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**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN FEES AND BAIL OF THE
CONCORD DIVISION OF THE
DISTRICT COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2007 TO MARCH 31, 2009**

**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 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 Concord 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 March 31, 2009.

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When defendants request the appointment of legal counsel at arraignment, CDC makes a preliminary assessment of indigency based on the defendant's self-reported income. State law provides for the court to verify the defendant's self-reported income with the Department of Revenue (DOR) records after legal counsel is appointed by the court. However, CDC does not have access to the DOR records, therefore, they do not perform this verification. Consequently, the Commonwealth may be paying for attorneys for individuals who do not meet the indigency criteria.

INTRODUCTION

Background

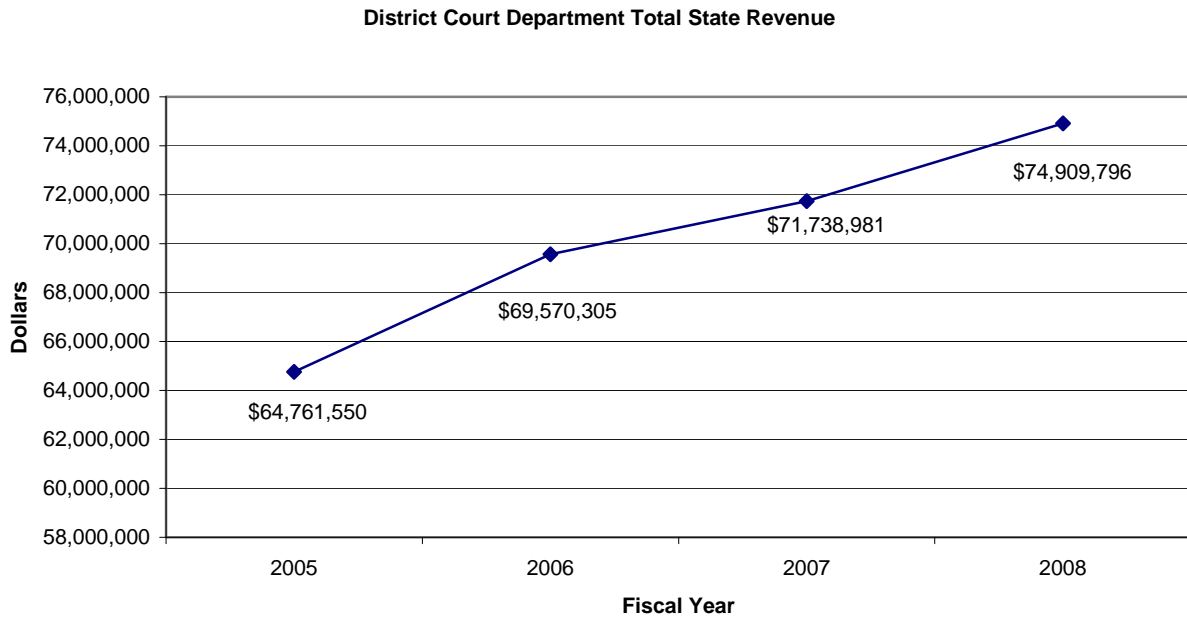
Massachusetts courts generate revenues from a variety of sources, and the amount of total revenues has increased over the years. Revenues are established by either a specific statute or a uniform fee schedule developed in accordance with Administrative Office of the Trial Court (AOTC) rules and regulations. 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 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>

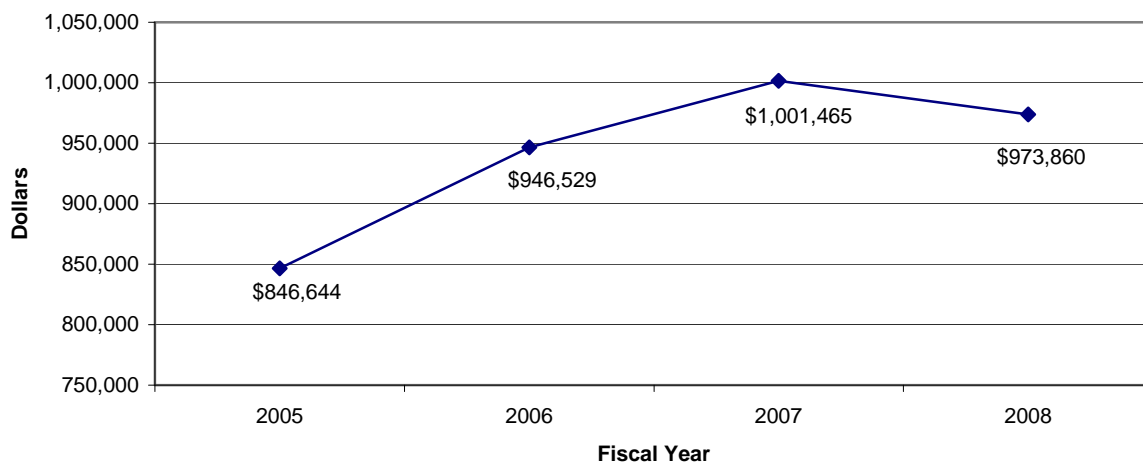
As shown in the preceding chart, the largest revenue source category, General Revenue, consists of a wide variety of items, including state fines, costs, surcharges, civil entry fees, copy fees, etc., that are deposited into the Commonwealth's General Fund. The next five revenue sources (Probation fees 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. 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 Concord Division of the District Court Department (CDC) generated revenues that increased from \$846,644 in fiscal year 2005 to \$973,860 in fiscal year 2008, as shown in the following chart.



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	\$282,626	\$277,795	\$373,603	\$334,206
Indigent Counsel Fees	75,549	78,507	75,884	67,336
Victim Witness Fees	<u>28,335</u>	<u>31,896</u>	<u>24,683</u>	<u>31,551</u>
Total	<u>\$386,510</u>	<u>\$388,198</u>	<u>\$474,170</u>	<u>\$433,093</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 9% 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 March 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 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. INTERNAL CONTROL IMPROVEMENTS NEEDED TO COMPLY WITH PROBATION FEE WAIVER REQUIREMENTS

We found that the Concord Division of the District Court Department (CDC) did not always document the granting of waivers of probation fees in accordance with state law and District Court Department (DCD) 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, CDC 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. State law and DCD 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.

DCD 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 CDC the court issues an order placing the offender on probation and can order the individual to pay a monthly probation fee. However, the CDC practice is that the probationer can either pay the fee or perform community service, as subsequent circumstances dictate, without a modified court order. This practice permits 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 the decision process being delegated to the Probation Office without bringing the case back into court for a judge's review, there is a breakdown of internal controls, and inadequate assurance that an undue financial hardship exists or that the Commonwealth is receiving all the funds to which it is entitled.

CDC 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. Therefore, the court

delegates the responsibility to the probation department in order to cut down on the amount of court time taken for such modifications. DCD 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 DCD guidance, CDC should modify its procedures to document, by court order, the specific terms the 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.

Auditee's Response

The First Justice provided the following response:

The Court, as appropriate, issues an order for payment of the probation fee, or performance of community service, if there is an indication that payment will constitute undue financial hardship. The statement of the defendant, defendant's attorney and probation intake information are the basis for the determination. There is no delegation to the Chief Probation Officer to make such a determination. Every effort is made to collect the fee, however when payment constitutes undue financial hardship, probation documents the performance of the community service.

Auditor's Reply

We agree that the court order is issued as "payment of a probation fee or performance of community service." However, although there is no formal delegation to the Chief Probation Officer to make such a determination, the effect is that the probation officers are making such a determination, resulting in a breakdown of internal controls. This is contrary to the guidance provided by the DCD, as noted in our report.

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 the court order.

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 paying 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 Office of the Commissioner of Probation (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 system that operates the community service program. 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 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. 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 provided the following response:

All required documentation was found to be maintained in the probationer's file and court docket. Further, the probation bookkeeper has recently begun maintaining a performance of community service log. A "work plan" entry is made in the PRA system, upon performance of authorized community service. The CDC is not aware of any requirement for a centralized system to be created and maintained. The CDC does not have the resources to create such a system, nor would the creation of same by the CDC be a cost benefit. This issue would more appropriately be handled at a state level, such as the Administrative Office of the Trial Court or the Office of the Commissioner of Probation.

Auditor's Reply

As noted in our report, we agree that there was supporting documentation available in the individual probationers file. However, this information was neither summarized nor readily available in CDC's accounting system for effective management control oversight. We also agree that the creation and implementation of such a system is beyond the control of a local court, and we understand that the Administrative Office of the Trial Court (AOTC) and the DCD are examining potential changes.

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 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. 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's 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 and 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 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 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 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 provided the following response:

The AOTC, Fiscal Affairs Division, has informed us that CDC currently has an accounts receivable component. CDC is in compliance with all AOTC requirements. Again, the CDC does not have the resources or authority to create an independent financial management system. Any fiscal changes to procedures would have to be instituted by the AOTC.

Auditor's Reply

As noted in our report, there are data elements captured in CDC's accounting system that would be found in an accounts receivable system (e.g., total amount due and amounts collected to date), but this information is not used to control overall activity, and an accounts receivable control account is not used. Therefore, it is not a true accounts receivable system, especially since the current system does not have a central control point to highlight non-cash adjustments to receivable balances. We agree that the creation and implementation of such a system is beyond the control of a local court, and we understand that the AOTC and the DCD are examining potential changes.

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 \$973,000 to the Commonwealth and approximately \$51,000 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 provided the following response:

The CDC is in compliance with the requirements of the dual collection process, as established by the AOTC. As noted in the audit report, CDC lacks the authority and resources to implement a change to the current system.

5. IMPROVEMENTS NEEDED TO VERIFY DEFENDANTS REPORTED INDIGENCY

When defendants claim to be indigent and request the appointment of legal counsel at arraignment, CDC makes a preliminary assessment of indigency based on the defendant's self-reported income. State law provides for the court to verify the defendant's self-reported income with the Department of Revenue (DOR) records after legal counsel is appointed by the court. However, CDC does not have access to the DOR records, therefore, it does not perform this verification. Consequently, the Commonwealth may be paying for attorneys for individuals who do not meet the indigency criteria.

We reviewed legal counsel appointments at the CDC to determine how well documented the initial indigency determination was and the extent to which the reported information was subsequently verified by the CDC probation office. Audit tests noted that the probation office completed pre-trial intake reports, including indigency information for defendants, prior to arraignment. The judge considers this report and probation office recommendations when allowing the appointment of legal counsel for the defendant determined to be indigent. However, we found that there was no further verification of a defendant's income reporting with the wage and income reporting system maintained by the DOR.

Provisions of the General Laws require verifiable affidavits of indigency as a prerequisite for continued legal counsel appointments. Chapter 211D, Section 2½ of the Massachusetts General Laws states:

Any appointment of counsel by the court is at all times subject to verification of indigency by the chief probation officer assigned to each court. Not later than 60 days after the appointment of counsel, the chief probation officer or his designee shall complete a reassessment of the financial circumstances of the person for whom counsel was appointed to ensure that such person continues to meet the definition of indigency. In preparing his assessment, the chief probation officer or his designee may access wage and tax information in the possession of the department of revenue and such other information relevant to the verification of indigency in the possession of the registry of motor vehicles.

Since CDC is unable to verify a defendant's reported income, there is a lack of assurance that the individual is entitled to Commonwealth subsidized legal counsel

According to a probation office official, CDC does not have online access to the DOR's wage and income reporting system and therefore does not have the capability to verify a defendant's

income reporting beyond what information is provided by the defendant at time of court arraignment.

Recommendation

The CDC should contact the AOTC and the OCP to establish online access to DOR records. Until an online connection can be established, the CDC, AOTC and OCP should look into alternative methods for verifying income reporting.

Auditee's Response

The First Justice provided the following response:

The Probation Office was previously informed by the OCP not to access the DOR records for income information, as protocols between the agencies had not been finalized. After the audit, for test purposes, the DOR records of a few indigent defenders were accessed to determine what information is currently available. The DOR records were found to be not as meaningful for verification purposes as we had hoped. Once again, this is a matter which will have to be addressed at the state level, whether it be the AOTC, the OCP, or the DOR.