

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

*Making government work better*

Official Audit Report – Issued March 18, 2011

---

## Falmouth District Court

For the period July 1, 2008 to March 31, 2010



---

**TABLE OF CONTENTS/EXECUTIVE SUMMARY**

---

**INTRODUCTION****1**

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 \$27 million from certain named fees collected, provided that the first \$53 million of revenue shall be deposited in the General Fund and not retained. Another section of the annual appropriations act allows the same Chief Justice to spend up to \$26 million of Probation Supervision fees collected and deposited by the courts. These amounts are monitored and allocated to specific courts by a Trial Court Revenue Unit. The Administrative Office of the District Court Department (AODC) and the Office of the Commissioner of Probation have also increased monitoring of revenues by instituting additional reporting processes.

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

The Falmouth Division of the District Court Department (FDC) presides over civil and criminal matters falling within its territorial jurisdiction. Of the 62 district courts throughout the Commonwealth, FDC is one that we selected for further review of the above fees. The purpose of our audit was to review FDC's internal controls and compliance with state laws and regulations regarding certain fees and bail funds for the period July 1, 2008 to March 31, 2010.

<b>AUDIT RESULTS</b>	<b>7</b>
<b>1. CONSIDERATION SHOULD BE GIVEN TO ESTABLISHING AN ACCOUNTS RECEIVABLE SYSTEM</b>	<b>7</b>
<p>We noted that although FDC has a system in place for collecting, disbursing, and accounting for partial payments of court-ordered assessments, its financial recordkeeping system does not have an accounts receivable component. Since this is a weakness at every district court location, the AOTC and the AODC should consider implementing an accounts receivable system to track collections rather than rely on the cash-based system currently in use. Without an accounts receivable system, courts lack control over a significant source of revenue and cannot readily identify the total amount to be collected, although detailed information is kept to identify what individuals owe. Of the total revenues of approximately \$78 million collected by all district courts during fiscal year 2009, over \$35 million of fees collected for all 62 district court locations in that year could have been processed through an accounts receivable system if the courts had one.</p>	
<b>2. VICTIM WITNESS FEE ASSESSMENT COLLECTIONS NOT ALLOCATED AS FIRST PRIORITY</b>	<b>8</b>
<p>Although FDC imposed Victim Witness fee assessments as required, it did not always apply partial payments made by the defendant to the Victim Witness fee assessment as a first priority. State law requires FDC to apply any payments made by persons to the Victim Witness fee assessment before any other criminal assessments are satisfied. As a result, collection of Victim Witness fee assessments is delayed.</p>	
<b>3. IMPROVEMENTS NEEDED TO COMPLY WITH COLLECTION OF INCREASED ADMINISTRATIVE PROBATION FEE</b>	<b>10</b>
<p>FDC did not consistently charge the higher Administrative Probation Fee that became effective on July 1, 2009. As a result, the Trial Court and the Commonwealth did not receive all the funds to which they were entitled. Based on court records, we estimated the amount involved to be as much as \$110,230 over the period of July 2009 to March 2011.</p>	

## 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 \$27<sup>1</sup> million from certain named fees<sup>2</sup> collected by the courts, provided that the first \$53 million of revenue shall be deposited in the General Fund and not retained. Another section of the annual appropriations act allows the same Chief Justice to spend up to \$26<sup>3</sup> million of Probation Supervision Fees collected and deposited by the courts. These amounts are monitored and allocated to specific courts by the AOTC Revenue Unit. The Administrative Office of the District Court Department (AODC) and the Office of the Commissioner of Probation (OCP) have also increased monitoring of revenues by instituting additional reporting processes. These revenues generally help offset funding shortfalls to the courts' appropriation accounts.

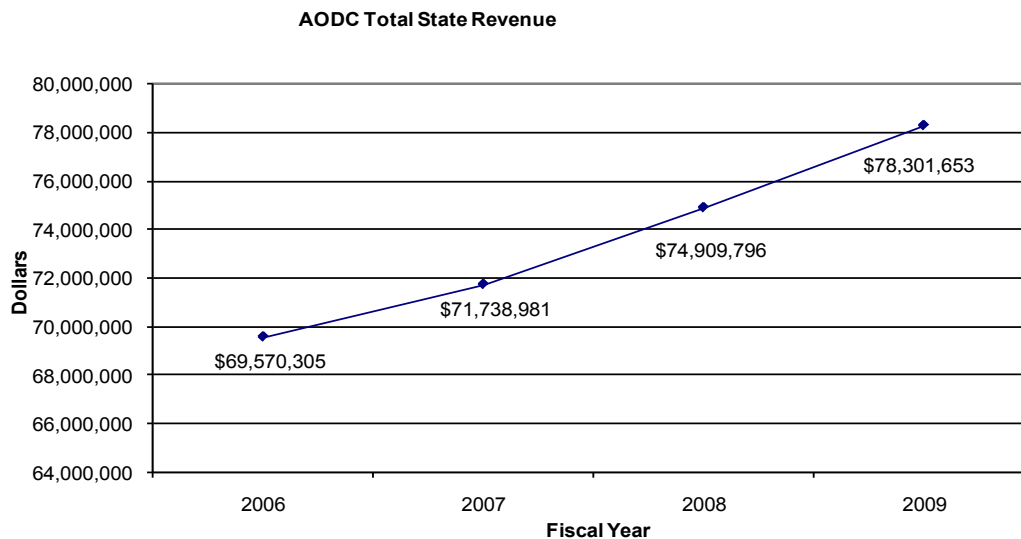
---

<sup>1</sup> Prior to July 1, 2009, the AOTC could spend up to \$20 million of these named fees that exceed the amount of fees collected for the base year of 2003.

<sup>2</sup> 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.

<sup>3</sup> Prior to July 1, 2009, the amount was \$23 million.

Revenues generated by the AODC have increased over the years. During the period fiscal year 2006 to fiscal year 2009, revenues increased 13%. This is attributable to a variety of reasons, including new fees enacted in accordance with legislative action, general fee increases, and increased monitoring and collection of fees. A chart of the AODC revenue collections during fiscal years 2006 through 2009 from the Commonwealth's accounting system and the AOTC Revenue Unit follows.



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

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

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

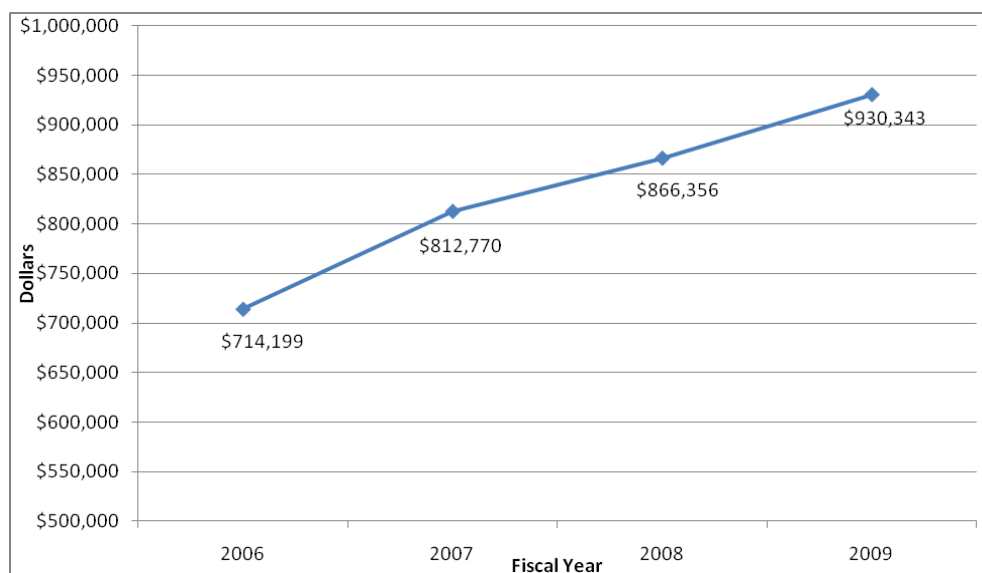
The fees we selected for further examination (Probation, Indigent Counsel, and Victim Witness) are established by various statutes and can have various fee amounts depending on the circumstances. An explanation of the fees follows.

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

hearing can result in the fee being offset by the amount of restitution payments (if applicable) against the defendant.

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

The Falmouth Division of the District Court Department (FDC) generated revenues that increased from \$714,199 in fiscal year 2006 to \$930,343 in fiscal year 2009, as shown in the following chart.



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

<b>Revenue Source</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Probation Fees	\$184,417	\$238,325	\$236,315	\$241,762
Indigent Counsel Fees	63,604	76,380	80,017	77,646
Victim Witness Fees	<u>15,218</u>	<u>20,317</u>	<u>21,059</u>	<u>18,173</u>
Total	<u>\$263,239</u>	<u>\$335,022</u>	<u>\$337,391</u>	<u>\$337,581</u>

In addition to the above cash collections at FDC, 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 14% 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 FDC. The scope of our audit included an examination of FDC's controls over administrative and operational activities, including certain fees and bail funds for the period July 1, 2008 to March 31, 2010.

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) assess the adequacy of FDC's internal controls over the assessment, collection, accounting, waiver, and community service in lieu of payment of certain fees and FDC's internal controls over bail funds and (2) determine the extent of controls for measuring, reporting,



and monitoring effectiveness and efficiency regarding FDC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and AODC policies and procedures with respect to certain fees and bail funds.

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

To achieve our audit objectives, we performed analytical reviews of AODC revenues, conducted interviews with management and staff, and reviewed prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and FDC'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 FDC was based on those interviews and the review of documents.

Our recommendations are intended to assist FDC in developing, implementing, or improving its internal controls and overall financial and administrative operations to ensure that FDC'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, FDC (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. CONSIDERATION SHOULD BE GIVEN TO ESTABLISHING AN ACCOUNTS RECEIVABLE SYSTEM

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

The accounting system used by Massachusetts courts is a cash-based system. There are two variations of the system used to collect probationers' money that are found depending on the specific court location: the Probation Receipt Account (PRA) system and the centralized cash system, which handles collections from the Clerk-Magistrate's office as well as for people on probation. Although there are data elements captured in both the PRA and centralized cash systems that would be found in an accounts receivable system (e.g., total amount due and amounts collected to date), this information is not used to control overall activity and an accounts receivable control account is not used. Therefore, neither is a true accounts receivable system.

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

When the court system first established the PRA system over 25 years ago, computerization capabilities were at a much different level than they are now. The PRA system was established with more emphasis on meeting the needs of capturing information relating to the receipt of funds and subsequent payout and using this information to post to the cash receipts and disbursements journal. The centralized cash system was developed later, with an aim of minimizing redundancy between the Clerk-Magistrate's 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 AODC revenues that would traditionally be processed through an accounts receivable system, and the total amount to be collected cannot be readily identified, although detailed information is kept to identify what individuals owe. Additionally, the courts do not have a central control point to highlight non-cash adjustments to receivable balances, such as for community service to be performed in lieu of the payment of fees. Lastly, the potential exists for unauthorized adjustments to be made in the system that would not be identified timely by employees in the normal course of their work.

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

### ***Recommendation***

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

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

The Clerk-Magistrate provided the following response:

*This has been accomplished by the installation and use of the Mass Courts accounting system, activated in this court in December, 2010. This system requires entry of all assessments of any type or description by case docket #, thereby establishing a receivables system. The system allows tracking of receivables by case, category of assessment, payment due date, etc., providing us a method of complying with this audit recommendation.*

---

## 2. VICTIM WITNESS FEE ASSESSMENT COLLECTIONS NOT ALLOCATED AS FIRST PRIORITY

Although FDC imposed Victim Witness fee assessments as required, it did not always apply partial payments made by the defendant to the Victim Witness fee assessment as a first priority. State law requires FDC to apply any payments made by persons to the Victim Witness fee assessment before any other criminal assessments are satisfied. As a result, collection of Victim Witness fee assessments is delayed.

State law requires the imposition of a Victim Witness fee of \$45, \$50, or \$90 when a defendant is either 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, misdemeanor, or felony. Specifically, Section 8 of Chapter 258B of the General Laws, as amended, states:

*When a determination of the order of priority for payments required of a defendant must be made by the court or other criminal justice system personnel required to assess and collect such fines, assessments or other payments, the victim and witness assessment mandated by this section shall be the defendant's first obligation.*

Prior to 2003, Victim Witness fee collections were deposited into a separate fund, the Victim Witness Assistance Fund. The Acts and Resolves of 2003, Chapter 26, Section 45, did away with the separate fund and made these funds General Fund revenue. However, the provision assigning first priority for collection remains.

The Victim Witness assessment is usually one of a number of fees a defendant pays, and these fees are usually partially paid in various amounts over a period of time. Audit tests of Victim Witness fee assessments ordered on criminal cases found that FDC would not always apply an individual's partial payments first to Victim Witness fees. Rather, FDC would satisfy monthly probation fees in advance of the fee.

Because Victim Witness fee assessment payments were not prioritized, the collection of Victim Witness fee assessments was delayed. When FDC personnel were made aware of this statutory requirement, they immediately began prioritizing the application of payments to unpaid Victim Witness assessments.

### ***Recommendation***

FDC should continue giving first priority to Victim Witness fee assessments upon collection, unless any additional guidance is issued by the AODC.

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

The Clerk-Magistrate provided the following response:

*As noted in your report, past practice did not always give first priority to allocation of initial payments received to pay Victim Witness assessments. Use of the Mass Courts accounting system will assist in assuring that payments are allocated properly, in accordance with law.*

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

Monthly Administrative Probation Fees<sup>4</sup> were increased from \$21 to \$50 in accordance with state law effective July 1, 2009. However, we noted that the FDC probation staff did not send letters explaining to individuals on probation prior to this date that the monthly probation fees were increasing, and these probationer accounts were allowed to be credited at the old rate of \$21 instead of \$50 – a \$29 shortfall. We did note that individuals who were placed on probation after July 1, 2009 were assessed the correct increased fee. State law and Office of the Commissioner of Probation (OCP) guidance require the local courts to retroactively apply increased administrative probation supervision fees to individuals on probation as of July 1, 2009. As a result of FDC's not applying the correct monthly probation fee, the Trial Court and the Commonwealth did not receive all the funds to which they were entitled. Based on court records, we estimated the amount involved to be as much as \$110,230 over the period of July 2009 to March 2011.

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

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

---

<sup>4</sup> As noted in the Background section of this report, this monthly fee is a combination of the Administrative Probation Supervision fee of \$45 and an Administrative Probationer's Victim Services surcharge of \$5.

*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.*

Because FDC did not collect the proper (increased) monthly fee, the Commonwealth and the Trial Court did not receive all the funds to which they were entitled. FDC did not retroactively apply the increased administrative probation fee to individuals whose probation period continued after July 1, 2009 because it would conflict with 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.

### ***Recommendation***

To improve internal controls and ensure compliance with state law and OCP guidance, FDC should modify its procedures to promptly adjust its accounting system for monthly fee changes. In addition, FDC should review its current accounts and determine whether any individuals on administrative probation are paying the lesser amount and make the appropriate changes. Additionally, the Probation Office and the Clerk-Magistrate's Office, which performs bookkeeping for the Probation Office as part of the courts consolidated cash system, should periodically compare case records to ensure that they contain corresponding information to eliminate the need to retroactively adjust probationer's accounts.

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

The First Justice provided the following response:

*[I would like to explain my position] on the increased Administrative probation service fee as an increased Ex Post Facto law change. Here at Falmouth District Court our terms and conditions of probation, including probation service fees, are part and parcel of all plea bargaining agreements. All of our "Green Sheets" delineating the terms of the plea are contractual and are so enforced. As such this court has not disturbed the terms of the plea bargain entered in good faith prior to the increase in the Administrative fee. Additionally, I would take issue with the estimate of the \$110,230 in potential lost revenue as an extremely inflated estimate.*

In addition, the Clerk-Magistrate provided the following response:

*At the time of introduction of the increased fee, a decision was made to apply it prospectively to all new cases, but not to cases previously decided. In those cases, probationers were told at the time of conviction, or plea, a dollar amount that would be assessed for probation service fees. Thereafter the court chose not to apply the new fee schedule "ex post facto" to existing cases. Note that very few currently active probation cases predate the new fee schedule, most of them having closed long ago, and therefore the imputed dollar value becomes a hypothetical figure in its real world application.*

### **Auditor's Reply**

Neither the First Justice nor the Clerk-Magistrate disagree with our main issue, which is that a decision was made to not charge the increased Administrative Probation Fee for people on Administrative Probation prior to June 30, 2009 and who would continue to be on Administrative Probation from July 1, 2009 onward. With respect to how we arrived at the \$110,230 estimate of potential lost revenue, we started with individuals on administrative probation as of June 30, 2009 who would be paying Administrative Probation Fees from July 1, 2009 onward, based on the court's suspended payments list. We applied a two step process to the suspended payments list to calculate the estimated lost revenue. The first part of the process involved sorting the suspended payments list to determine who actually continued paying the lower fee and had terminated their probation during the period July 1, 2009 to June 2, 2010 (shortly after audit fieldwork started). This analysis found that the potential lost revenue was \$43,906. The second part of the process involved sorting the suspended payments list, determining who was still paying the lower Administrative Probation Fee, and calculating how many more months they had left to pay Administrative Probation Fees, which resulted in an estimate of \$66,324. We then combined the two amounts (the potential lost revenue of terminated cases of \$43,906 and the estimated potential lost revenue of on-going cases of \$66,324) which totaled \$110,230. We agree that this results in an estimated amount, but we believe our methodology provides a reasonable basis for determining the potential lost revenue.