

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DeNUCCI
AUDITOR

TEL. (617) 727-6200

NO. 2009-1185-30

INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN FEES AND BAIL OF THE
CLINTON DIVISION OF THE
DISTRICT COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2007 TO NOVEMBER 30, 2008

OFFICIAL AUDIT
REPORT
MARCH 2, 2010

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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 District Court Department (DCD) and the Office of the Commissioner of Probation (OCP) have also increased monitoring of revenues by instituting additional reporting processes.

Revenues generated by the DCD have increased over the years. During the period fiscal year 2005 to fiscal year 2008, revenues increased 16%. 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 Clinton Division of the District Court Department (CDC) presides over civil and criminal matters falling within its territorial jurisdiction. Of the 62 district courts throughout the Commonwealth, CDC is one that we selected for further review of the above fees. The purpose of our audit was to review CDC's internal controls and compliance with state laws and regulations regarding certain fees and bail funds for the period July 1, 2007 to November 30, 2008.

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1. IMPROVEMENTS NEEDED IN REPORTING OF PROBATION STATISTICS **7**

Although CDC probation office personnel completed the required monthly statistical reports and filed them as required with the OCP, certain cases were incorrectly reported as active, resulting in incorrect statistical information. Since the statistical reports are used for a variety of monitoring purposes, AOTC and OCP officials may be making decisions based on incorrect data.

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We noted that CDC lacked a centralized system to track court-ordered community service and that there are only detailed individual records in each probationer's file to support community service worked. Therefore, the court cannot readily determine how many community service work hours are owed, what community service equates to in dollars, and whether offenders will be able to fulfill the requirements of their court orders.

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We noted that although CDC 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 DCD 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 \$75 million collected by all district courts during fiscal year 2008, 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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CDC has two cash collection points--one in the Clerk-Magistrate's Office and another in the Probation Office--making the process for receiving and disbursing funds duplicative at times. As a result, there is a certain amount of redundancy as well as an inefficient use of court resources. Provisions of the Massachusetts General Laws allow courthouses to have a single cash collection and disbursement point for both offices. In the past, the DCD consolidated cash receipts and disbursements into one location, but has held off changing any more courts to the consolidated system until the new accounting system, MassCourts with a financial module, completes testing and is ready for implementation.

INTRODUCTION

Background

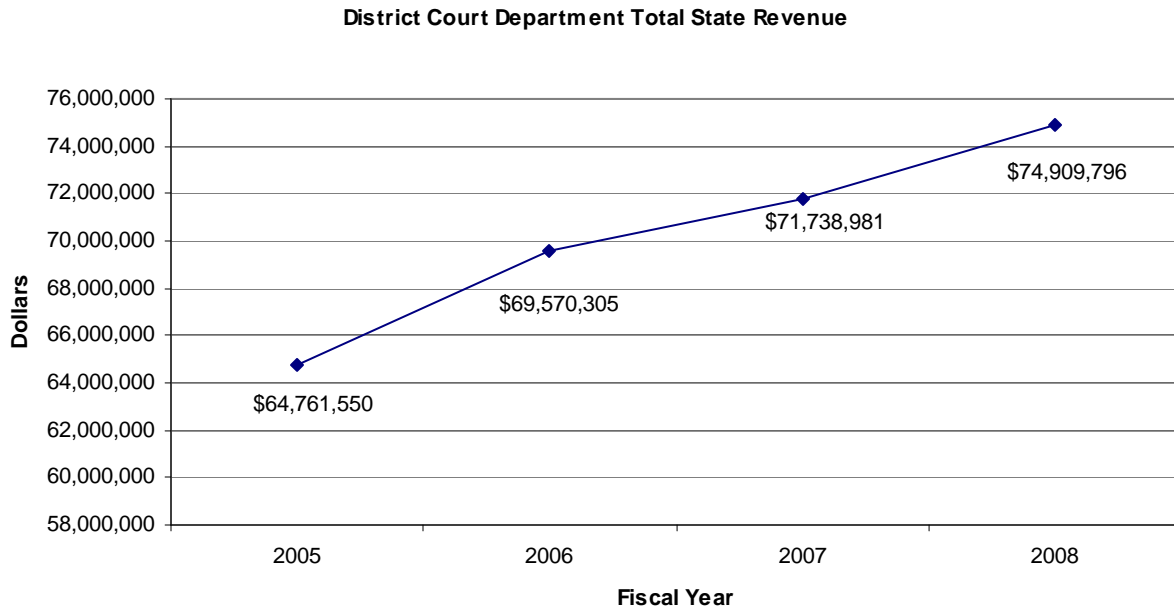
Massachusetts courts generate revenues from a variety of sources, and the amount of total revenues has increased over the years. Revenues are established by either a specific statute or a uniform fee schedule developed in accordance with Administrative Office of the Trial Court (AOTC) rules and regulations. 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 the 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 District Court Department (DCD) 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 DCD have increased over the years. During the period fiscal year 2005 to fiscal year 2008, revenues increased 16%. 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 DCD revenue collections during fiscal years 2005 through 2008 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	2005	2006	2007	2008
General Revenue	\$31,490,167	\$34,621,161	\$36,110,747	\$37,746,391
Probation Fees	16,484,678	18,214,139	18,766,141	19,335,234
Indigent Counsel Fees	6,309,767	6,393,010	6,634,205	7,088,134
Victim Witness Fees	3,294,909	3,189,071	3,033,415	2,994,960
Civil Surcharges	2,268,430	2,468,156	2,620,719	2,893,583
Alcohol Fees	1,970,116	1,834,424	1,801,824	1,991,220
Head Injury Fees	1,730,014	1,636,350	1,602,282	1,633,554
All Other	<u>1,213,469</u>	<u>1,213,994</u>	<u>1,169,648</u>	<u>1,226,720</u>
Total	<u>\$64,761,550</u>	<u>\$69,570,305</u>	<u>\$71,738,981</u>	<u>\$74,909,796</u>

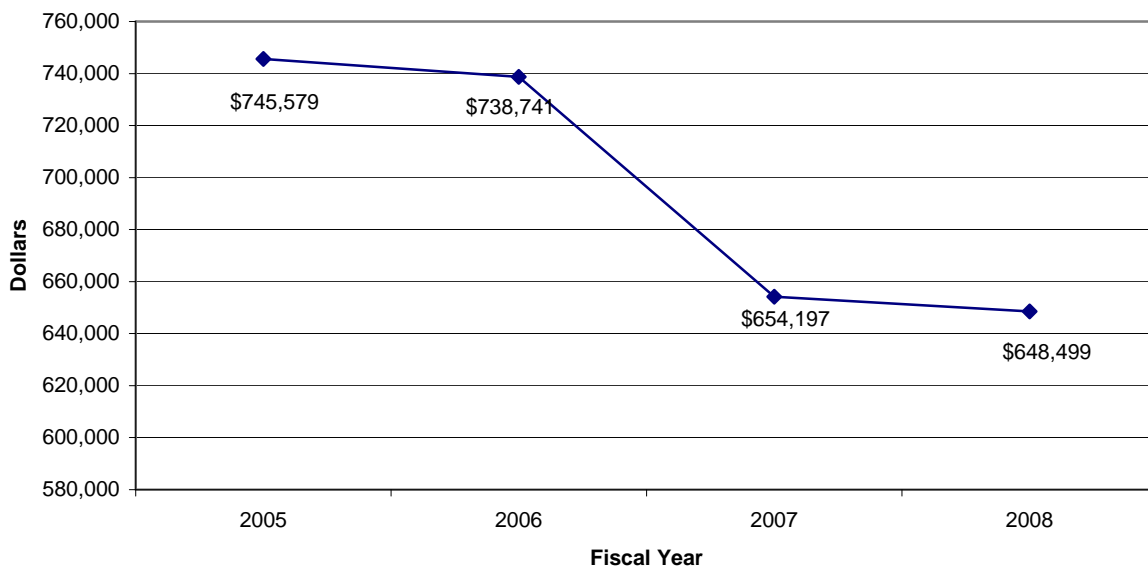
As shown in the preceding chart, the largest revenue source category, General Revenue, consists of a wide variety of items, including state fines, costs, surcharges, civil entry fees, and copy fees, etc., that are deposited to the Commonwealth's General Fund. The next five revenue sources (Probation fees through Alcohol fees) are separately identified in the Commonwealth's accounting system, but are all deposited to 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. The amount of the fee is \$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 Clinton Division of the District Court Department (CDC) generated revenues that decreased from \$745,579 in fiscal year 2005 to \$648,499 in fiscal year 2008, as shown in the following chart.



As shown in the preceding chart, total revenues decreased by 13% (\$97,080) from fiscal year 2005 to fiscal year 2008. According to CDC case statistical information, this decrease was attributable to an 11.6% decrease in new civil case filings and a 1.6% decrease in the number of new criminal cases.

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

Revenue Source	2005	2006	2007	2008
Probation Fees	\$213,200	\$206,176	\$182,872	\$206,047
Indigent Counsel Fees	41,505	48,280	52,185	44,040
Victim Witness Fees	<u>47,423</u>	<u>47,418</u>	<u>36,492</u>	<u>38,390</u>
Total	<u>\$302,128</u>	<u>\$301,874</u>	<u>\$271,549</u>	<u>\$288,477</u>

In addition to the above cash collections at CDC, 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 15% 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 CDC. The scope of our audit included an examination of CDC's controls over administrative and operational activities, including certain fees and bail funds for the period July 1, 2007 to November 30, 2008.

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

Our review encompassed the activities and operations of CDC'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 DCD policies and procedures were being followed.

To achieve our audit objectives, we performed analytical reviews of DCD 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 CDC'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 CDC was based on those interviews and the review of documents.

Our recommendations are intended to assist CDC in developing, implementing, or improving its internal controls and overall financial and administrative operations to ensure that CDC'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, CDC (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. IMPROVEMENTS NEEDED IN REPORTING OF PROBATION STATISTICS

Although the Clinton Division of the District Court Department (CDC) probation office personnel completed monthly statistical reports timely and filed them with the Office of the Commissioner of Probation (OCP), certain cases were incorrectly reported as active. As a result, the monthly statistical information being reported is incorrect, and the number of cases carried forward for the next month's reporting is incorrect. Since the statistical reports are used for a variety of monitoring purposes, Administrative Office of the Trial Court (AOTC) and OCP officials may be making decisions based on incorrect data.

The OCP monitors individual court probation office activity based on a local court-submitted Monthly Report of Probation Activity (MRPA), which summarizes probation office activity by reporting the number of people served by the probation office according to four categories²: supervised probation, administrative probation, conditional release probation, and driving under the influence probation. The report also reports dollar collections for various types of categories, and other statistical information deemed necessary by the OCP. The AOTC and District Court Department (DCD) also use the data from these monthly reports to correlate and monitor collection activity. These reports can also be used for reviewing local court activity levels and making staffing adjustments, if necessary.

Our review indicated that, at the CDC probation office, administrative probation case activity was overstated monthly, a problem that would compound as the balances were carried forward from month to month. Specifically, for the month of October 2008, CDC reported 489 administrative probation cases on the MRPA report. However, supporting court records indicated that the number of administrative probation cases was actually 244 cases. This problem appears to be caused by staff inadvertently double-counting cases by reporting case activity in multiple categories on the MRPA as both supervised and administrative probation categories. Also, we were unable to obtain any procedural memorandums, guidelines, etc., instructing the probation department on how to calculate and report case activity. As a result,

² The MRPA form contains slightly different language as it refers to all four categories under the heading of "Supervision" and classifies supervised probation as "Risk/Need" probationers. Our report uses the terms "Supervised Probation" and "Administrative Probation" to be consistent with Chapter 276, Section 87A, of the Massachusetts General Laws.

CDC is reporting a higher number of active cases, and AOTC and OCP are making decisions based on incorrect data.

We discussed this matter with CDC officials, who noted that they would review the matter with OCP officials and take corrective action on future reports.

Recommendation

CDC should seek clarification of what should be reported as supervised probation cases and administrative supervision cases and use the correct methodology on future reporting.

Auditee's Response

The First Justice and the Chief Probation Officer provided the following response:

Responsibility for preparing the MRPA report has since been assigned to the Assistant Chief Probation Officer. The MRPA report was corrected for November 2008 and we believe subsequent reports are correct.

2. IMPROVEMENTS NEEDED TO CENTRALIZE COURT-ORDERED COMMUNITY SERVICE RECORDKEEPING

We noted that CDC lacked a centralized system to track court-ordered community service. Without a centralized system to record and account for court-ordered community service, there are only detailed individual records in each probationer's file to support community service. Therefore, CDC cannot readily determine how many community service work hours are owed, what community service equates to in dollars, and whether offenders will be able to fulfill the requirements of their court orders.

Community service is ordered in lieu of cash payments of monthly probation fees and legal counsel fees when a judge determines that payment of the fee would cause an undue financial hardship on the offender. At CDC it is up to each probationer, in conjunction with his or her probation officer, to find community service work to fulfill the requirements of the court order.

We reviewed criminal case activity at the CDC to determine how well documented the granting and fulfillment of community service orders were when it was decided community service would be performed instead of payment of the requisite criminal cash assessment. Audit tests noted that the probation officer assigned to the criminal case and the associated probation file documented the status of an offender's court-ordered community service, but that the probation

office lacked any central recordkeeping of community service work orders for all offenders required to perform such. Without a central record, there is no readily available way for the court to determine the extent of court-ordered community service, the extent of its completion, its potential dollar value, or whether offenders will be able to fulfill the requirements of their court order within the required time frame.

Court personnel indicated that the OCP has a statewide community service program that centrally accounts for, tracks, and coordinates the performance of offenders' community service participation, but probationers at CDC perform work independent of the Office of Community Corrections (OCC) system that operates the community service program. District Court Department (DCD) officials noted that, as part of the process of implementing the MassCourts system in district courts, they are attempting a pilot project to centralize, identify, and track community service as part of that system.

Recommendation

The DCD should continue its efforts to incorporate recordkeeping of community service performed into the MassCourts system. Additionally, CDC should determine whether it would be cost-beneficial to implement a centralized system of tracking community service performed by probationers independent of the OCC system. If it is determined to be beneficial, then the court should implement its own centralized community service recordkeeping system until the MassCourts system is functioning and implemented.

Auditee's Response

The First Justice and the Chief Probation Officer provided the following response:

Verification of Community Service Work is verified by the Chief Probation Officer and the supervising Probation Officer to check to see if it was performed. Unless waived by a Judge, no case is terminated or dismissed without Community Service being performed and verified. CDC has since contacted the Office of Community Corrections to request that the court participate in their Community Service Program.

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

We noted that although CDC 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

AOTC and DCD 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 \$75 million collected by all district courts during fiscal year 2008, 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 probationer money that are found depending on the specific court location: the Probation Receipt Account (PRA) system and a 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 and Probation Office as well as creating one secure cash collection point for the court.

As a result of the courts' using 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 DCD 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 payment of fees. Lastly, the potential exists for unauthorized adjustments to be made in the system and that would not be identified timely by employees in the normal course of their work.

The AOTC and the DCD 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 DCD 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, Clerk-Magistrate, and the Chief Probation Officer provided the following response:

Once this system is available from AOTC, it will be implemented at CDC.

4. IMPROVEMENTS NEEDED TO STREAMLINE THE RECEIPT AND DISBURSEMENT OF COURT ASSESSMENTS AND FEES

CDC has two cash collection points--one in the Clerk-Magistrate's Office and another in the Probation Office--making the process for receiving and disbursing funds duplicative at times. As a result, there is a certain amount of redundancy as well as an inefficient use of court resources. Provisions of the General Laws allow courthouses to have a single cash collection and disbursement point for both offices.

During the latest fiscal year, fiscal year 2008, the Clerk Magistrate's Office collected and transmitted revenues of over \$648,000 to the Commonwealth and approximately \$50,000 to municipalities within CDC's jurisdiction. Much of these funds were first receipted through the Probation Office accounting system and subsequently disbursed to the Clerk Magistrate's Office for receipting into its accounting system. This receipting process requires both offices to record the receipt of the same funds, which includes validating the respective case papers.

Chapter 279, Section 1B, of the General Laws, as amended, allows courts to combine separate cash collection and disbursement functions of the Clerk-Magistrate's and Probation Offices into one, as follows:

Notwithstanding any other provision of law, the administrative justice of a department of the trial court may direct that both the clerk-magistrate's office and the probation office of one or more court divisions are to utilize a single funds collection and disbursement point within the courthouse.

Court personnel agree that having two collection sites is redundant, but indicated that the DCD is not switching any more courts to central cashing at this point, as the next system upgrade will be the implementation of the MassCourts financial module. This module is currently being tested at certain court locations and will be implemented at other courts at a later date.

Recommendation

The DCD should continue testing the MassCourts financial module, whose implementation should help streamline receipt and disbursement activity at CDC.

Auditee's Response

The First Justice, Clerk-Magistrate, and the Chief Probation Officer provided the following response:

Once this system is available from AOTC, it will be implemented at CDC.