



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

*Making government work better*

Official Audit Report – Issued February 20, 2014

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## Hampshire Division of the Superior Court Department

For the period July 1, 2011 through March 31, 2013





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

*Making government work better*

February 20, 2014

Harry Jekanowski, Jr., Clerk of Courts  
Hampshire Division of the Superior Court Department  
15 Gothic Street  
Northampton, MA 01061

Margaret Oglesby, Chief Probation Officer  
Hampshire Division of the Superior Court Department  
15 Gothic Street  
Northampton, MA 01061

Dear Clerk of Courts Jekanowski and Chief Probation Officer Oglesby:

I am pleased to provide this performance audit of the Hampshire Division of the Superior Court Department. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2011 through March 31, 2013. My audit staff discussed the contents of this report with management of the agency, and their comments are reflected in this report.

I would also like to express my appreciation to the Hampshire Division of the Superior Court Department for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "S M Bump".

Suzanne M. Bump  
Auditor of the Commonwealth

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## EXECUTIVE SUMMARY

This report considers whether, during our audit period of July 1, 2011 through March 31, 2013, the Hampshire Division of the Superior Court Department (HSC) administered the applicable laws and policy directives to ensure that HSC had adequate controls over bail and civil escrow funds, cash management, inventory, and evidence.

HSC presides over civil, criminal, and other matters falling within its territorial jurisdiction of Hampshire County. The audit was undertaken to determine whether HSC's (1) financial records are accurate, up to date, and maintained in accordance with established criteria; (2) inventory systems are adequate to safeguard furniture and equipment; (3) evidence exhibits are appropriately tracked and secured by HSC's Clerk of Courts' Office (the Clerk's Office); (4) internal controls over civil escrow fund and bail fund management are adequate; and (5) overall internal control structure is suitably designed and implemented to safeguard Commonwealth assets in compliance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies. In addition, we assessed the status of issues that were identified in our prior audit report (No. 2006-1114-3O).

### *Summary of Findings*

- The Probation Office had not fully implemented procedures for maintaining its furniture and equipment inventory records or its annual physical inventory verification. As a result, Commonwealth assets with an estimated historical cost of \$40,974 may be at risk of loss, misuse, or misappropriation, and inventory may not be properly reported.
- The Clerk's Office did not maintain an accurate centralized evidence log that always identified the storage location and a sufficiently detailed description of evidence (including amounts/quantities) and accounted for evidence returned. In addition, HSC maintained custody of evidence exhibits, including cash, drugs, and guns, that were not adequately secured from theft or loss. As a result, evidence may not be properly secured and accounted for, which may prevent the Clerk's Office from locating it when it is needed for court cases; evidence could be misplaced or misappropriated and such losses may not be detected; and the Clerk's Office faces an increased risk of theft or loss.
- HSC is not consistently complying with the statutory requirements for the collection of legal counsel fees from defendants. As a result, the Commonwealth may not be receiving all the money to which it is entitled.
- Some HSC judges allow a defendant's probation officer to choose whether the defendant must pay a monthly probation supervision fee or perform community service, which is contrary to

Chapter 276 of the Massachusetts General Laws. HSC also lacks a consistent method of tracking community service performed, and when probationers fall behind on fee payments, the Probation Office does not hold hearings to address the issue. As a result, probationers may not be complying with their probation conditions; the Commonwealth may not be receiving fees to which it is entitled; and the Probation Office cannot readily determine the value, performance, and likelihood of completion of community-service hours.

- The Probation Office’s monthly bank-account reconciliations were not always completed on time, prepared by the correct employee, completed accurately, or approved by the appropriate Probation Office authority. As a result, errors in HSC’s fiscal records may go undetected and uncorrected for an extended period.
- HSC’s restitution accounts contain eight balances, totaling \$34,186, that have not been paid to defendants in criminal cases that started as many as 14 years ago because the Probation Office staff has either insufficient information or no information about to whom the money is to be paid. As a result, reparation has not been made to the victims affected by the criminal actions as the judge who made the ruling intended, and some of the funds may be due the State Treasurer as unclaimed property.
- During our previous audit period, HSC had not developed an internal control plan (ICP) or conducted periodic risk assessments as required by state law and Trial Court rules and regulations. During our current audit period, HSC developed an ICP and performed a risk assessment. However, the risk assessment did not consider significant risks we identified in performing our audit, such as not adequately safeguarding the Clerk of Courts’ signature stamp or segregating the duties of a staff member who was responsible for both maintaining the Clerk’s Office furniture and equipment inventory record and performing the annual verification of the inventory.
- During our previous audit period, HSC office personnel could not reconcile revenue that HSC remitted to the Commonwealth as required by Trial Court fiscal policy. During our current audit, we determined that HSC performed monthly reconciliations of revenue remitted to the Commonwealth to revenue credited to HSC’s revenue accounts in the Commonwealth’s Massachusetts Management Accounting and Reporting System.
- During our previous audit period, HSC needed to improve its internal controls to comply with the General Laws regarding forfeiting bail when defendants default and do not make their required court appearances. Specifically, HSC was in possession of five bails, totaling \$8,500, for which the defendant was in default but the bail had not been ordered forfeited. During our current audit, we determined that, as of March 31, 2013, none of the 24 bails held by HSC applied to criminal cases where the defendants were in default or where the bails had been ordered forfeited in open court.

### ***Recommendations***

- HSC’s Probation Office should establish the historical cost values for all items appearing on its inventory record based on actual invoices, the Trial Court’s established values list, or comparative values of similar equipment (from catalogues, state purchasing agent records, etc.).

- In consultation with the Trial Court, the Probation Office should consider increasing the \$100 inventory threshold to eliminate the items that are historically less risky or likely to be misused or misappropriated.
- The Probation Office should include all items of value in its care and control, particularly high-value electronic equipment like computers and printers, on the inventory list.
- The Probation Office should follow Trial Court regulations on the disposal of equipment. The required equipment disposal form should be prepared by the inventory liaison for equipment inventory ready to be disposed of. The Chief Probation Officer should review whether the equipment inventory has reached the end of its useful life and, if so, approve the form. The form should be retained with the physical inventory list. If inventory cannot be located during the physical count, a list of missing items should be developed. The Probation Office should make all reasonable efforts to determine whether the inventory was moved or misplaced without the inventory liaison being notified and the equipment inventory list updated. If the Probation Office still cannot locate the equipment, the Chief Probation Officer should file a Chapter 647 report<sup>1</sup> with the Office of the State Auditor.
- The Probation Office should request that the Trial Court conduct training on inventory procedures to ensure that all Probation Office employees know and understand proper procedures for recording, physical verification, and disposal of inventory.
- HSC should create a centralized evidence log that includes the defendant name, docket number, location, amount, detailed description, and type of evidence maintained for all cases for which it maintains the evidence. It may be necessary for HSC staff to review the evidence for each case maintained and ensure that the evidence log properly documents the docket number, the defendant, the type of evidence maintained, and the location of that evidence.
- The Clerk's Office should again request a safe from the Trial Court to use to secure evidence exhibits. The safe should be large enough to store all high-risk evidence exhibits, including guns, drugs, and money. This will help limit access to evidence to individuals authorized by the Clerk of Courts.
- The Probation Office should report to the Clerk's Office any unpaid legal counsel fees that are not paid within 60 days of assessment, so that the latter can give proper notification to the Registry of Motor Vehicles, Department of Revenue, and Department of Transitional Assistance.
- Upon the surety's request for the return of bail, the Clerk's Office staff should review the case file before releasing the outstanding bail to the surety to ensure that the defendant has paid the legal counsel fee. The bail should not be returned to the surety until the legal counsel fee is paid in full.
- HSC should comply with the requirements of Chapter 276 for the imposition and waiving of probation supervision fees and the restitution made for nonpayment of those fees. Specifically, it

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<sup>1</sup> This process occurs under Chapter 647 of the Acts of 1989, which requires agencies to file a report with the Office of the State Auditor if they find any "unaccounted for variances, losses, shortages or thefts of funds or property."

should make sure that it documents whether, based on court order, a probationer will pay a probation fee or a finding of fact has been held to allow the fee to be waived and community service performed instead. If HSC finds the statute too restrictive, then it should seek input from the Trial Court on getting an exemption from the requirement or look at legislative changes that could be put forward to better suit its needs.

- The Probation Office should hold administrative hearings after a probationer fails to pay the monthly probation supervision fee for two consecutive months or fails to perform the required community-service hours in lieu of payment. After a hearing, the Probation Office should assess the probationer's ability and willingness to pay the fee to decide whether a court hearing should be held to determine whether payment of the fee would create an undue hardship on the probationer. If so, the fee should be waived. If not, the Probation Office should either require the probationer to pay delinquent fees owed or issue a notice of surrender for failing to pay the probation supervision fee.
- The Probation Office should ensure that supervising probation officers promptly report to the bookkeeper all hours of community service performed by each probationer. It should also consider implementing a more centralized system that would allow it to track community service performed by probationers on a timely basis without having to rely on its current ledger-card system to be able to readily determine the status of a probationer's account.
- The Probation Office should ensure that Monthly Bank Account Reconciliation forms are completed and reviewed in a timely manner.
- The Probation Office should request specific training from the Trial Court on completing and filing monthly bank-account reconciliations for primary and designated backup personnel.
- The Probation Office should reconcile funds on hand on its most current Detail Account Trial Balance to balances recorded on the probation ledger cards. Next, it should reconcile the Detail Account Trial Balance to the Monthly Summary Trial Balance each month and retain a file copy of the Detail Account Trial Balance for audit purposes. The Probation Office should investigate any unreconciled balances to determine which account the funds should be applied to. For any unreconciled balances identified, the Probation Office should immediately file Chapter 647 reports.
- The Probation Office should collaborate with the District Attorney's Office to research names and current addresses of, and amounts owed to, victims and pay restitution balances as soon as practical. If information is unavailable or the balances are returned as undeliverable, the Probation Office should request that the court order the balances transmitted to the State Treasurer.
- HSC should continue to improve its ICP and risk assessments. To accomplish this, it should review the Trial Court Internal Control Guidelines and conduct a risk assessment to address potential problems in fiscal and court operations. Additionally, HSC should perform a risk assessment after changes in management (such as the hiring of a Chief Probation Officer) or significant changes in fiscal operations so that it can develop controls to mitigate any risks identified.

## OVERVIEW OF AUDITED AGENCY

### *Background*

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. The statute also created a centralized administrative office managed by a Chief Justice for Administration and Management (CJAM), who was also responsible for the overall management of the Trial Court. The CJAM charged the central office, known as the Administrative Office of the Trial Court, with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including budget; central accounting and procurement systems; personnel policies, procedures, and standards for judges and staff; and the management of court facilities, security, libraries, and case-management automation. Legislative changes that took effect July 1, 2012 eliminated the CJAM position and created two new Trial Court leadership positions: the Chief Justice of the Trial Court (CJTC) and the Court Administrator. The CJTC is considered the judicial head of the Trial Court and is responsible for all matters of judicial policy. The Court Administrator is the administrative head of the Trial Court, operating from the Office of Court Management (OCM) and working with the CJTC, with the overall responsibility for budget preparation and oversight, labor relations, information technology, capital projects, and personnel policy (thereby performing the many administrative functions of the former CJAM position).

Chapter 211B of the Massachusetts General Laws established the Superior Court Department (SCD), which has original jurisdiction in civil actions valued at over \$25,000 or where equitable relief is sought. It also has original jurisdiction in actions involving labor disputes where injunctive relief is sought, and it has exclusive authority to convene medical malpractice tribunals. According to its website, the SCD has exclusive original jurisdiction in first-degree murder cases, all felony matters, and other crimes, although it shares jurisdiction over crimes where other Trial Court departments have concurrent jurisdiction. It also has appellate jurisdiction over certain administrative proceedings. The SCD has established 14 divisions, each having a specific territorial jurisdiction, to preside over matters that are brought before the court. Each division's organizational structure consists of two main offices: the Clerk of Courts' Office, headed by a Clerk of Courts who is an elected official, and the Probation Office, headed by a Chief Probation Officer. The Clerk of Courts



and the Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Hampshire Division of the Superior Court Department (HSC) presides over civil and criminal matters falling within its territorial jurisdiction of Hampshire County. HSC is responsible for scheduling, holding, and recording proceedings in civil and criminal matters and for the care and custody of all the records, books, and papers that pertain to, or are filed or deposited in, the Clerk of Courts' Office.

During the audit period, July 1, 2011 through March 31, 2013, HSC collected revenue totaling \$314,631,<sup>2</sup> which it disbursed as either general or specific state revenue as shown in the following table:

Revenue Type	July 1, 2011 to June 30, 2012	July 1, 2012 to March 31, 2013	Totals
General Revenue	\$103,093	\$ 74,351	\$177,444
Probation and Administrative Supervision Fees	71,441	42,039	113,480
Victim/Witness Fund	4,705	3,130	7,835
Surcharge	3,480	2,625	6,105
Reimbursement for Indigent Counsel	3,705	3,085	6,790
Drug Analysis Fund	1,440	450	1,890
Other	<u>600</u>	<u>487</u>	<u>1,087</u>
Totals	<u>\$188,464</u>	<u>\$126,167</u>	<u>\$314,631</u>

In addition to the funds collected and transferred to the Commonwealth, HSC was the custodian of 24 cash bails, totaling \$77,520, as of March 31, 2013.<sup>3</sup> HSC held custody of two civil escrow accounts, totaling \$24,749, as of March 31, 2013. (Civil escrow accounts are considered assets held in trust by the court pending case disposition.)

<sup>2</sup> Some revenue, like probation supervision fees, is collected and transmitted by the probation office; however, HSC is given copies of these transmittals so it can reconcile revenue transmitted by the court division to the Commonwealth's records.

<sup>3</sup> Bail is the security given to the court by defendants or their sureties to obtain release to ensure appearance in court, at a future date, on criminal matters. Bail is subsequently returned, upon court order, if defendants adhere to the terms of their release.

HSC operations are funded by appropriations under OCM control from which HSC receives periodic allotments. According to the Commonwealth's records, expenditures<sup>4</sup> associated with the operation of HSC were \$918,118 for the period July 1, 2011 through March 31, 2013.

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<sup>4</sup> This amount does not include certain expenditures, such as facility lease and related operational expenses; personnel costs attributable to court officers, security officers, and any probation staff; and related administrative expenses of the Probation Office, because they are not identified by court division in the Commonwealth's accounting system.

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

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Hampshire Division of the Superior Court Department (HSC) for the period July 1, 2011 through March 31, 2013. In one instance, it was necessary to go outside this period to gather and review pertinent financial and criminal case information included in this report (see Findings 5 and 6).

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.

HSC presides over civil, criminal, and other matters falling within its territorial jurisdiction of Hampshire County. The audit was undertaken to determine whether HSC's (1) financial records are accurate, up to date, and maintained in accordance with established criteria; (2) inventory systems are adequate to safeguard furniture and equipment; (3) evidence exhibits are appropriately tracked and secured by HSC's Clerk of Courts' Office (the Clerk's Office); (4) internal controls over civil escrow fund and bail fund management are adequate; and (5) overall internal control structure is suitably designed and implemented to safeguard Commonwealth assets in compliance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies. In addition, we assessed the status of issues that were identified in our prior audit report (No. 2006-1114-3O).

To achieve our audit objectives, we reviewed our prior audit report, reports on the court division's revenue and expenses produced by the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System (MMARS), and Trial Court statistical reports. The financial data we obtained from MMARS about the court division's activities during our audit period were not used in our audit testing; they were used solely for the purpose of presenting background information in our report. Consequently, we did not assess the reliability of these data.

We gained an understanding of the internal controls we deemed to be significant to our audit objectives and evaluated the design and effectiveness of those controls. Specifically, we performed

procedures such as interviewing HSC managers and other staff members and reviewing relevant documents, statutes, and regulations as well as HSC's policies, procedures, and accounting records. We obtained and analyzed case data from selected case docket records and traced and compared them to Forecourt, HSC's case-management system, for consistency and completeness. We also interviewed agency officials who were knowledgeable about Forecourt data-input activities. Since the court case docket record is the source document used to update Forecourt and the principal document that identifies all court activity about a civil or criminal case, including the assessment and collection of various fees and fines, civil judgments, and criminal case adjudication, we did not rely on Forecourt for the purposes of our audit. We believe the information we obtained from case docket records was sufficient for the purposes of our analysis and findings. Also, for the purposes of our audit, we used random non-statistical sampling during our examination of bail funds, civil escrow accounts, civil and criminal case activities, inventory, and evidence. We did not rely on computer-processed data for our audit purposes. We relied on hardcopy source documents, interviews, and other non-computer-processed data as supporting documentation on which we based our conclusions. At the conclusion of our audit, we discussed the results with HSC officials, and we considered these officials' comments in the drafting of our final report.

**DETAILED AUDIT RESULTS AND FINDINGS WITH AUDITEE'S RESPONSE***Audit Findings***1. The Probation Office has not fully implemented the procedures for maintaining its inventory of furniture and equipment.**

At the time of our audit, the Hampshire Division of the Superior Court Department (HSC) Probation Office had not fully implemented procedures for maintaining its furniture and equipment inventory records or its annual physical inventory verification. As a result, Commonwealth assets with an estimated historical cost of \$40,974 may be at risk of loss, misuse, or misappropriation, and inventory may not be properly reported.

The Probation Office maintains the inventory of furniture and equipment for all office space used by its staff. The office created an inventory list but did not conduct an annual physical verification of inventory under its care and control. Additionally, the inventory record was not always updated when items were moved; it lacked essential cost data and other important data; and it contained obsolete inventory items and inventory items that did not meet the minimum dollar threshold.

Required historical cost data for inventoried items were not recorded on the most recent inventory list. We estimated the historical cost at \$40,974 by assigning values to each of the 73 items using either a cost list that the Trial Court had provided to the Clerk of Courts' Office (the Clerk's Office) or cost comparisons for similar items found through Web searches (when an item did not appear on the Trial Court list). The Trial Court cost list identified values for office furniture like desks, chairs, tables, and files; however, it did not provide values for items, such as computers, monitors, televisions, typewriters, calculators, and audio/visual recording equipment, that we consider to be more vulnerable to misuse and misappropriation. Another inventory-list deficiency was that 4% of the items listed (3 items), based on our auditors' judgment, did not appear to meet the \$100 minimum dollar value threshold for inclusion on the inventory list.

We also selected<sup>5</sup> 20 items to verify that the Probation Office properly tagged, maintained, and accounted for furniture and equipment in its care and control. (We tested the Probation Office furniture and equipment inventory by judgmentally selecting these items to verify that they were properly reflected on the list, with tag number, correct location, etc.) We found that the Probation

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<sup>5</sup> We selected the judgmental sample from 69 inventory items that were considered to be of high dollar value and/or more vulnerable to misuse/misappropriation (20 items).

Office was not fully compliant with Trial Court regulations regarding the accounting for, and full reporting of, furniture and equipment inventory for the items judgmentally selected.

- Five of 10 inventory items, or 50%, sampled from the inventory list could not be located by Probation Office personnel upon our request (2 items) or were in a different location from that reported on the inventory list (3 items). Of the 2 items that could not be located, the inventory liaison told us that one had been disposed of the previous year and the other had been transferred to the Clerk's Office.
- Six of 10 inventory items, or 60%, sampled from the various locations in the Probation Office were not properly tagged with an inventory code or had the wrong location recorded on the inventory listing.

***Authoritative Guidance***

In its Internal Control Guide, the Office of the State Comptroller (OSC) requires state agencies, including courts, to institute controls to protect their equipment, information, documents, and other resources that could be wrongfully used, damaged, or stolen. OSC also requires that assets that originally cost \$1,000 or more be recorded in a department's inventory perpetual record, reconciled with the physical inventory at least annually, and included in the inventory record with the following identifiers at a minimum: date of purchase, cost, description, location, and disposal of an inventory item.

In Fiscal Year 2004 Memo #16, the former Chief Justice for Administration and Management delegated the responsibility for maintaining inventory to the manager of each court division because these assets are in the divisions' care and control.

The same memo included furniture and equipment inventory procedures and was supplemented with Fiscal Year 2009 Memo #8 (see Appendix A), which required court divisions to inventory and tag all fixed assets with a value over \$100, account for inventory items disposed of by completing and approving equipment disposal forms, and perform an annual physical inventory and report its results to the Trial Court. It also stated that any inventory items that could not be located during the physical inventory must be reported to the Office of the State Auditor (OSA) using a "Report on Unaccounted Variances, Losses, Shortages or Thefts of Funds or Property," also referred to as a Chapter 647 report (see Appendix B).

***Reasons for Inadequate Implementation of Inventory Process***

The acting Chief Probation Officer was also the employee designated as the inventory liaison. No employee was properly trained as the inventory liaison backup. When the acting Chief Probation Officer left the office on leave in October 2011, no successor was designated. The acting Chief Probation Officer's temporary replacement started in April 2012, but she did not perform inventory liaison duties because her regional supervisor did not assign them to her. Instead, the bookkeeper began to monitor the inventory list, acting as the inventory liaison for the Probation Office. The bookkeeper told us that she was not aware of Trial Court procedures that required a physical inventory of furniture and equipment and completion of equipment disposal forms to document the authorization of the inventory disposals.

The list of values established by the Trial Court was not all inclusive, as it omitted most electronic equipment like computers and electronic recording equipment. Therefore, the bookkeeper was unable to enter costs for these items on the inventory list.

Our inquiries with the bookkeeper and our review of Trial Court inventory control procedures also revealed that computer-related equipment and court recording equipment need not be tagged by each court. Instead, the Trial Court's information-technology department tags and monitors these items.

***Recommendations***

To properly control and maintain its furniture and equipment inventory and ensure compliance with OSC regulations and Trial Court policies and procedures, the Probation Office should:

- Establish the historical cost values for all items appearing on its inventory record based on actual invoices, the Trial Court's established values list, or comparative values of similar equipment (from catalogues, state purchasing agent records, etc.).
- In consultation with the Trial Court, consider increasing the \$100 inventory threshold to eliminate the items that are less vulnerable or less likely to be misused or misappropriated.
- Include all items of value in its care and control, particularly high-value electronic equipment like computers and printers, on the inventory list.
- Follow Trial Court regulations on the disposal of equipment. The equipment disposal form should be prepared by the inventory liaison for equipment inventory ready to be disposed of. The Chief Probation Officer should review whether the equipment has reached the end of its

useful life and, if so, approve the form. The form should be retained with the physical inventory list. If inventory cannot be located during the physical count, a list of missing items should be developed. The Probation Office should make all reasonable efforts to determine whether the inventory was moved or misplaced without the inventory liaison being notified and the equipment inventory list updated. If the Probation Office still cannot locate the equipment, the Chief Probation Officer should file a Chapter 647 report with OSA.

- Request that the Trial Court conduct training on inventory procedures to ensure that all Probation Office employees know and understand proper procedures for recording, physical verification, and disposal of inventory.

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

In response to this issue, the Chief Probation Officer stated,

*Probation will adopt and implement the five recommendations proposed . . . with the exception of the second recommendation. (Increasing the inventory threshold.) Please note some corrections have already been implemented.*

### ***Auditor's Reply***

Increasing the \$100 inventory threshold would be more in line with OSC's non-fixed-asset (inventory) guidance and, in OSA's opinion, will streamline the physical inventory verification process and allow Probation Office staff to work on other important Probation Office tasks. Therefore, we again recommend that the Probation Office consider working with the Trial Court on increasing the inventory dollar-value threshold to eliminate items of lesser value.

## **2. The Clerk's Office does not have a centralized evidence log that contains sufficient identifying information, and evidence is not adequately safeguarded in a secure area.**

The Clerk's Office did not maintain an accurate centralized evidence log that always identified the storage location and a sufficiently detailed description of evidence (including amounts/quantities) and accounted for evidence returned. In addition, HSC maintained custody of evidence exhibits, including cash, drugs, and guns, that were not adequately secured from theft or loss. As a result, the office cannot be certain that evidence in its possession related to 80 criminal cases, which could include high-risk evidence like drugs, money, and weapons, is properly secured and accounted for. This creates a risk that the Clerk's Office will not be able to locate such evidence when required to produce it for official purposes (e.g., when a criminal case decision is appealed and the evidence is needed during the appellate stage of the case). In addition, high-risk evidence could be misplaced or misappropriated, and such losses may not be detected because the evidence's location is not



documented. By not storing high-risk evidence in a secure location, such as a combination safe, and by retaining evidence longer than required, the Clerk's Office increases its risk of theft or loss.

The Clerk's Office has developed guidelines to properly account for the receipt of evidence in a centralized log; however, the evidence was not centrally logged to enable identification of the evidence retained in the custody of the Clerk's Office and the location of these exhibits, particularly quantities and types of controlled substances, money, and weapons. Instead, the Clerk's Office maintained a record of each case's evidence exhibits within the case file itself and a copy of the record with the exhibits. Moreover, guidelines were silent when it came to logging the return or disposal of evidence.

We randomly reviewed 19 criminal evidence files and found 9 files containing high-risk evidence, like weapons, illegal drugs, and/or money, that was not logged on a centralized record. Three files contained cash totaling \$9,613; two files contained what appeared to be illegal substances like marijuana, cocaine, heroin, and prescription pills of undetermined quantities; and seven files contained weapons like handguns and/or rifles. This high-risk evidence is held in a locking cabinet in a storage room in the Clerk's Office. The storage room is left unlocked and open during normal court hours. The office stores other non-evidence-related materials, which are accessed by other court employees, in this cabinet. Additionally, we observed that the key to the locking cabinet hung on a hook in the storage room and was labeled "white cabinet key."

#### ***Authoritative Guidance***

The Clerk's Office's internal control plan (ICP) provides guidelines for maintaining an adequately documented evidence log:

*An Evidence Log must be maintained by the Hampshire Division to record the receipt of all case evidence. Necessary information includes a description of the evidence, person(s) from whom it was received and the docket number of each case. Evidence must be kept in a secure location. It is the practice in the Clerk's office to make a list (in the courtroom) as the evidence is submitted. The evidence and copy of the exhibit list is then put in a box clearly marked with the name of [the] case and stored in the vault until its eventual return to the appropriate parties. A copy of the exhibit list is also kept in the corresponding case file.*

The Massachusetts General Laws (see Appendix C for excerpts from Chapters 94C, 276, and 278A) require that evidence be safeguarded, documented, and preserved while the convicted individual remains in state custody or on probation or parole.

***Reasons for Not Maintaining a Centralized Evidence Log***

We asked the Clerk of Courts why his office did not use an evidence log to centrally track the receipt and return of evidence exhibits. He stated that he did not think it was necessary to prepare a centralized evidence log that documents the receipt of all case evidence. Instead, he noted that each case file contains a list of all evidence exhibits pertaining to the case, which the court could use to research what evidence the Clerk of Courts should possess for each case.

***Reasons for Inadequately Securing High-Risk Evidence***

We asked the Clerk of Courts why high-risk evidence was not stored in a more secure location. The Clerk of Courts responded that high-risk evidence is stored in the most secure location available to him. He had previously requested a safe from the Trial Court, but had yet to receive one.

***Recommendations***

- HSC should create a centralized evidence log that includes the defendant name, docket number, location, amount, detailed description, and type of evidence maintained for all cases for which it maintains the evidence. It may be necessary for HSC staff to review the evidence for each case maintained and ensure that the evidence log properly documents the docket number, the defendant, the type of evidence maintained, and the location of that evidence.
- The Clerk's Office should again request a safe from the Trial Court to use to secure evidence exhibits. The safe should be large enough to store all high-risk evidence exhibits, including guns, drugs, and money. This will help limit access to evidence to individuals authorized by the Clerk of Courts.

***Auditee's Response***

In response to this issue, the Clerk of Courts stated, in part,

*While respecting the Auditor's suggestion to create a centralized evidence log, it would be an endeavor that I deem unnecessary and duplicative. All evidence that can be kept in our secure vault area. Any guns, money or drugs that cannot be returned, or destroyed are kept in a locked cabinet within the vaulted area. An exhibit list is contained in each case file (as well as with the exhibits themselves) and cross referenced as to their location. This process has proven effective in the over thirty (30) years I have been associated with this office and for many years prior thereto. I respectfully do not see the necessity for a change in this practice.*

*As to the suggestion that a safe be requested for the Trial Court instead of the present "locked cabinet," I concur with this recommendation and have again made a request for the same with the Superior Court and Trial Court Administrators.*

***Auditor's Reply***

The Trial Court's internal control guidelines require court divisions to maintain various control logs for assets and materials, including evidence. Specifically, these guidelines require that "an *Evidence Log* must be maintained by court divisions to record the receipt and disbursement of all case evidence." Although an exhibit list may be contained in each case file, an effective internal control system would also include maintaining a centralized log of this information to allow quick identification of all the evidence in a court division's custody and control. Consequently, we again recommend that the Clerk's Office create a centralized evidence log to adequately address the Trial Court's Internal Control Guidelines for evidence.

We do not believe that the secure vault area referred to in the auditee's reply adequately safeguards high-risk evidence. The secure vault area is a storage room behind the counter in the Clerk's Office and remains unlocked during normal business hours. The room is accessible to all HSC employees and others who are allowed behind the counter, and it also functions as a cash office, since the cash register is also in the room. We again recommend that access to evidence be limited to employees designated by the Clerk of Courts.

**3. HSC is not properly collecting court-ordered legal counsel fees.**

HSC is not consistently complying with the statutory requirements for the collection of legal counsel fees.<sup>6</sup> As a result, the Commonwealth may not be receiving all the money to which it is entitled.

We judgmentally selected a sample of criminal cases disposed of during the audit period to determine HSC's compliance with statutes covering legal counsel fees. We identified 14 cases where defendants were appointed legal counsel and ordered to pay the \$150 legal counsel fee. In 5 cases (36%), the legal counsel fee was not paid within 60 days of legal counsel appointment, and the Clerk of Courts did not notify the appropriate state agencies of the outstanding balance as required by the General Laws. We also found that, contrary to the General Laws, bail is sometimes returned to sureties before the legal counsel fees are paid. Of the 14 cases where defendants were ordered to pay a \$150 legal counsel fee, there was bail associated with 4 cases. For 2 of those 4 cases (50%), the Clerk's Office returned bail to the surety before the legal counsel fee was paid.

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<sup>6</sup> The legal counsel fee is an amount, usually \$150, that an indigent defendant who is provided with a court-appointed lawyer is responsible for paying.

***Authoritative Guidance***

Chapter 211D of the General Laws (see Appendix E) requires the Clerk of Courts to notify the Registry of Motor Vehicles (RMV), the Department of Transitional Assistance (DTA), and the Department of Revenue (DOR) upon a defendant's failure to pay the legal counsel fee within 60 days from its assessment. The same statute requires the defendant to pay the legal counsel fee before bail is released to the surety.

***Reasons for Not Notifying State Agencies of Unpaid Legal Counsel Fees***

The Clerk of Courts stated that he does not notify state agencies when a defendant does not pay the legal counsel fee within 60 days of assessment because the collection of the fee resides with the Probation Office and he is not notified by that office when the fee remains unpaid.

***Reasons for Returning Bail Funds before Payment of Legal Counsel Fee***

Inquiry with the Clerk of Courts revealed that it was most likely an oversight by his office that allowed bail to be returned to the surety before legal counsel fees were paid.

***Recommendations***

- The Probation Office should report to the Clerk's Office any unpaid legal counsel fees that are not paid within 60 days of assessment, so that the latter can give proper notification to the RMV, DTA, and DOR.
- Upon the surety's request for the return of bail, the Clerk's Office staff should review the case file before releasing the outstanding bail to the surety to ensure that the defendant has paid the legal counsel fee. The bail should not be returned to the surety until the legal counsel fee is paid in full.

***Auditee's Response***

In response to this issue, the Clerk of Courts stated,

*Upon notification by the Probation Office that a defendant has not paid an assessed legal counsel fee within 60 days, the Clerk's Office will give the proper notification to the Registry of Motor Vehicles, Department of Revenue and Department of Transitional Assistance.*

*The Clerk's Office does review the file and docket before returning the bail to the surety. If the legal counsel fee is not paid, before returning the bail, the surety is informed that the legal counsel fee must be paid before bail is returned or deducted from the bail amount. In the cases cited by the Auditor, I believe the bail was returned to the surety without the legal counsel fee paid at that time because the surety (non-defendant) was insistent on receiving the total amount. After review of the file and consultation with the sitting justice, the court had also*

*ordered at disposition of the case that the legal counsel fee could be paid during period of probation, which was ultimately done.*

*If the bail was returned without consultation with the court and through oversight, the Clerk's Office will monitor the situation more carefully.*

In response to this issue, the Chief Probation Officer stated,

*Probation will adopt and implement the recommendation proposed. . . .*

### ***Auditor's Reply***

We reviewed the files and dockets for the cases where bail was returned before payment of the legal counsel fee. We noted that the sitting justice allowed for the payment of the legal counsel fee during probation, but we did not find any additional order of the court authorizing the return of bail before payment of the fee. Further, we did not see any evidence in these files that the surety insisted on receiving the total amount. The legal requirements of Chapter 211D, and the bail recognizance form that is signed by and provided to the surety (the person who posted bail for the defendant) at the time bail is collected, specifically state that bail will not be returned until the legal counsel fee is paid. Therefore, we reiterate our recommendation that bail not be returned to the surety until after the legal counsel fee is paid in full.

Based on their comments, both the Clerk of Courts and the Chief Probation Officer are taking measures to address our concerns in this area.

#### **4. HSC does not always assess or waive monthly probation supervision fees as required and needs to improve fee collection and tracking of community service.**

Some judges allow a defendant's probation officer to choose whether the defendant must pay a monthly probation supervision fee or perform community service, which is contrary to Chapter 276 of the General Laws. In addition, when probationers fall behind on their monthly payment obligation, the Probation Office does not perform administrative hearings to address nonpayment. Finally, the Probation Office has no consistent method in place to track probationers' performance of community-service hours to ensure that probationers are fulfilling their legal obligation to compensate the state for probation supervision services. As a result, probationers may not be complying with their probation conditions; the Commonwealth may not be receiving fees to which it is entitled; and the Probation Office cannot readily determine the value, performance, and likelihood of completion of community-service hours.

**a. Exceptions were noted in the assessment, waiver, collection, and monitoring of the monthly probation supervision fee.**

We found that HSC did not always perform the granting of waivers of probation fees in accordance with state law. A waiver of the probation fee requires the probationer to perform monthly community service instead of paying the fee. Contrary to policy, the Probation Office did not regularly perform administrative hearings with probationers who fell behind two consecutive months on the payment of their monthly probation supervision fee or performance of community-service hours to assess their ability and willingness to pay the fee or perform community service. As a result, the Probation Office has inadequate assurance that probationers are complying with the terms of their conditions of probation, and the Commonwealth may not be receiving the funds from probation supervision fees to which it is entitled.

We judgmentally sampled 32 criminal cases in which an individual was placed on probation. Of the 32, there were 18 instances in which the court ordered the individual to either pay a monthly probation fee or perform unpaid community-service work (whichever the probation officer chose). There was no indication that a finding of fact had been held to allow the fee to be waived. We also identified one instance in which the court ordered the individual to pay restitution in an amount less than the monthly probation fee (contrary to Chapter 276, Section 87A, of the General Laws) and then waived the reduced fee. Both these practices are contrary to statutory requirements.

We also reviewed 20 of these 32 cases to verify that the Probation Office enforced the requirement of monthly fee payment or community service by the probationers. Our testing found 8 of 20 instances in which the probation office allowed probationers to fall behind at least three months on their monthly fee/community-service obligation without any repercussions. No administrative hearing between the Probation Office and probationers to determine a plan to catch up on payment of fees or performance of community service was noted. Additionally, no court hearing was noted for a probation violation for these cases, and no notice of surrender was issued. Both practices are contrary to instructions provided by the Office of the Commissioner of Probation (OCP).

***Authoritative Guidance***

Chapter 276, Section 87A, of the General Laws, as amended (see Appendix D), requires the imposition of a designated fee, depending on which type of probation the probationer is placed on. The probation supervision fee can be waived (in which case community service must be performed) upon order of the court after a finding of fact establishing that the probationer cannot pay the fee. The probation supervision fee can also be waived when the probationer is making monthly restitution payments, but the payments must be equal to or greater than the value of the probation supervision fee.

During fiscal year 2010, OCP issued a directive titled “Directive on Collecting Probation Supervision Fees,” which detailed steps the Probation Office should take if a probationer is delinquent on the payment of the probation supervision fee. After the probationer has failed to pay two consecutive months of probation supervision fees, the supervising probation officer must meet with the probationer to review the reasons the probationer has failed to pay the fee and the probationer’s ability and willingness to pay it, as well as to establish a plan to catch up. The Probation Office must schedule a court hearing to determine whether the fee is creating an undue hardship on the probationer and should be waived. If the probationer appears to be willing and able to pay, the supervising probation officer can allow the probationer up to two weeks to make full payment of the fee. If a probationer fails to pay the probation supervision fee for a third consecutive month, the supervising probation officer must issue a notice of surrender (i.e., bring the probationer’s case into court to argue that the probationer has violated the terms and conditions of probation) for failing to pay the probation supervision fee.

***Reasons for Judges Ordering Either the Monthly Probation Supervision Fees or Community Service in Lieu of the Fees***

The Clerk of Courts and Chief Probation Officer noted that sometimes judges order a probationer to either pay the monthly probation supervision fee or perform community service, whichever the probation officer thinks is most appropriate, because the court’s schedule is too busy to go through the process of a finding of fact establishing that the probationer cannot pay the fee.

***Reasons for Not Performing Administrative Hearings When Probationers Become Delinquent***

The Probation Office did not perform administrative hearings when probationers fell behind two consecutive months on their fee/community-service obligation because of turnover in the Chief Probation Officer position. The lack of management oversight appears to have resulted in a relaxed environment with regard to ensuring timely administrative hearings.

***Recommendations***

- HSC should comply with the requirements of Chapter 276 for the imposition and waiving of probation supervision fees and the restitution made for nonpayment of those fees. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a probation fee or a finding of fact has been held to allow the fee to be waived and community service performed instead. If HSC finds the statute too restrictive, then it should seek input from the Trial Court on getting an exemption from the requirement or look at legislative changes that could be put forward to better suit its needs.
- The Probation Office should hold administrative hearings after a probationer fails to pay the monthly probation supervision fee for two consecutive months or fails to perform the required community-service hours in lieu of payment. After a hearing, the Probation Office should assess the probationer's ability and willingness to pay the fee to decide whether a court hearing should be held to determine whether payment of the fee would create an undue hardship on the probationer. If so, the fee should be waived. If not, the Probation Office should either require the probationer to pay delinquent fees owed or issue a notice of surrender for failing to pay the probation supervision fee.

***Auditee's Response***

In response to this issue, the Clerk of Courts stated, in part,

*Though this audit finding appears to specifically pertain to the Probation Office, I feel compelled to respond on behalf of the Hampshire Superior Court as to the imposition of probation supervision fees.*

*If so requested by counsel and/or probation, this court is always available to hold a hearing as to whether a defendant has the "ability" to pay certain fees and costs including restitution because of their financial status. The imposition of the probation supervision fee or in the alternative community service is made at the disposition of the case by the sitting justice. Since most of the defendants in this court have been found to be indigent, the judge often orders community service in lieu of the monthly supervision payments which is under their purview pursuant to Chapter 276 §87A. As keeper of the record, the Clerk's Office only documents what fees have been imposed or waived, and any reasons cited.*



In response to this issue, the Chief Probation Officer stated,

*Probation will adopt and implement the recommendation. . . .*

**b. Improvements are needed to centrally track community service performed by probationers.**

The Probation Office staff records the performance of community service in probationers' files and transfers the information to ledger cards, but the Probation Office lacks a centralized system to track all the hours of community service performed through the Office of Community Corrections (OCC)<sup>7</sup> or independent work arrangements made outside OCC. As a result, the Probation Office cannot readily determine how many community-service work hours are owed, what community service amounts to in dollars, and whether offenders will be able to fulfill the requirements of court orders on schedule.

We reviewed criminal-case activity at HSC to determine how well it documented the fulfillment of community-service orders by judgmentally sampling six cases in which a probationer's monthly probation fee requirement was satisfied by performing community service. We reviewed the probationers' files and copies of community-service records provided to the Probation Office by OCC or by the independent agency where the probationer was performing community service to determine whether Probation Office staff verified the community-service hours. Additionally, we reviewed the tracking system for community-service hours performed by probationers; this review was intended to ensure that the Probation Office staff can easily track whether probationers are performing community service during each period in which it is required. Our testing showed that in three of six cases tested, or 50%, the community service performed by the probationer was not tracked in such a manner as to ensure that the probationer was performing the required hours of community service monthly. Instead, the probationer's file needed to be thoroughly reviewed for any supervisory notes made by the probation officer and for evidence from OCC or the independent agency where the probationer performed community service to verify that community service was performed monthly.

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<sup>7</sup> OCC is the office within the Trial Court's Probation Department that administers the Community Service Program throughout Massachusetts.

***Authoritative Guidance***

The Probation Office is responsible for monitoring community service performed by individuals under Chapter 276, Section 87A, of the General Laws, titled “Conditions of Probation; Probation Fee”:

*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. . . .*

Though the General Laws do not address the issue of a centralized record, they do require adequate monitoring, and best business practices would require the use of a centralized tracking system.

***Reasons for Not Maintaining a Central Record of Community-Service Hours***

The probation ledger cards were designed to track probationers’ payment of monthly probation supervision fees, not the performance of community-service hours. The Probation Office adapted these ledger cards as a method of recording community service. The cards are only updated for community-service hours performed when the supervising probation officer informs the bookkeeper of these hours. The bookkeeper records the hours performed on the probation ledger card and calculates their cash equivalent value in order to calculate the balance of the probation supervision fee remaining for the probation term. Therefore, a lack of communication between the supervising probation officer and the bookkeeper prevents community-service hours from being consistently tracked on each probationer’s ledger card.

***Recommendation***

The Probation Office should ensure that supervising probation officers promptly report to the bookkeeper all hours of community service performed by each probationer. It should also consider implementing a more centralized system that would allow it to track community service performed by probationers on a timely basis without having to rely on its current ledger-card system to be able to readily determine the status of a probationer’s account.

***Auditee’s Response***

In response to this issue, the Chief Probation Officer stated,

*Probation will adopt and implement the recommendation proposed. . . .*

*Please note improvements have already been implemented.*

**5. The Probation Office staff did not prepare and approve bank-account reconciliations in a timely and accurate manner.**

The Probation Office's monthly bank-account reconciliations (\$351,096 was deposited in the bank over the 21-month audit period) were not always completed on time, prepared by the correct employee, completed accurately, or approved by the appropriate Probation Office authority. Without timely and accurate monthly bank-account reconciliations that include reconciling items like bad checks and confirming amounts that appear on the Detail Account Trial Balance, and without approval of those reconciliations by a Probation Office authority, errors in HSC's fiscal records may go undetected and uncorrected for an extended period.

Of the 21 monthly bank-account reconciliations reviewed, none were fully compliant with the Trial Court's policies and procedures governing the process for preparation and approval of bank-account reconciliations. The noncompliant areas we noted were as follows:

- Sixteen, or 76%, appeared to be untimely because they took more than 30 days to complete.
- Three, or 14%, were not completed by the bookkeeper as required by the Trial Court's Fiscal Systems Manual (FSM). Instead, the individuals who prepared the reconciliations were the Trial Court's internal auditors.
- Seven, or 33%, were not approved by the former acting Chief Probation Officer or an authorized delegate as required by the FSM.

Further examination of the June 2011, December 2011, and June 2012 bank-account reconciliations showed that the Detail Account Trial Balance (which lists balances on hand by probationer) did not agree in total with the reconciled bank balance. The Detail Account Trial Balances for these three months were \$191, \$1,325, and \$1,755 (respectively) less than what was indicated in the bank balance, meaning that the Probation Office could not determine to whom these additional deposited funds belonged. This created an unaccounted-for variance that required Chapter 647 reporting. Additionally, the Detail Account Trial Balances for October 2012 through March 2013 were not available for our review; this inhibited our ability to confirm that the reconciled bank balance was in agreement with the Detail Account Trial Balance for those months. We were able to review the Detail Account Trial Balance available as of June 21, 2013 (the date of our test) to verify that the activity recorded on the ledger cards reconciled to the Detail Account Trial Balance. For the five

restitution cases judgmentally sampled, the balances of two ledger cards disagreed with the Detail Account Trial Balances by a combined \$2,571.

***Authoritative Guidance***

The FSM contains detailed policies and procedures for court divisions to ensure complete and accurate accounting, reconciling, and reporting of financial transactions. The FSM was published in 1996; sections were amended occasionally. The FSM stresses the importance of reporting accurate data on the Detail Account Trial Balance and reconciling it to the Monthly Summary Trial Balance (see Appendix F).

While the Trial Court's policy requires the bookkeeper to prepare and submit monthly bank-account reconciliations by the tenth day of each month, it provides a short grace period to allow sufficient time for the court division's receipt of bank statements. Section 11.6 of the FSM (Monthly Closing and Reporting), which details the steps the bookkeeper must take when reconciling, comments on untimely delivery of bank statements:

*Bank statements are not always received on a timely basis, but the importance of a proper reconciliation cannot be overstated. If the Bank Account Reconciliation form cannot be sent with the other month-end reports by the tenth day of the following month, every effort must be made to send in this report as soon after submission of the other month-end reports as possible.*

Additionally, Chapter 647 of the Acts of 1989 requires that all unaccounted-for variances, losses, or thefts of funds or property be immediately reported to OSA and that OSA determine the internal control weaknesses that contributed to or caused the condition and make recommendations to the agency official overseeing the internal control system (see Appendix B).

***Reasons for Inconsistent and Untimely Preparation and Review of Monthly Bank-Account Reconciliations***

After the departure of the acting Chief Probation Officer in October 2011, the regional supervisor took over the supervision of the Probation Office's fiscal procedures. The regional supervisor was not always available to review and approve financial documents. Delays ensued in the review and approval of the Monthly Bank Account Reconciliation forms prepared by the Probation Office's bookkeeper. The lack of stability and regular availability of a management figure in the Probation Office meant the bookkeeper had no one to ask about fiscal operations issues and timely review of the Monthly Bank Account Reconciliation forms. Therefore, when questions arose over the

preparation of the Monthly Bank Account Reconciliation forms, the bookkeeper needed the internal audit staff to help prepare them.

***Reasons for Not Maintaining and Reconciling the Detail Account Trial Balance to the Monthly Summary Trial Balance Figure on the Bank-Account Reconciliation***

The bookkeeper's supervisor did not instruct her to print or otherwise retain a copy of this new version of the Detail Account Trial Balance at month-end in order to verify the balance with the reconciled bank accounts.

***Reasons for Not Reconciling Differences Detected between the Detail Account Trial Balance and Monthly Summary Trial Balance***

The bookkeeper stated that the Trial Court internal auditors told her the unaccounted-for variance of funds between the Detail Account Trial Balance and the Monthly Summary Trial Balance need not be investigated further because it would be too cumbersome a task to discover which accounts were attributable to the variance.

***Recommendation***

- The Probation Office should ensure that Monthly Bank Account Reconciliation forms are completed and reviewed in a timely manner.
- The Probation Office should request specific training from the Trial Court on completing and filing monthly bank-account reconciliations for primary and designated backup personnel.
- The Probation Office should reconcile funds on hand on its most current Detail Account Trial Balance to balances recorded on the probation ledger cards. Next, it should reconcile the Detail Account Trial Balance to the Monthly Summary Trial Balance each month and retain a file copy of the Detail Account Trial Balance for audit purposes. The Probation Office should investigate any unreconciled balances to determine which account the funds should be applied to. For any unreconciled balances identified, the Probation Office should immediately file Chapter 647 reports.

***Auditee's Response***

In response to this issue, the Chief Probation Officer stated,

*The Probation Department will implement the recommendations outlined. . . . with one exception. Probation will not conduct any additional investigation of unreconciled balances dated before this audit was conducted. Any further discrepancies will be investigated and a Chapter 647 will be filed if required.*

*On February 3, 2014, a review of the detailed monthly balances by the trial court will be reviewed by the Trial Court Auditor to ensure compliance. The need for additional training will be determined subsequent to the review.*

**6. The Probation Office is retaining restitution account balances that should be paid over to victims or transferred to the State Treasurer as unclaimed property.**

HSC's restitution accounts contain balances that have accumulated over time because the Probation Office staff has either insufficient information or no information about to whom the money is to be paid. As a result, reparation has not been made to the victims affected by the criminal actions as the judges who made the rulings intended, and some of the funds may be due the State Treasurer as unclaimed property.

We reviewed the 13 restitution accounts, totaling \$36,416, that appeared on the most recent Detail Account Trial Balance and noted that 8 account balances, valued at \$34,186, applied to cases in which the Probation Office did not have sufficient information on the victims (e.g., names, addresses, and restitution amount owed) to pay out the restitution. The defendants in these criminal cases, some of which started as many as 14 years ago, have all been sentenced, and in some instances, the supervision of the case has been transferred to other courts or the case has terminated.

***Authoritative Guidance***

The General Laws provide for unclaimed money collected by probation officers to be paid to the State Treasurer. Chapter 276, Section 93, states, in part,

*Money collected by a probation officer under order of the court by which he is appointed, if unclaimed after one year from the time of its collection, shall, upon further order of the court, be paid to the treasurer provided, that any part of the said money may be paid to persons establishing before the comptroller a lawful claim thereto within five years of its payment to said treasurer. . . .*

***Reasons for Restitution Balances Remaining on Hand***

Restitution may be ordered by judges, but delays have sometimes been encountered from the District Attorney's Office, which is responsible for determining the restitution amounts and victims. During these delays, victims may move and not update their addresses with the Probation Office or the District Attorney's Office. Therefore, the Probation Office has mailed checks to injured parties at their former addresses. These mailings sometimes are returned by the Post Office marked "addressee unknown" or "forwarding time expired" and therefore never reach the injured party.

These undeliverable checks become stale and void, and the funds are returned to their respective restitution accounts with the Probation Office.

### ***Recommendation***

The Probation Office should collaborate with the District Attorney's Office to research names and current addresses of, and amounts owed to, the victims and pay the balances as soon as practical. If information is unavailable or the balances are returned as undeliverable, the Probation Office should request that the court order the balances transmitted to the State Treasurer.

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

In response to this issue, the Chief Probation Officer stated,

*Probation will adopt and implement the recommendation proposed. . . .*

*Probation contacted the District Attorney's Office in September 2013 concerning outstanding restitution as advised by the State Auditors.*

*Please note some funds have been disbursed since the beginning of the audit. In addition Probation will explore additional avenues to find victims such as DMV and or Attorney General Office etc. within the next sixty days. After all of these options have been exhausted, Probation will forward the remaining funds to the State Treasurer, Abandon Property Division.*

### **7. Since the prior audit, HSC has developed an ICP, but further effort is needed in conducting adequate periodic risk assessments.**

During our previous audit period, HSC had not developed an ICP or conducted periodic risk assessments as required by state law and Trial Court rules and regulations such as the Trial Court Internal Control Guidelines. During our current audit period, HSC developed an ICP and performed a risk assessment. However, the risk assessment did not consider significant risks we identified in performing our audit. The Clerk of Courts keeps a signature stamp in his office that is not secured from court staff. Therefore, there is a risk that the signature stamp could be used on checks or court documents without the Clerk of Courts' authorization. In addition, the employee who maintained the Clerk's Office furniture and equipment inventory record also performed the annual verification of inventory. Since one person is responsible for the entire operation, and the functions are not segregated so one person's work serves as a check on another's, there is a risk that errors or irregularities within the inventory cycle could occur and go undetected.

**Recommendation**

HSC should continue to improve its ICP and risk assessments. To accomplish this, it should review the Trial Court Internal Control Guidelines and conduct a risk assessment to address potential problems in fiscal and court operations. It should also perform a risk assessment after changes in management (such as the hiring of a Chief Probation Officer) or significant changes in fiscal operations so that it can develop controls to mitigate any risks identified.

**Auditee's Response**

The Chief Probation Officer did not respond to this issue.

In response to this issue, the Clerk of Courts stated,

*While accepting the findings of the Auditor in continuing to improve the internal control plan with regard to potential risks in the Clerk's Office, I do not consider access during normal business hours of my signature stamp (any signature stamp is kept in a locked vault overnight) a significant risk.*

*The stamp is used with my permission for various notices and docketing purposes on court documents only, never on checks. Trial Court policies and procedures do not allow any signature stamp to be utilized on checks or without my authority. Furthermore, the issuing bank for the Commonwealth will not honor any checks without an original authorized signature.*

*Also, there are at least two or three Deputy Assistant and First Assistant Clerks in a supervisory role in the main office where my signature stamp may be utilized for the proper intended purposes. Furthermore, all employees know that deviation from this practice and procedure would result in prompt disciplinary action and possible termination of employment. No abuse of my signature stamp has ever occurred in this office under the present internal controls in place.*

*Lastly, in reference to this office's Internal Control Plan and Funds Management procedures, for the period of July 2011 through September 2013, members of the Trial Court Internal Audit Staff found that the Clerk's Office has no material weaknesses and is properly discharging its fiduciary responsibility as well as applying the required policies and internal controls promulgated by Office of Court Management and pertinent state statutes. . . .*

*As to the recording of furniture and equipment inventory, the duties of annual verification will be segregated as recommended.*

**Auditor's Reply**

Guidance provided by OSC on performing risk assessments discusses the importance of identifying potential problems, analyzing the procedures in place, developing procedures to mitigate risk, and communicating them. Based on the Clerk of Courts' response, it appears that the Clerk's Office has documented a series of controls that would mitigate the risk of unauthorized use of his signature



stamp on checks. Since the signature stamp can also be used on court documents, particularly those that allow for the waiver of court fees, there is a risk of unauthorized approval of fee waivers that could reduce revenue collections due the Commonwealth. The Clerk of Courts should formally update the risk assessment by identifying the risk of the signature stamp, along with the controls developed as a way to mitigate any errors or irregularities involving its unauthorized use.

**8. Since the prior audit, HSC has succeeded in performing monthly revenue reconciliations.**

During our previous audit period, HSC office personnel could not reconcile revenue that HSC remitted to the Commonwealth as required by Trial Court fiscal policy. As a result, our prior audit report recommended that HSC use the information from the Trial Court's internally prepared revenue summary as a source for reconciling the local court revenue to the local court records.

During our current audit, we determined that HSC performed monthly reconciliations of revenue remitted to the Commonwealth to revenue credited to HSC's revenue accounts in the Commonwealth's Massachusetts Management Accounting and Reporting System.

**9. Since the prior audit, HSC has improved internal controls over bail forfeiture procedures.**

During our previous audit period, HSC needed to improve its internal controls to comply with the General Laws regarding forfeiting bail when defendants default and do not make their required court appearances. Specifically, HSC was in possession of five bails, totaling \$8,500, for which the defendant was in default but the bail had not been ordered forfeited. As a result, our prior audit report recommended that the Clerk of Courts contact either the Superior Court Department or the Trial Court Fiscal Affairs Division to determine whether alternative procedures were available to commence forfeiture proceedings so that these bails could be transmitted to the Commonwealth.

During our current audit, we determined that, as of March 31, 2013, none of the 24 bails held by HSC applied to criminal cases where the defendants were in default or where the bails had been ordered forfeited in open court.

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## APPENDIX A

### Trial Court Inventory Procedures Memorandum

The Trial Court implemented inventory procedures in Fiscal Year 2004 Memo #16, issued to the Clerks of the Trial Court on May 28, 2004. These procedures superseded previous inventory procedures issued by the Trial Court. The memo states,

*The fixed asset inventory must contain all fixed assets with a value over \$100 that are in the care and control of a court/office. There should be one fixed asset inventory for each court division or office. . . .*

. . .

*Fixed assets that become lost or stolen must be reported using the "Report on Unaccounted Variances Losses Shortages or Thefts of Funds or Property" form contained in Section 1.5.8 of the Fiscal Systems Manual.*

. . .

*Each court and office must . . . conduct a physical inventory of the fixed assets to create the data for the initial inventory. . . . A physical inventory must be performed each year before the information is . . . sent to the [Trial Court]. Additionally, courts and offices must ensure that all equipment with a value over \$100 has an inventory tag.*

The Trial Court's fiscal year 2004 inventory procedures detail the information required in the inventory listing, including inventory tag numbers, item descriptions, year received (if known), cost, room or location of the fixed asset, and date of disposal or transfer.

The Trial Court supplemented the fiscal year 2004 inventory procedures with updated equipment inventory procedures issued in Fiscal Year 2009 Memo #8, issued to the Clerks of the Trial Court on October 3, 2008. The memo states,

*Courts and offices should diligently research to determine the original purchase date and cost of all equipment. In instances where documentation is unavailable, courts and offices should use the attached listing . . . as the approximate cost of the equipment and a purchase date of July 1, 2000.*

*The responsibility for determining when assets have exceeded their useful life . . . has been delegated to the Administrative Heads and the Department Heads of each court or office. If it is determined that equipment should be disposed of and removed from the inventory list, documentation must be kept on file to certify that the equipment was no longer useful to the Trial Court. The attached [disposal form] must be used to document the disposal of all assets. The completed form is to be kept on file with the annual inventory listing. . . .*

## APPENDIX B

### Guidance on Reporting Unaccounted-For Variances, Losses, Shortages, or Theft of Funds or Property

Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, states,

*All unaccounted for variances, losses, shortages or thefts of funds or property shall be immediately reported to the state auditor's office, who shall review the matter to determine the amount involved which shall be reported to appropriate management and law enforcement officials. Said auditor shall also determine the internal control weakness that contributed to or caused the condition. Said auditor shall then make recommendations to the agency official overseeing the internal control system and other appropriate management officials. The recommendations of said auditor shall address the correction of the conditions found and the necessary internal control policies and procedures that must be modified. The agency oversight official and the appropriate management officials shall immediately implement policies and procedures necessary to prevent a recurrence of the problems identified.*

The Trial Court Internal Control Guidelines also require the prompt reporting of unaccounted-for variances, losses, shortages, and theft of funds or property. Section 1.5.8 states, in part,

*In compliance with Chapter 647 of the Acts of 1989, all departments, divisions and offices must complete the **Report on Unaccounted For Variances, Losses, Shortages or Thefts of Funds or Property** form immediately following the discovery of one of these occurrences. The form must be signed by the department head and the administrative head of the department, division or office must be notified.*

## APPENDIX C

### Massachusetts General Laws Involving Evidence Retention, Disposal, Forfeiture, and Destruction

#### ***Chapter 278A, Section 16, of the Massachusetts General Laws (Post Conviction Access to Forensic and Scientific Analysis: Retention and Preservation of Evidence or Biological Material by Governmental Entities; Regulations)***

This law was put into effect on May 17, 2012. The law states the following regarding evidence retention:

*Any governmental entity that is in possession of evidence or biological material that is collected for its potential evidentiary value during the investigation of a crime, the prosecution of which results in a conviction, shall retain such evidence or biological material for the period of time that a person remains in the custody of the commonwealth or under parole or probation supervision in connection with that crime, without regard to whether the evidence or biological material was introduced at trial. Each governmental entity shall retain all such evidence or biological material in a manner that is reasonably designed to preserve the evidence and biological material and to prevent its destruction or deterioration. The evidence or biological material need not be preserved if it is to be returned to a third party or if it is of such a size, bulk or physical character as to render retention impracticable.*

#### ***Chapter 276, Section 3, of the General Laws (Search Warrants, Rewards, Fugitives from Justice, Arrest, Examination, Commitment and Bail. Probation Officers and Board of Probation: Seizure, Custody and Disposition of Articles; Exceptions)***

*If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence in any trial. As soon as may be, thereafter, all property seized under clause First of section one [property or articles stolen, embezzled or obtained by false pretenses, or otherwise obtained in the commission of a crime] shall be restored to the owners thereof; and all other property seized in execution of a search warrant shall be disposed of as the court or justice orders and may be forfeited and either sold or destroyed, as the public interest requires, in the discretion of the court or justice, except:*

...

- (b) Rifles, shotguns, pistols, knives or other dangerous weapons which have been found to have been kept, concealed or used unlawfully or for an unlawful purpose shall be forfeited to the commonwealth and delivered forthwith to the colonel of the state police for destruction or preservation in the discretion of the colonel of the state police.*
- (c) Money seized under clause Third of section one ["property or articles the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty-eight"] shall be forfeited and paid over to the state treasurer.*
- (d) Any property, including money seized under section one, the forfeiture and disposition of which is specified in any general or special law shall be disposed of in accordance therewith.*

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***Chapter 94C, Section 47, of the General Laws (Controlled Substances Act: Forfeiture of Property)***

This law states the following regarding the forfeiture of drugs and money related to a crime committed under the Controlled Substances Act:

- (a) *The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:*
- (1) *All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.*
  - (2) *All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.*
  - ...
  - (5) *All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty [unlawful manufacture, distribution, dispensing, possession with intent to manufacture, and trafficking of controlled or counterfeit substances].*
  - (6) *All drug paraphernalia.*
  - ...
- (b) *Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.*
- ...
- (d) *A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or*
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*(7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.*

*The final order of the court shall provide that said moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.*

*There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.*

*All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.*

- (e) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete*

*records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.*

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## APPENDIX D

### Massachusetts General Laws Involving Monthly Probation Fees and Legal Counsel Fees

#### ***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 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; individuals who are required to make child-support payments are not required to pay the monthly probation supervision fee.) 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 fee is \$45 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; individuals who are required to make child-support payments are not required to pay the monthly probation supervision fee.) 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.

#### ***Legal 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 found to be “indigent” or “indigent but able to contribute [to the cost of counsel.]” 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.

***Legal Counsel Contribution***

Established in accordance with Chapter 211D, Section 2, of the General Laws and with 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 legal counsel fee. The amount can also be remitted (brought to zero) if the defendant is acquitted.

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**APPENDIX E****Chapter 211D, Section 2A (f – h), of the  
Massachusetts General Laws: Affidavit of  
Indigency; Waiver Authorizing Access to Verifying  
Information; Quarterly Reports on Implemented  
Procedures**

- (f) *A person provided counsel under this chapter shall be assessed a counsel fee of \$150, which the court may waive only upon a determination from officer's data verification process that the person is unable to pay such \$150 within 180 days. If, upon the biannual reassessment of the person's indigency, the court concludes that the person is able to pay the \$150 counsel fee of which the person obtained a waiver, the court shall revoke the waiver and reimpose the \$150 counsel fee. . . .*
- (g) *. . . Notwithstanding any general or special law to the contrary, a court proceeding shall not be terminated and the person shall not be discharged if the person owes any portion of the legal counsel fee imposed by this section. The clerk shall not release any bail posted on such court proceeding until the legal counsel fee is satisfied in accordance with this chapter.*
- (h) *The clerk of the court shall, within 60 days of appointment of counsel, report to the department of revenue, the department of transitional assistance and the registry of motor vehicles the amount of any legal counsel fee owed by the person for whom counsel was appointed under this chapter. The department of revenue shall intercept payment of such fee from tax refunds due to persons who owe all or a portion of such fee. The registry of motor vehicles shall not issue or renew a person's driver's license or motor vehicle registration for any vehicle subsequently purchased by such person until it receives notification from the clerk of the court that the fee has been collected or worked off in community service.*

## APPENDIX F

### Trial Court Fiscal Systems Manual: Selected Procedures for Preparation and Reconciliation of the Detail Account Trial Balance

Section 11.6 of the Trial Court's Fiscal Systems Manual (Monthly Closing and Reporting) states the following regarding preparation and reconciliation of the Detail Account Trial Balance and approval of the reconciliation:

*All of these reports [including the Bank Account Reconciliation Form] must be signed by the authorized signatory, again according to the policies and procedures set forth [in the Fiscal Systems Manual].*

*The bookkeeper preparing and the individual approving the Bank Account reconciliation and other related reports must be different people. The policies and procedures . . . on authorized signatories must be followed.*

. . .

*Prepare the Detail Account Trial Balance . . . to list all monies being held by the court at the end of the month after the last receipts and disbursements have been recorded; enter each category of money held on the Detail Account Trial Balance.*

. . .

*Maintain the original Detail Account Trial Balance, along with copies of other month-end financial reports, in the Probation Office file for future reference as well as audit review purposes.*

. . .

*The Detail Account Trial Balance . . . must equal the Monthly Summary Trial Balance. . . .*

. . .

*After the Bank Account Reconciliation Form has been completed, reviewed for accuracy and reconciled, fill in the preparer's name and contact information ("**Prepared by**" and "**Telephone No.**") and have it signed and dated by the appropriate party ("**Authorized Signature**" and "**Date**"), where requested at the bottom of the form.*