



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report-Issued March 1, 2013

---

## Central Division of the Boston Municipal Court Department

For the period July 1, 2009 through June 30, 2011



**TABLE OF CONTENTS**

**INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS ..... 1**

**OVERVIEW OF AUDITED AGENCY ..... 3**

**AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY ..... 5**

**AUDIT FINDINGS ..... 7**

**1. IMPROVEMENTS NEEDED IN INTERNAL CONTROLS OVER PROCESSING OF UNCLAIMED AND ABANDONED BAIL AND BAIL ASSOCIATED WITH CRIMINAL CASES IN DEFAULT ..... 7**

**2. IMPROVEMENTS NEEDED IN INTERNAL CONTROLS OVER ASSESSMENT OF PROBATION AND VICTIM WITNESS FEES..... 9**

**3. IMPROVEMENTS NEEDED IN BMC CENTRAL'S INTERNAL CONTROL PLAN AND PERIODIC RISK ASSESSMENTS ..... 12**

**4. IMPROVEMENTS NEEDED IN REVENUE PROCESSING AND RECONCILIATION ..... 15**

**OTHER MATTERS ..... 19**

## **INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS**

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. Chapter 211B of the Massachusetts General Laws established the Boston Municipal Court Department (BMCD), which has civil jurisdiction over money-damage cases involving tort and contract actions, small claims, summary process, civil motor vehicle infractions, mental health commitments, and domestic abuse actions. Its criminal jurisdiction includes most criminal offenses that do not require the imposition of a state prison sentence. BMCD established eight divisions, each having a specific territorial jurisdiction, to preside over civil and criminal matters that are brought before it. Each division's organizational structure consists of three main areas: the Judge's Lobby, headed by a First Justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and the Probation Department, headed by a Chief Probation Officer. The First Justice is the administrative head of the division, whereas the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices. The Office of the State Auditor initiated an audit of the Central Division of the Boston Municipal Court Department (BMC Central), the scope of which included BMC Central's internal controls over certain operational activities, including cash management, bail funds, and criminal- and civil-case activity, for the period July 1, 2009 through June 30, 2011.

### ***Highlight of Audit Findings***

- BMC Central did not always notify rightful owners of bail that was available for release in a timely manner, properly transmit unclaimed bail to the Office of the State Treasurer (OST) as abandoned property, or order bails forfeited when defendants failed to appear for scheduled court dates. As a result, the rightful bail owners and the Commonwealth have been denied timely access to, and use of, bail funds.
- BMC Central did not always order individuals to pay the correct statutory amounts for victim witness fees and monthly probation supervision fees, nor did it retroactively apply a 2009 increase in the monthly administrative probation supervision fee to individuals already on probation. Provisions of the General Laws and guidance from the Trial Court and Office of the Commissioner of Probation (OCP) stipulate the standard assessment of fees consistent with the offense(s) charged, and require documentation of any deviation from the standard. Because BMC Central did not comply with those provisions, the Commonwealth did not receive all the funds to which it was entitled in some cases, and in other cases, probationers were overcharged.

- The BMC Central Clerk-Magistrate's Office did not have a complete, up-to-date internal control plan and had not conducted an annual risk assessment as required by state law and Administrative Office of the Trial Court (AOTC) rules and regulations. As a result, AOTC could not ensure the integrity and effectiveness of BMC Central's internal control system, records, and safeguarding of assets.
- BMC Central did not reconcile the amount of revenues it transmitted to the Commonwealth to the state's Massachusetts Management Accounting and Reporting System each month as required by AOTC. It also improperly accounted for and transmitted revenues that were classified in the wrong fiscal year and wrong account. As a result, BMC Central transmittals of state revenue were overstated in some years and understated in others, leading to an overall miscalculation of \$182,311 during the audit period. This total included \$78,527 of restitution owed to crime victims that was inappropriately transmitted as state revenue.

### ***Recommendations of the State Auditor***

- BMC Central should reexamine and strengthen existing internal controls to ensure that its management of bail funds conforms to applicable state law and AOTC regulations and should continue to perform periodic reviews of its bail records. In addition, BMC Central should note the applicable dates (i.e., bail release date, one-year date for notifying a defendant or surety of available bail, and three-year date for unclaimed bail to be remitted to OST as abandoned property) on its bail records. Similarly, BMC Central should continue to improve and strengthen its existing internal controls to ensure that probation and victim witness fees are assessed in accordance with applicable state laws. This process should include BMC Central's reviewing the current probationers on administrative probation, determining whether any are paying the old monthly probation rate, and making the appropriate adjustments, as warranted, after seeking guidance from AOTC and OCP.
- BMC Central should make sure that case docket information clearly details all decisions made in the courtroom when it deviates from imposing the statutorily mandated fee assessments.
- After conducting an annual risk assessment, the Clerk-Magistrate's Office should ensure that its internal control plan is updated to address the risks and internal control requirements specific to all fiscal, administrative, and program operations.
- BMC Central should establish and implement the necessary controls to ensure compliance with AOTC Fiscal Year 2007 Memo #6, which requires the completion of monthly revenue reconciliations and compliance with the Office of the State Comptroller's annual year-end closing instructions, particularly when it comes to properly classifying fiscal year-end revenue in the correct year.
- BMC Central should establish and implement the necessary controls to ensure that undeliverable restitution checks and restitution checks outstanding for one year or more are reported to OST's Unpaid Check Fund after the mandatory waiting period in accordance with the AOTC Fiscal Systems Manual.

---

## OVERVIEW OF AUDITED AGENCY

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court Departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. The statute created a central administrative office managed by a Chief Justice for Administration and Management (CJAM), who is also responsible for the overall management of the Trial Court. The CJAM charged the central office, known as the Administrative Office of the Trial Court, with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including a budget; central accounting and procurement systems; policies and procedures for judges and staff; and the management of court facilities, security, libraries, and case automation.

Chapter 211B of the Massachusetts General Laws established the Boston Municipal Court Department (BMCD), which has civil jurisdiction over money-damage cases involving tort and contract actions, small claims, summary process, civil motor vehicle infractions (CMVIs), mental health commitments, and domestic abuse actions. Its criminal jurisdiction includes most criminal offenses that do not require the imposition of a state prison sentence. BMCD established eight divisions,<sup>1</sup> each having a specific territorial jurisdiction, to preside over civil and criminal matters that are brought before it. Each division's organizational structure consists of three main areas: the Judge's Lobby, headed by a First Justice; the Clerk-Magistrate's Office, headed by a Clerk-Magistrate; and the Probation Department, headed by a Chief Probation Officer. The First Justice is the administrative head of the division, whereas the Clerk-Magistrate and the Chief Probation Officer are responsible for the internal administration of their respective offices.

The Central Division of BMCD (BMC Central) presides over civil and criminal matters falling within its territorial jurisdiction of wards 6 through 12 and 16 through 17 in the city of Boston. It also presides over criminal matters within the jurisdiction of the Roxbury and Brighton divisions of BMCD and the Waltham, Cambridge, and Newton divisions of the District Court Department. During our audit period, July 1, 2009 through June 30, 2011, BMC Central collected revenues of

---

<sup>1</sup> The BMCD divisions: Brighton, Central, Charlestown, Dorchester, East Boston, Roxbury, South Boston, and West Roxbury.

\$4,350,842, which were disbursed to the Commonwealth. The revenue collected by BMC Central was paid to the Commonwealth as either general or specific state revenue, as follows:

Revenue Type	Amount
General Revenue	\$3,036,194 <sup>2</sup>
Probation Fees	529,255
Legal Counsel Fees	369,853
Surcharges	211,490
Miscellaneous	78,527
Victim Witness Fees	68,752
Alcohol Fees	24,067
Head Injury Program	21,884
Environmental Fines	7,745
Indigent Salary Enhancement Trust Fund	1,995
Drug Analysis	<u>1,080</u>
Total	<u>\$4,350,842</u>

Both the Clerk-Magistrate's Office and the Probation Department processed receipts and disbursements from July 1, 2009 through June 30, 2011, including \$882,000 of restitution money that the Probation Department paid directly to crime victims.

In addition to processing civil-case entry fees and monetary fee assessments on criminal cases, BMC Central was custodian of approximately 1,103 bails amounting to \$1,232,526 as of June 30, 2011. Bail in cash is the security given to the court by defendants or their sureties to obtain release and to ensure appearance in court, at a future date, on criminal matters. Bail is subsequently returned, upon court order, if defendants adhere to the terms of their release.

BMC Central is responsible for conducting CMVI hearings, which are requested by the alleged violator and heard by a Clerk-Magistrate or judge who determines whether the alleged violator is responsible for the CMVI offenses cited. BMC Central does not collect the associated fine when a violator is found responsible, but is required to submit the results of the hearing to the Registry of Motor Vehicles, which follows up on collections.

---

<sup>2</sup> General Revenue consists of civil filing fees, criminal fines, bail forfeitures, and copy fees.

## **AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY**

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor conducted an audit of the financial and management controls of the Central Division of the Boston Municipal Court Department (BMC Central). The scope of our audit included BMC Central's controls over operational activities including cash management, bail funds, and criminal- and civil-case activity for the period July 1, 2009 through June 30, 2011.

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

Our audit objectives were to (1) determine whether BMC Central had established adequate internal controls over certain operational activities, including cash management, bail funds, criminal-case activity, and civil-case activity and (2) determine the effectiveness of BMC Central's controls for measuring, reporting, and monitoring compliance with applicable state laws, rules, and regulations; other state guidelines; and Administrative Office of the Trial Court (AOTC) and BMC Central policies and procedures.

Our audit focused on the activities and operations of BMC Central's Clerk-Magistrate's Office and Probation Department. We reviewed bail and related criminal-case activity. We also reviewed cash management activity and transactions involving criminal monetary assessments and civil-case entry fees to determine whether policies and procedures were followed.

To achieve our audit objectives, we conducted interviews with BMC Central management and other staff and reviewed prior audit reports on BMC Central, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and BMC Central's organizational structure. In addition, we obtained and reviewed copies of statutes, policies, procedures, accounting records, and other source documents. Our assessment of internal controls over financial and management activities at BMC Central was based on those interviews and document reviews. In addition, we obtained and analyzed case data from selected case docket records and traced and compared them to BMC Central's CourtView Case Management

System for consistency and completeness. We also interviewed agency officials who were knowledgeable about CourtView data input activities. Since the court case docket record is the source document used to update CourtView and the principal document that identifies various fees and judgments made on each court case, we did not rely on CourtView for the purposes of our audit. We believe the information we obtained from case docket records was sufficient for the purposes of our analysis and findings. Also, for the purposes of our audit, we used random non-statistical sampling during our examination of bail funds and civil- and criminal-case activities.

Based on our audit we determined that, except for the issues noted in the Audit Findings section of the report, BMC Central (1) maintained adequate internal controls over cash management, bail funds, criminal-case activity, and civil-case activity; (2) properly recorded, collected, deposited, and accounted for all receipts; and (3) complied with applicable laws, rules, and regulations for the areas tested.



---

## AUDIT FINDINGS

### 1. IMPROVEMENTS NEEDED IN INTERNAL CONTROLS OVER PROCESSING OF UNCLAIMED AND ABANDONED BAIL AND BAIL ASSOCIATED WITH CRIMINAL CASES IN DEFAULT

Our audit revealed that the Central Division of the Boston Municipal Court Department (BMC Central) needs to improve its internal controls to comply with state law and Administrative Office of the Trial Court (AOTC) policies and procedures regarding the processing of unclaimed bails, abandoned bails, and bails applying to criminal cases in default status. Specifically, BMC Central did not promptly notify rightful owners of bails available for release, properly transmit unclaimed bail to the Office of the State Treasurer (OST) as abandoned property, or order bails to be forfeited when defendants failed to appear for scheduled court dates. As a result, the rightful bail owners and the Commonwealth have been denied timely access to, and use of, bail funds.

AOTC's Fiscal Systems Manual, Section 9.2, defines abandoned bail as follows:

*Abandoned Property—bail (or other held monies) unclaimed after three years, despite written attempts to contact the surety in accordance with Massachusetts General Law, Chapter 200A, Section 6.*

In addition, in Section 9.6 of the Fiscal Systems Manual, AOTC establishes policies and procedures for the processing of abandoned bail. The section states, in part:

*If bail remains unclaimed one year after its release date, the Court division must attempt to contact the owner of the bail in writing by registered mail. If the appropriate individual cannot be found and the bail remains unclaimed for three (3) years after the release date, the bookkeeper transmits the bail to the Office of the State Treasurer as abandoned property in accordance with Massachusetts General Law (M.G.L.) Chapter 200A, Section 6.*

Under Chapter 276, Section 80, of the Massachusetts General Laws, the court is authorized to forfeit bail if defendants fail to appear in court in accordance with the terms of their release. The law states, in part:

*At any time after default of the defendant, the court may order forfeited the money, bond or bank books deposited at the time of the recognizance and the court or clerk of the court with whom the deposit was made shall thereupon pay to the state treasurer any money so deposited.*

BMC Central's detailed accounting records indicated that 1,103 cash bails, totaling \$1,232,526, were on hand as of June 30, 2011, and that 155 bails, totaling \$51,565, were transmitted as

abandoned property to OST during the audit period. The Office of the State Auditor's (OSA) audit testing of a random sample of 27 of these bails, totaling \$79,045, noted 17 instances, amounting to \$26,200, where BMC Central failed to properly notify the rightful owners because it either did not mail required notifications or did not mail them promptly. Specifically, we found that written notifications were not mailed until 14 to 70 months after bail funds were available for release. Also, contrary to AOTC procedures and state law, BMC Central subsequently transferred seven of these bails, totaling \$17,950, as abandoned property before the required minimum holding period of three years. We also found that there were an additional two bails, amounting to \$2,020, that could have been ordered forfeited because they were associated with criminal cases where the defendants defaulted on their court appearances.

BMC Central personnel indicated that, although they are aware of the Commonwealth's laws and AOTC policies and procedures regarding the handling of unclaimed and abandoned bail, their current system requires the bookkeeper to manually review the corresponding criminal-case information each month, which is both labor-intensive and time-consuming. Once we called their attention to bails applying to cases where defendants were in default, BMC Central took immediate action, and the bails were forfeited and transmitted to the Commonwealth's General Fund. BMC Central officials also assured us that necessary corrective action would be taken to rectify inefficiencies in identifying unclaimed, abandoned, and potentially forfeitable bails.

***Recommendation***

BMC Central should reexamine and strengthen existing internal controls to ensure that its management of bail funds conforms to applicable state law and AOTC policies and procedures. At a minimum, BMC Central should continue to perform periodic reviews of bail records. In addition, BMC Central should note the applicable dates (i.e., bail release date, one-year date for notifying a defendant or surety of available bail, and three-year date for unclaimed bail to be remitted to OST as abandoned property) on its bail records. This practice should facilitate BMC Central's compliance with AOTC policies and procedures and the bail provisions of the General Laws.

***Auditee's Response*****Records of bail forfeitures.**

*All assistant clerk magistrates and session clerks are being reminded to include on the written docket an entry each time a defendant has defaulted that the court has either forfeited or not forfeited the bail.*

**Management of bail money.**

*Upon notice from the auditing team of deficits regarding the processing of unclaimed or abandoned bails, the clerk's office began to implement a plan to improve internal controls of this money. The clerk's office now notifies sureties of the availability of bail monies at the time the case is disposed as well as reviews bail records to ensure that management of all bail funds conforms to state law and AOTC regulations.*

**2. IMPROVEMENTS NEEDED IN INTERNAL CONTROLS OVER ASSESSMENT OF PROBATION AND VICTIM WITNESS FEES**

During our audit, we determined that BMC Central did not always order individuals to pay the correct statutory amounts for victim witness fees and monthly probation supervision fees, nor did it retroactively apply a 2009 increase in the monthly administrative probation supervision fee to individuals already on probation. Provisions of the General Laws and guidance from AOTC and the Office of the Commissioner of Probation (OCP) stipulate the standard assessment consistent with the offense(s) charged, and require documentation of any deviation from the standard. Because BMC Central did not comply with those provisions, the Commonwealth did not receive all the funds to which it was entitled in some cases, and in other cases, probationers were overcharged.

Section 87A of Chapter 276 of the General Laws provides for mandatory assessments in criminal cases, and AOTC and OCP have issued further guidance on the explanation and application of such mandatory assessments. Regarding probation supervision, persons convicted before a court who are sentenced to a fine or imprisonment often have their sentence suspended and are placed on probation for a specific period of time as long as they adhere to the conditions of probation. Individuals are placed on either supervised probation or administrative supervised probation (administrative probation). Supervised probation is considered a more intensive form of probation, requiring more supervision and contact with a probation officer when an offender presents a higher risk of harm to the community, whereas administrative probation does not require direct supervision because the individual is considered a low risk of harm to the community and is generally on a shorter probation period. Both types of probation require a

monthly probation fee of either \$60 for supervised probation or \$45 for administrative probation, in addition to a monthly victim services surcharge of \$5. State law and guidance issued by OCP required the local courts to retroactively apply increased administrative probation supervision fees to individuals on probation as of July 1, 2009. More specifically, the Fiscal Year 2010 Appropriations Act amended Section 87A of Chapter 276 of the General Laws, 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 the change to the affected parties, as stated below:

*On June 29, 2009, the Governor passed the Commonwealth's budget for FY 2010. 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.*

Regarding victim witness fees, Chapter 258B, Section 8, of the General Laws requires the imposition of a victim witness fee when a defendant either is convicted or pleads to a finding of sufficient facts in a case. The amount of the assessment depends on whether the conviction was for a delinquency (\$45), a misdemeanor (\$50), or a felony (\$90).

OSA's audit testing of a random sample of 24 cases with monthly probation fees identified 11 instances where probationers were paying the incorrect monthly probation fee, which resulted in the loss of \$2,657 to the Commonwealth. Specifically, we found six instances where individuals were ordered to be on supervised probation, yet BMC Central assessed them the lesser monthly rate of \$50, a \$15 shortfall, without any evidence of financial hardship or justifiable reason for the reduction. We also found five instances where individuals whose monthly administrative

probation extended beyond July 1, 2009 were paying the monthly administrative probation fee at the pre-July 1, 2009 monthly rate of \$21 instead of \$50 – a \$29 shortfall.

Additionally, audit tests of a random sample of 17 criminal cases involving victim witness assessments showed that in four instances, BMC Central assessed more than the statute required, resulting in these individuals being overcharged a combined total of \$55. Of the four cases where defendants were assessed a victim witness fee greater than the statutory \$50 fee for a misdemeanor conviction, no written explanation was recorded in the individual case docket that provided justification for the higher imposed fee.

BMC Central officials explained that they did not retroactively apply the increased monthly administrative probation fee to individuals whose probation period continued after July 1, 2009 because it conflicted with the Conditions of Probation contracts signed by the probationer, probation officer, and judge that established the monthly administrative probation fee at the lesser amount of \$21. BMC Central personnel could not provide reasonable explanations for the court's under-assessment of monthly supervised probation fees or over-assessment of victim witness fees.

### ***Recommendation***

BMC Central should continue to improve its existing internal controls to ensure that probation and victim witness fees are assessed in accordance with applicable state laws. Moreover, BMC Central should review current probationers on administrative probation, determine whether any are paying the old rate, and make the appropriate adjustments. If necessary, BMC Central should seek guidance from AOTC and OCP regarding this matter. Also, BMC Central should ensure that case docket information clearly details all decisions made in the courtroom when it deviates from imposing the statutorily mandated fee assessments.

### ***Auditee's Response***

#### ***Probation Supervision Fees.***

*Only individuals placed on supervised probation or supervised administrative probation are subject to assessment of supervision fees or in appropriate cases community service in place of supervision fees. Upon notification by the audit team of deficits in this area, Central's probation department began reviews and a process to ensure that the appropriate level of fees or community service were being collected or required including any fees or community service from the past that had not been collected or required.*

*Victim Witness Fees.*

*The clerk's office has begun to implement recording on the docket whether victim witness fees have been assessed and the amount or waived by the court and, if waived, recording on the docket the required findings by the court. In addition, the clerk's office is working with the probation department to improve existing internal controls to ensure that the correct amount of probation supervision and victim witness fees are assessed and recorded on the docket.*

**3. IMPROVEMENTS NEEDED IN BMC CENTRAL'S INTERNAL CONTROL PLAN AND PERIODIC RISK ASSESSMENTS**

During our review of BMC Central's internal controls, we determined that the Clerk-Magistrate's Office did not have a complete and up-to-date internal control plan and that an annual risk assessment had not been conducted as required by state law and AOTC rules and regulations. As a result, AOTC could not ensure the integrity and effectiveness of BMC Central's internal control system, records, and safeguarding of assets. Moreover, an annual risk assessment process might have helped the Clerk-Magistrate's Office to identify, analyze, and better manage the internal control weaknesses disclosed in our report.

Chapter 647 of the Acts of 1989 (An Act Relative to Improving the Internal Controls within State Agencies) states, in part:

*Internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the office of the comptroller.*

After Chapter 647 was passed, the Office of the State Comptroller (OSC) issued written guidelines in the form of the Internal Control Guide for Managers and the Internal Control Guide for Departments. OSC's revised Internal Control Guide<sup>3</sup> continues to stress the importance of internal controls and the need for departments to develop an internal control plan, defined as follows:

*A description of how a department expects to meet its various goals and objectives by using policies and procedures to minimize risk. The Commonwealth has defined the internal control plan to be a high-level summary supported by lower level policy and procedures. Each department's internal control plan will be unique; however, it should be based on the same framework – the organization's mission statement, goals and*

---

<sup>3</sup> The OSC issued its seventh edition of its Internal Control Guide on September 13, 2007. The guide streamlines the contents of existing manuals and incorporates the principles of Enterprise Risk Management (ERM) that tie risk to strategic planning. Accordingly, the new guide replaced the Internal Control Guide for Managers, Volume I, and Internal Control Guide for Departments, Volume II.

---

*objectives, and components of internal control....The plan should be reviewed and updated as conditions warrant, but at least annually.*

The OSC Internal Control Guide continues to put emphasis on a department-wide risk assessment, which is defined as:

*[T]he identification and analysis of the risks that could prevent the department from attaining its goals and objectives.*

For this reason, the risk assessment is an integral part of an internal control plan because it assists management in prioritizing the activities where controls are most needed. To comply with Chapter 647, management is responsible for evaluating and implementing, at least annually, any changes necessary to promote efficiency, reduce the risk of asset loss, help to ensure the reliability of financial activity and compliance with laws and regulations, and maintain the integrity and effectiveness of the internal control system.

Accordingly, AOTC issued Internal Control Guidelines for the Trial Court, establishing the following requirement for department heads when developing an internal control plan, including the following important internal control concepts:

*[The internal control plan] must be documented in writing and readily available for inspection by both the Office of the State Auditor and the AOTC Fiscal Affairs department, Internal Audit Staff. The plan should be developed for the fiscal, administrative and programmatic operations of a department, division or office. It must explain the flow of documents or procedures within the plan and its procedures cannot conflict with the Trial Court Internal Control Guidelines. All affected court personnel must be aware of the plan and/or be given copies of the section(s) pertaining to their area (s) of assignment or responsibility.*

*The key concepts that provide the necessary foundation for an effective Trial Court Control System must include: risk assessments; documentation of an internal control plan; segregation of duties; supervision of assigned work; transaction documentation; transaction authorization; controlled access to resources; and reporting unaccounted for variances, losses, shortages, or theft of funds or property.*

In addition to issuing the Internal Control Guidelines, Fiscal Systems Manual, and Personnel Policies and Procedures Manual, AOTC has issued additional internal control guidance

(administrative bulletins, directives, and memoranda)<sup>4</sup> in an effort to promote effective internal controls in court divisions and offices.

Although the Clerk-Magistrate's Office provided us with its internal control plan, our audit noted that a key administrative function and responsibility was not clearly documented in the plan and that an annual risk assessment had not been conducted for the fiscal years 2010 and 2011. Specifically, our audit found that the Clerk-Magistrate's Office's manual case management operations (i.e., the process in which cases are initiated [docketing procedures], monitored, and retained, as well as its electronic CourtView Case Management System [e.g., user manuals, system flow charts, design specifications]) were not included in the internal control plan or mentioned in supporting lower-level documents. Also, without an annual risk assessment, there is inadequate assurance that the most significant areas that could keep the Clerk-Magistrate's Office from attaining its mission, goals, and objectives will be identified and the controls to mitigate risks implemented. It should be noted that although the purpose of a recently conducted AOTC Internal Audit<sup>5</sup> was to examine various aspects of BMC Central's operations to determine compliance with Trial Court Policies and Procedures, Chapter 647 of the Acts of 1989, and pertinent state accounting regulations and related statutes, the internal control plan deficiencies we disclosed above were not identified during AOTC's Internal Audit and reported to management for corrective action.

According to officials at BMC Central, they considered AOTC's Internal Control Guidelines—along with various policies and procedures manuals—to be its internal control plan. However, AOTC's Guidelines were only intended to be a set of general strategies to assist department heads in discharging their obligations and responsibilities. Department heads are responsible for developing and implementing controls applicable to the specific needs of their courts or offices, taking into consideration the distinctive activities that take place there. Moreover, department heads must review their plans each year and revise them as necessary.

---

<sup>4</sup> Additional AOTC internal control guidelines are disseminated to all Chief Justices, First Justices, Clerk-Magistrates, Registers of Probate of the Trial Court, and Chief Probation Officers of the Trial Court; the Recorder of the Land Court; the Commissioner of Probation; and the Jury Commissioner.

<sup>5</sup> Administrative Office of the Trial Court, examination of the Central Division, Boston Municipal Court Department, covering the period January 2009 through April 2010, issued August 16, 2010.



***Recommendation***

The Clerk-Magistrate's Office should ensure that its internal control plan addresses the risks and internal control requirements specific to all fiscal, administrative, and, if applicable, program operations. Also, the Clerk-Magistrate's Office should ensure that a risk assessment is conducted annually and that its internal control plan is updated based on the results of the risk assessment, as necessary.

***Auditee's Response***

*The clerk's office has initiated the process to update and complete an internal control plan and an annual risk assessment which addresses the risks and internal control requirements specific to all fiscal, administrative and program operations as required.*

**4. IMPROVEMENTS NEEDED IN REVENUE PROCESSING AND RECONCILIATION**

BMC Central did not reconcile the amount of revenues it transmitted to the Commonwealth to the state's Massachusetts Management Accounting and Reporting System each month as required by AOTC. It also improperly accounted for and transmitted revenues that were classified in the wrong fiscal year and wrong account. Guidance issued by AOTC requires courts to reconcile revenue transmittals each month, follow specific year-end closing instructions for reporting final state revenues, and report transmittals to OST's Unpaid Check Fund. As a result, BMC Central transmittals of state revenue were misstated by \$182,311 during the audit period. This misstatement included \$78,527 of restitution owed to victims that was inappropriately transmitted as state revenue.

In an effort to improve revenue reporting efficiency, effective August 16, 2006, the AOTC issued Fiscal Year 2007 Memo #6, which addressed procedures for revenue transmittal, reporting, and reconciliation. The procedures allow a court to verify each revenue transaction affecting the court's revenue accounts by comparing monthly Revenue Transmittal Sheets (RTS)—submitted by the court to the AOTC—to monthly Revenue Reconciliation Reports (RRR) posted on the Trial Court intranet. As evidence of monthly revenue reconciliations, courts were instructed to make a copy of each monthly RRR and use checkmarks to note that all revenue and revenue refund transactions were in agreement. Any variances or unidentifiable transactions had to be resolved, and each report needed to be signed by the bookkeeper and the department head and retained for audit purposes. In addition, to ensure that all revenues and cash are recognized in the proper fiscal year, OSC annually requires state agencies to deposit all

cash received and on hand through the end of the last business day of the fiscal year and enter all revenue data pertaining to these deposits into MMARS by a prescribed date. For example, the FY2010 Closing/FY2011 Opening Instructions issued by OSC state, in part:

*Cash receipts on hand or on deposit as of June 30, 2010, are FY2010 assets and revenue of the Commonwealth and need to be reflected as such on the annual financial statements.*

***Final Deposits for June 30th collections must be posted by the bank by noon on Thursday, July 1, 2010. To ensure that all deposits reflected in clearing accounts are properly posted for the FY2010 closing, departments should enter CRs [cash receipts] at the same time that the deposits are made for cash received through June 30th.***

Moreover, specific procedures describing the method to be used and disposition of undeliverable checks are established in the AOTC Fiscal Systems Manual, Section 13.3, as follows:

*All unpaid checks originally issued by the Court will be voided after ninety (90) days.*

*All checks that remain outstanding for one year or longer must be sent, with detailed backup information, to the Office of the State Treasurer attached to a Revenue Transmittal Sheet (RTS) for Unpaid Check Fund Only.*

*The Office of the State Treasurer will hold undeliverable funds for two years. If these funds are not claimed in that time, the balance is turned over to the State General Fund. If an individual comes to a court division seeking to claim any of these monies during that two year holding period, the individual(s) must be referred directly to the Office of the State Treasurer to make a claim.*

*If relevant, notify the Probation Officer responsible for the case that the funds were undeliverable to the address provided.*

Our audit revealed that BMC Central did not perform monthly reconciliations of revenues it transmitted to the Commonwealth, follow AOTC's fiscal year-end closing instructions for revenue transmittals, or correctly classify its miscellaneous state revenue. We analyzed revenues credited to BMC Central revenue accounts and found that MMARS reported \$87,514 more than the amount that BMC Central transmitted to the Commonwealth for the same period. We determined that the difference was due to a miscoding of another court's revenue that AOTC inadvertently credited to BMC Central's revenue account in MMARS. Our review of receipts collected by BMC Central on June 30 for fiscal years 2010 and 2011 (totaling \$7,472 and \$8,798, respectively) determined that they were improperly accounted for and transmitted as fiscal year 2011 and 2012 revenues, respectively. Our analysis of revenues also revealed that BMC Central

inappropriately transmitted \$78,527 of restitution owed to crime victims as miscellaneous state revenue.

BMC Central's bookkeeper explained that he was not aware of the AOTC policies and procedures requiring the monthly reconciliation of state revenue transmittals, and he stated that appropriate steps would be taken to ensure that monthly revenue reconciliations are performed and retained for audit purposes. Although the bookkeeper acknowledged that he was aware of AOTC's year-end closing procedures, he explained that the BMC Central's noncompliance was an oversight and assured us that required year-end revenue cutoff and reporting procedures would be appropriately carried out in the future.

At the beginning of fiscal year 2012, BMC Central personnel were remitting undeliverable checks and restitution checks over a year old to the Commonwealth's miscellaneous revenue account. However, after we notified BMC Central of the AOTC-prescribed policies and procedures, the acting Chief Probation Officer implemented a new policy that required restitution funds to be held for one year before being remitted to OST's Unpaid Check Fund. BMC Central also indicated that, in the future, it would adhere to the provisions of Section 13.3 of the Fiscal Systems Manual.

***Recommendation***

BMC Central should establish and implement the necessary controls to ensure compliance with AOTC Fiscal Year 2007 Memo #6, which requires monthly revenue reconciliations. To that end, BMC Central's procedures should require that monthly RTSs are compared to monthly RRRs located on the Trial Court intranet; that any variances or unidentified transactions are properly resolved; and that each monthly RRR is signed by both the bookkeeper and the department head and retained for audit purposes.

BMC Central should establish and implement the necessary controls to ensure compliance with OSC's annual year-end closing instructions. These controls would include accounting for all cash receipts in the appropriate fiscal year. In addition, each year management should discuss year-end closing requirements with BMC Central staff to ensure a clear understanding of responsibilities. Moreover, management should enhance oversight and monitoring functions to ensure that prescribed policies and procedures are consistently followed.

BMC Central should establish and implement the necessary controls to ensure that undeliverable restitution checks and restitution checks outstanding for one year or more are remitted to OST's Unpaid Check Fund in accordance with the AOTC Fiscal Systems Manual. The Probation Department should continue to hold on to funds from voided, undeliverable, and uncashed checks for one year after the issuance date before forwarding the funds to the Unpaid Check Fund.

***Auditee's Response***

*The clerk's office now requires the bookkeeper to ensure that the monthly revenue sheets (RTS) are compared to the monthly Revenue Reconciliation Report (RRR) located on the Trial Court intranet and that any variances or unidentified transactions are properly resolved and that each monthly RRR is signed by both the bookkeeper and the Department Head and retained for audit purposes. In addition, the clerk's office will pay particular attention going forward to ensure compliance with year-end closing instructions.*

**OTHER MATTERS****THE OFFICE OF THE COMMISSIONER OF PROBATION AND THE BMC CENTRAL PROBATION DEPARTMENT SHOULD CONTINUE TO IMPLEMENT MEASURES TO VERIFY INFORMATION PROVIDED BY ALL DEFENDANTS WHO CLAIM TO BE INDIGENT**

The Office of the Commissioner of Probation (OCP), the oversight agency for court probation offices, has authority over, and responsibility for, activities of the Massachusetts Probation Service, whose probation officers are responsible for screening applicants during the court intake process to determine indigency and eligibility for court-appointed counsel. On December 19, 2011, the Office of the State Auditor (OSA) issued Audit Report No. 2011-1104-17C1. During that audit, which covered July 1, 2009 through June 30, 2011, OSA found that the Central Division of the Boston Municipal Court Department (BMC Central) Probation Department had not established any formal, written policies and procedures for ensuring that only eligible individuals were provided with state-sponsored legal counsel services. It also found that, contrary to the requirements of Chapter 211D of the Massachusetts General Laws, BMC Central did not routinely conduct verifications of information provided by defendants in order to ensure that the defendants were indigent and entitled to receive state-sponsored legal representation. Additionally, the BMC Central Probation Department disposed of various probation records before the mandatory holding period of 10 years. As a result, there was inadequate assurance that the state-sponsored legal services that BMC Central provided to defendants were appropriate.

During our current audit period, the Commonwealth paid \$6,633,954 for 13,214 state-sponsored legal counsel assignments occurring at BMC Central. Although our current audit review of indigency determination on criminal cases reaffirmed that the BMC Central Probation Department was not complying with the statute requiring certain verifications of reported information and policies and procedures requiring retention of certain court records, the Probation Department started implementing changes on indigency determinations on criminal cases starting after July 31, 2011, to better conform to the statute. For the five randomly selected criminal cases we reviewed after August 1, 2011 to determine BMC Central Probation Department's compliance with indigency determination requirements, we found that the Chief Probation Officer's final reports—disclosing the financial circumstances of the person appointed public counsel—were completed within seven days. This review, however, indicated that probation files did not contain the required Pre-Trial Intake Form signed by the defendant

or contain the Defendant Waiver Access Forms authorizing the Probation Department to obtain tax information and other facts about the defendant. Also, because the Probation Department only performed indigency verification procedures on new cases starting on or after August 1, 2011, ongoing cases that started before August 1, 2011 were still not verified, contrary to state law. For this reason, the Commonwealth is still at risk of paying for legal services for defendants who were deemed indigent and were provided with public legal counsel but do not meet the indigence criteria. The Probation Department should continue with its implementation of OCP's indigency verification instructions and retroactively apply these procedures to criminal cases entered before August 1, 2011 where defendants were appointed state-sponsored legal counsel. Also, the Probation Department should seek additional OCP guidance for streamlining and standardizing a tracking system that will document, support, and provide a sufficient audit trail for accurately reporting indigency data each month.

***Auditee's Response***

*Under the former Commissioner of Probation, indigency verification was at the discretion of the chief probation officer in each division. Only for just cause was verification done. As of July 2011, all chief probation officers were required to ensure that in all cases a claim of indigency must be verified. New indigency verification forms have been used in BMC Central since October 2011 and BMC Central's probation department has been in compliance with all other applicable indigency verification procedures since August, 2011. In addition, the probation department is reviewing cases where an indigency review was completed before August 31, 2011 to ensure that all individuals receiving state sponsored legal counsel assignment qualify for such services.*

*We appreciate the identification of areas in our work where we can improve. The audit report gives us an opportunity and helps us to provide better service to the citizens of the Commonwealth.*