE

Administrative Probation Fees² were increased in accordance with state law effective July 1, 2009. Although the BDC notified individuals on probation that they were responsible for paying the increased monthly administrative probation fee, we found that the collection of the higher amount was not always enforced. The Clerk-Magistrate's Office performs bookkeeping for the Probation Office as part of the court's consolidated cash system. Since the Probation Office did not notify the Clerk-Magistrate's Office of which accounts should be charged the higher rate until October 2009, not all accounts were charged the correct monthly amounts. As a result, the Trial Court and the Commonwealth did not receive all the funds to which they were entitled, which we estimated to be as much as an additional \$19,285 for the month of July 2009 alone. State law and Office of the Commissioner of Probation (OCP) guidance require the local

² As noted in the Background section of this report, this monthly fee is a combination of the Administrative Probation Supervision Fee of \$45 and an Administrative Probationer's Victim Services surcharge of \$5.

courts to retroactively apply increased administrative probation supervision fees to individuals on probation as of July 1, 2009.

The Fiscal Year 2010 Appropriations Act amended Section 87A of Chapter 276 of the Massachusetts General Laws by increasing the monthly administrative probation fee from \$21 to \$50 for individuals on probation. This change was reiterated in a July 2, 2009 memorandum from the Deputy Commissioner of Probation to all Chief Probation Officers. The memorandum summarized the change, clarified who would be affected, and established a process for communicating such change to the affected parties, as stated below:

*On June 29, 2009, the Governor passed the Commonwealth's budget for FY2010. Outside sections 99 and 100 of the budget amend G. L. 276 87A, increasing the monthly supervision fee from \$21 to \$50 (\$45 monthly fee for probation supervision and \$5 monthly fee for the victim service surcharge). This increase is **effective July 1, 2009**. All probationers required to pay administrative supervision fees as of the effective date are required to pay the increased fees, regardless of the start date of probation. The increased fees, however, are not to be applied retroactively prior to the effective date of July 1, 2009.*

Based on the foregoing, please identify all probationers that are presently paying administrative fees and notify them that, as of July 1, 2009, they are required to pay the increased monthly supervision fee of \$50.

Please consult with your respective First Justice (Regional Justice in the Superior Court) if you have not already done so.

At BDC, probation staff sent letters to its probationers explaining the fee increase and its retroactive application. However, the increased monthly fee amounts due were not immediately entered into the court's automated accounting system, maintained by the Clerk-Magistrate's Office, thereby allowing probationers' accounts to be credited at the old rate of \$21 instead of \$50 – a \$29 shortfall. Subsequently, during October 2009, probation officials provided the Clerk Magistrate's Office with a listing of current probationers whose monthly rate was still at the lesser amount, as well as a process for updating those accounts as payments were received. However, problems in completely updating the information resulted in probationers still paying reduced amounts as of the completion of audit fieldwork in April 2010. As a result of BDC's not collecting the proper (increased) monthly fee, the Commonwealth and the Trial Court did not receive all the funds to which they were entitled.

Recommendation

To improve internal controls and ensure compliance with state law and OCP guidance, BDC should modify its procedures to promptly adjust its accounting system for monthly fee changes. It should also review its current accounts and determine whether there exists any individuals on administrative probation who are paying the lesser amount and make the appropriate changes. Additionally, the Probation Office and the Clerk-Magistrate's Office should periodically compare case records to ensure that they contain corresponding information to eliminate the need to retroactively adjust probationer's accounts.

Auditee's Response

The First Justice provided the following response:

In consultation with the probation department, I concluded that it would be unfair and unwieldy to collect additional Administrative Probation Supervision Fees from probationers who have already paid their Administrative PSF.