



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

Making government work better

Official Audit Report – Issued May 23, 2011

Natick District Court

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



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Massachusetts courts generate revenues from a variety of sources, and the amount of total revenues has increased over the years. Revenues are established by either a specific statute or a uniform fee schedule developed in accordance with Administrative Office of the Trial Court (AOTC) rules and regulations. Revenues are collected by local courts and are transmitted monthly to municipalities in the courts' jurisdiction and to the Commonwealth through the AOTC. Although revenues are generally paid in cash, certain circumstances allow for the performance of community service (unpaid work at not-for-profit or governmental entities) in lieu of a cash payment.

Current law provides for courts to retain a portion of the revenues, which generally help offset funding shortfalls to the courts' appropriation accounts. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$27 million from certain named fees collected, provided that the first \$53 million of revenue shall be deposited in the General Fund and not retained. Another section of the annual appropriations act allows the same Chief Justice to spend up to \$26 million of Probation Supervision fees collected and deposited by the courts. These amounts are monitored and allocated to specific courts by a Trial Court Revenue Unit. The Administrative Office of the District Court Department (AODC) and the Office of the Commissioner of Probation have also increased monitoring of revenues by instituting additional reporting processes.

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

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

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NDC did not consistently charge the higher Administrative Probation Fee, which became effective July 1, 2009. As a result, the Trial Court and the Commonwealth did not receive all the funds to which they were entitled, which we estimated to be as much as an additional \$31,581.

INTRODUCTION

Background

Massachusetts courts generate revenues from a variety of sources, and the amount of total revenues has increased over the years. Revenues are established by either a specific statute or a uniform fee schedule developed in accordance with Administrative Office of the Trial Court (AOTC) rules and regulations. Revenues are collected by local courts and are transmitted either directly to municipalities in the courts' jurisdiction or indirectly to the Commonwealth, through the AOTC, monthly. The court system classifies revenues into two categories: general revenue or criminal case monetary assessments. General Revenue is the largest source of revenues, consisting of such items as civil case filing fees, bail forfeitures, court costs, fines, and other general court revenue, all of which are deposited into the Commonwealth's General Fund. Criminal case monetary assessments are established by specific statute and can be deposited into either the General Fund or a specific fund. For revenue deposited into the General Fund, the Commonwealth's accounting system often identifies it as a specifically designated revenue source. Revenues are generally paid in cash, but certain circumstances allow for the waiving of fees or performance of community service (unpaid work at not-for-profit or governmental entities) in lieu of cash payment of certain fees.

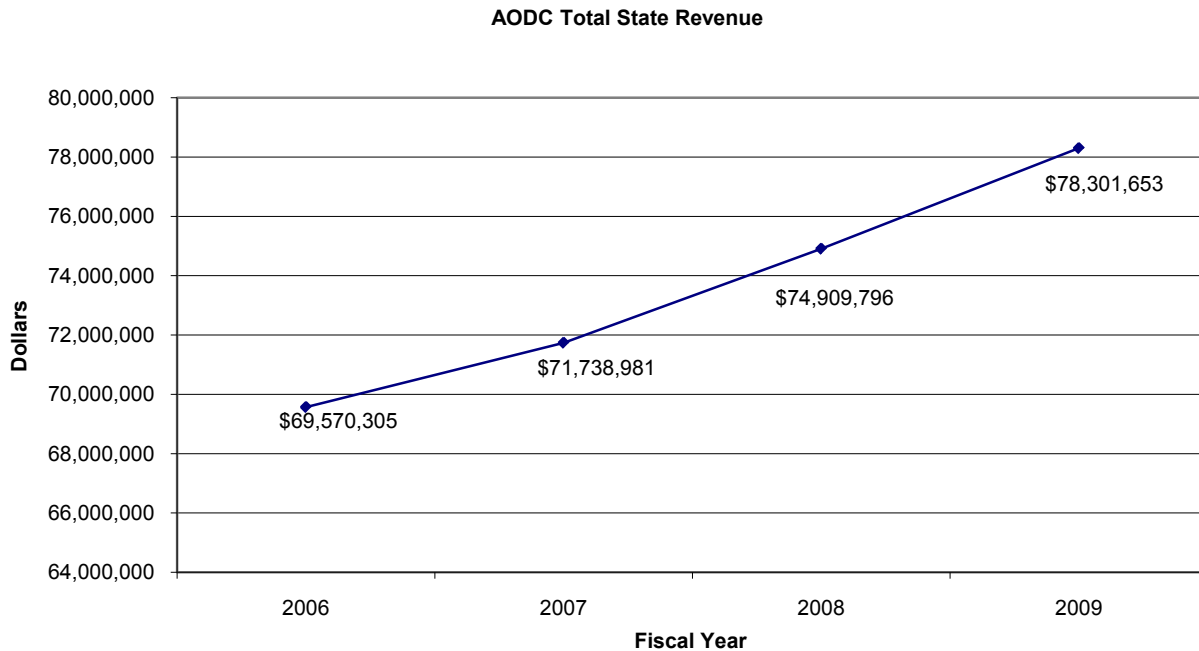
Current law provides for the AOTC to retain a portion of the revenues. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$27¹ million from certain named fees² collected by the courts, provided that the first \$53 million of revenue shall be deposited in the General Fund and not retained. Another section of the annual appropriations act allows the same Chief Justice to spend up to \$26³ million of Probation Supervision Fees collected and deposited by the courts. These amounts are monitored and allocated to specific courts by the AOTC Revenue Unit. The Administrative Office of the District Court Department (AODC) and the Office of the Commissioner of Probation (OCP) have also increased monitoring of revenues by instituting additional reporting processes. These revenues generally help offset funding shortfalls to the courts' appropriation accounts.

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

² At district courts, the applicable fees would include civil entry fees and related surcharges, small claims entry fees and related surcharges, and civil motor vehicle infraction fees.

³ Prior to July 1, 2009, the amount was \$23 million.

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



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

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

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

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

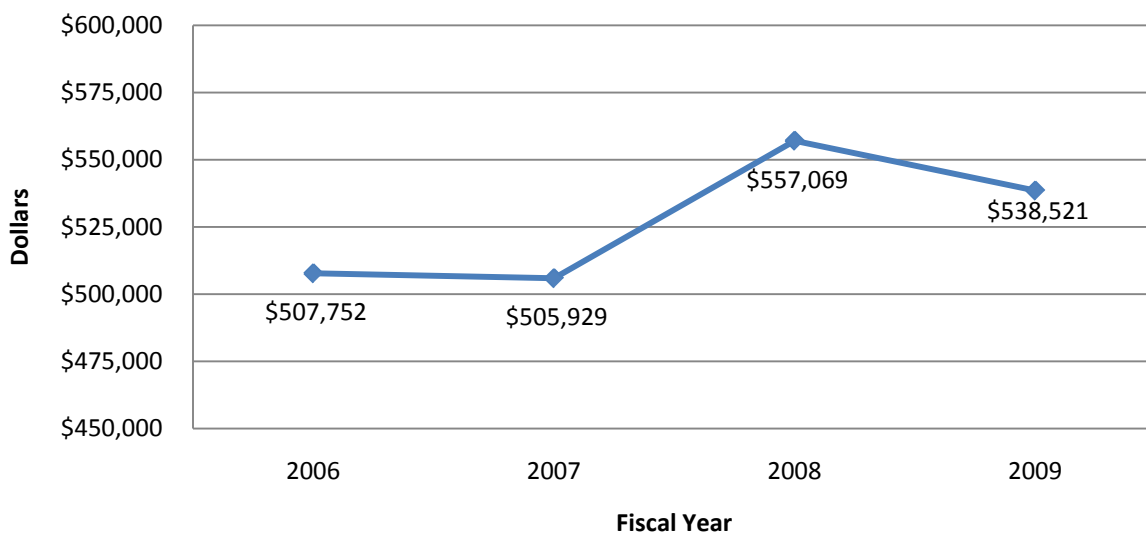
An explanation of the fees follows:

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

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

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

The Natick Division of the District Court Department (NDC) generated revenues that increased from \$507,752 in fiscal year 2006 to \$538,521 in fiscal year 2009, as shown in the following chart:



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

Revenue Source	2006	2007	2008	2009
Probation Fees	\$109,741	\$122,248	\$132,259	\$133,945
Indigent Counsel Fees	30,564	30,072	35,348	42,019
Victim Witness Fees	<u>19,883</u>	<u>18,509</u>	<u>19,834</u>	<u>19,274</u>
Total	<u>\$160,188</u>	<u>\$170,829</u>	<u>\$187,441</u>	<u>\$195,238</u>

In addition to the above-mentioned cash collections at NDC, probationers also performed community service in lieu of paying probation and indigent counsel fees. Based on our review of probation office documents, and reports as well as interviews with probation officials, as of March 31, 2010, approximately 7% of the fee assessments were satisfied with community service. With respect to Victim Witness fees, state law requires either payment of the fee or waiver of the fee if it would cause a severe financial hardship. The district courts do not summarize information on the number of waivers of the Victim Witness fees, so we do not have information on the number of waivers of that fee that were granted. However, our observations while conducting audit fieldwork indicated that the fee was generally assessed and not waived.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls over certain operations of NDC. The scope of our audit included an examination of NDC's controls over administrative and operational activities, including certain fees and bail funds for the period July 1, 2008 through March 31, 2010.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit objectives were to (1) assess the adequacy of NDC's internal controls over the assessment, collection, accounting, waiver, and community service in lieu of payment of certain fees and NDC's

internal controls over bail funds; and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding NDC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and AODC policies and procedures with respect to certain fees and bail funds.

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

To achieve our audit objectives, we performed analytical reviews of AODC revenues, conducted interviews with management and staff, and reviewed prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and NDC's organizational structure. In addition, we obtained and reviewed copies of statutes, policies and procedures, accounting records, and other source documents. We also requested court management to sign a Representation Letter, which is a standard auditing document that confirms certain representations made to us during our audit. Court personnel were advised against signing this letter on advice from AOTC Legal Counsel, as they thought it was too broadly worded. Since this is a performance audit, not a financial audit, Government Auditing Standards do not require us to consider this as a limitation of our audit scope. Our assessment of internal controls over financial and management activities at NDC was based on those interviews and the review of documents.

Our recommendations are intended to assist NDC in developing, implementing, or improving its internal controls and overall financial and administrative operations to ensure that NDC's systems covering certain fees and bail funds operate in an economical, efficient, and effective manner and in compliance with applicable laws, rules, and regulations.

Based on our review, we determined that, except for the issues noted in the Audit Results section of this report, NDC (1) maintained adequate internal controls over certain fee and bail fund activity; (2) properly assessed, recorded, collected, deposited, and accounted for the fees examined; and (3) complied with applicable laws, rules, and regulations for the areas tested.

After concluding audit fieldwork, a draft copy of this report was provided to NDC officials for their review and response; however, NDC officials chose not to provide a written response.

AUDIT RESULTS

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

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

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

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

When the court system first established the PRA system over 25 years ago, computerization capabilities were at a much different level than they are now. The PRA system was established with more emphasis on meeting the needs of capturing information relating to the receipt of funds and subsequent payout and using this information to post to the cash receipts and disbursements journal. The centralized cash system was developed later, with an aim of minimizing redundancy between the Clerk-Magistrate's Office and the Probation Office as well as creating one secure cash collection point for the court.

As a result of the courts' use of the current cash-based system, a number of weaknesses exist. Specifically, the system does not properly establish accountability for and control over the approximately \$35 million in AODC revenues that would traditionally be processed through an accounts receivable system, and the total amount to be collected cannot be readily identified, although detailed information is kept to identify what individuals owe. Additionally, the courts do not have a central control point to highlight non-cash adjustments to receivable balances, such as for community service to be performed in lieu of the payment of fees. Lastly, the potential exists for unauthorized adjustments to be made in the system that would not be identified timely by employees in the normal course of their work.

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

Recommendation

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

2. IMPROVEMENTS NEEDED OVER THE PROCESSING OF ABANDONED BAIL AND BAILS ASSOCIATED WITH CRIMINAL CASES IN DEFAULT

Our audit found that NDC needs to improve on its compliance with state law and AOTC rules and regulations regarding the processing of abandoned bail and bail applying to criminal cases in default status. Specifically, NDC did not always notify persons who posted bail that the bail was available to be returned or transmit unclaimed bails released over three years ago to the Office of

the State Treasurer (OST) as abandoned property. Additionally, NDC did not always order bails forfeited when defendants failed to appear for their scheduled court date. As a result, the Commonwealth has been denied timely access and use of these funds and defendants or sureties that posted bail may not know it is available to be released.

NDC's detailed bail trial balance reported that there were 161 cash bails totaling \$50,023 on hand as of March 31, 2010. Audit tests of 21 criminal cases associated with bails totaling \$3,400 appearing on the detailed trial balance identified 18 cases that needed corrective action. Specifically, one case totaling \$100 should have been transmitted to the OST as abandoned property, one case totaling \$200 should have been transmitted to the OST as forfeited bail and three cases amounting to \$500 where the bail was released and available to be picked up, but letters were not sent to notify the defendant or surety of the release of bail. Additionally, we noted 13 cases totaling \$2,300 in which NDC could have issued bail forfeiture orders, but abstained from such action.

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

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

Moreover, under Section 9.6 of the Fiscal Systems Manual, AOTC established policies and procedures for the processing of unclaimed and abandoned bail. The section states, in part:

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

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

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

Although NDC personnel were aware of the Commonwealth's laws and regulations and NDC had procedures in place to properly process bail, staffing constraints resulted in individual bails not receiving appropriate attention. When NDC staff was made aware of this issue, bails associated with cases where defendants were in default were forfeited and transmitted to the State Treasurer, bails qualifying as abandoned property were sent to OST, and defendants or sureties were notified of unclaimed bails that were available for release.

Recommendation

NDC should perform periodic reviews of bail records to ensure future compliance with the state law and AOTC regulations governing bail. This may enable the court to better comply with the provisions of the General Laws and transmit those bails to the OST in a timely manner.

3. IMPROVEMENTS NEEDED IN INTERNAL CONTROLS OVER FINANCIAL AND ADMINISTRATIVE OPERATIONS

Our review found that while NDC had an internal control plan, it was not updated to account for changes brought about by the court's relocation to the courthouse also used by the Framingham District Court (FDC). This is contrary to state law requirements and AOTC rules and regulations. We also noted that the NDC needed to strengthen its internal controls over reconciling the financial and administrative information contained on its suspended payments list to the data in its criminal case dockets.

a. Improvements Needed in Updating the Internal Control Plan and Conducting Periodic Risk Assessments

Our audit found that when NDC operations were relocated during October 2009, NDC did not update the internal control plan or conduct a risk assessment to account for operational changes brought on by the move to a courthouse also used by FDC.

We found that significant operational changes occurred as a result of the relocation that have not been addressed in the internal control plan. For example, NDC court sessions were staffed by FDC personnel and the resulting court orders and case docketing may not have been conducted in accordance with NDC's operating style. Additionally, allowing non-NDC staff to handle NDC case files (taking court records away from the responsible parties) potentially leaves these documents susceptible to errors or omissions. This is contrary to state law requirements

and AOTC rules and regulations. As a result, the AOTC's efforts to ensure the integrity of court records and assets were diminished.

Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, states, in part, that "internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the Office of the Comptroller." Subsequent to the passage of Chapter 647, the Office of the State Comptroller (OSC) issued written guidance in the form of the Internal Control Guide for Managers and the Internal Control Guide for Departments, which were replaced in September 2007 with the Commonwealth Internal Control Guide. In this revised guide, the OSC stressed the importance of internal controls and need for departments to develop an effective internal control plan, defined as follows:

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

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

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

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

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

bulletins, directives, and memorandums) in an effort to promote effective internal controls in court divisions and offices.

Although NDC personnel were aware of need to update the internal control plan after performing a department-wide risk assessment, staffing constraints, coupled with additional guidance from AODC on the case processing matters resulting from the consolidation, have hindered updating the plan.

Recommendation

The NDC should identify the risks brought on by consolidating and work with Framingham District Court and AODC in order to update its internal control plan to identify and mitigate risks. In the future, periodic risk assessments should be performed and the internal control plan should be updated based on the results of these risk assessments, as necessary.

b. Improvements Needed over Reconciling the Financial and Administrative Information Contained on its Suspended Payments List to the Data in its Criminal Case Dockets

Our audit found that while the NDC Clerk Magistrate's Office properly receipted collections through the electronic cash register and validated those collections on the corresponding case papers, it did not ensure those monetary criminal assessments, collections, dispositions, and other pertinent case information was properly reflected on the suspended payments list. The suspended payments list (SPL) replaced the probation receipt accounting system when the court consolidated to a single cash collection point. The SPL is an electronic excel spread sheet that itemizes, by case and receipt category, all monies ordered by the court. It contains pertinent case information, including probationer's name, case number, monetary assessment category and amount, and payment history, as well as other data. Our review found that data entry into the SPL for both establishing the account and subsequently accounting for payment activity and additional court orders was, at times, entered incorrectly or not at all. Incorrect entries and lack of entering all court case activity caused the data appearing in the SPL to be out of agreement with the court records. For example, the SPL indicated a probationer owed \$1,800, yet the case papers noted that five months earlier the probationer was incarcerated and outstanding assessments were remitted (forgiven) by the court. Moreover, there were numerous data entry errors on case numbers, assessment categories, and spelling of probationer's names.

NDC officials acknowledged that discrepancies exist between the SPL and case papers. While they realize the records should be in agreement, the SPL is viewed as an internal document and the case papers are the official court records. Also, staffing constraints have prevented the court from correcting previous typographical errors on the SPL. However, court personnel plan to be more diligent in future data entry.

Recommendation

NDC should make accurate data entry a priority and institute procedures to ensure that the SPL is reflective of case activity. It should also correct previously made entries that have been made in error so that the SPL reconciles with the court's case papers.

4. IMPROVEMENTS NEEDED TO COMPLY WITH COLLECTION OF INCREASED ADMINISTRATIVE PROBATION FEE

Administrative Probation Fees⁴ were increased in accordance with state law effective July 1, 2009. At NDC, the probation staff did not send letters to its probationers explaining that monthly probation fees were increasing from \$21 to \$50. Therefore, individuals on administrative probation prior to July 1, 2009 had their accounts credited at the old rate of \$21 instead of \$50 – a \$29 shortfall. Individuals placed on administrative probation subsequent to July 1, 2009 were properly charged the higher administrative probation fee. As a result, the Trial Court and the Commonwealth did not receive all the funds to which they were entitled, which we estimated to be as much as an additional \$31,581 subsequent to July 1, 2009. State law and Office of the Commissioner of Probation (OCP) guidance require the local courts to retroactively apply increased administrative probation supervision fees to individuals on probation as of July 1, 2009.

The Fiscal Year 2010 Appropriations Act amended Section 87A of Chapter 276 of the Massachusetts General Laws by increasing the monthly administrative probation fee from \$21 to \$50 for individuals on probation. This change was reiterated in a July 3, 2009 memorandum from the Deputy Commissioner of Probation to all Chief Probation Officers. The memorandum summarized the change, clarified who would be affected, and established a process for communicating such change to the affected parties, as stated below:

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

*On June 29, 2009, the Governor passed the Commonwealth's budget for FY 2010. Outside sections 99 and 100 of the budget amend G. L. 276 § 87A, increasing the monthly supervision fee from \$21 to \$50 (\$45 monthly fee for probation supervision and \$5 monthly fee for the victim service surcharge). This increase is **effective July 1, 2009**. All probationers required to pay administrative supervision fees as of the effective date are required to pay the increased fees, regardless of the start date of probation. The increased fees, however, are not to be applied retroactively prior to the effective date of July 1, 2009.*

Based on the foregoing, please identify all probationers that are presently paying administrative fees and notify them that, as of July 1, 2009, they are required to pay the increased monthly supervision fee of \$50.

Please consult with your respective First Justice (Regional Justice in the Superior Court) if you have not already done so.

As a result of not collecting the proper (increased) monthly fee, the Commonwealth and the Trial Court did not receive all the funds to which they were entitled. The First Justice stated to auditors during the audit process that NDC did not retroactively apply the increased administrative probation fee to individuals whose probation period continued after July 1, 2009 because it would conflict with Conditions of Probation contracts signed by the probationer, probation officer, and judge, which established the monthly administrative probation fee at the lesser amount of \$21.

Recommendation

To improve internal controls and ensure compliance with state law and OCP guidance, NDC should modify its procedures to promptly adjust its accounting system for monthly fee changes. It should also review its current accounts and determine whether there exists any individual on administrative probation who are paying the lesser amount and make the appropriate changes. Additionally, the Probation Office and the Clerk-Magistrate's Office should periodically compare case records to ensure that they contain corresponding information to eliminate the need to retroactively adjust probationer's accounts.