

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON, MASSACHUSETTS 02108

A. JOSEPH DeNUCCI
AUDITOR

TEL. (617) 727-6200

NO. 2009-1177-30

INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN FEES AND BAIL OF THE
ORANGE DIVISION OF THE
DISTRICT COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2007 TO JUNE 30, 2009

OFFICIAL AUDIT
REPORT
AUGUST 13, 2010

TABLE OF CONTENTS/EXECUTIVE SUMMARY

INTRODUCTION**1**

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

Current law provides for courts to retain a portion of the revenues, which generally help offset funding shortfalls to the courts' appropriation accounts. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$20 million from certain named fees collected that exceed the amount of those fees collected for the base year of 2003 (the floor amount). Another section of the annual appropriations act allows the same Chief Justice to spend up to \$23 million of Probation Supervision fees collected and deposited by the courts not subject to a floor amount. These amounts are monitored and allocated to specific courts by a Trial Court Revenue Unit. The Administrative Office of the District Court Department (AODC) and the Office of the Commissioner of Probation have also increased monitoring of revenues by instituting additional reporting processes.

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

The Orange Division of the District Court Department (ODC) presides over civil and criminal matters falling within its territorial jurisdiction. Of the 62 district courts throughout the Commonwealth, ODC is one that we selected for further review of the above fees. The purpose of our audit was to review ODC's internal controls and compliance with state laws and regulations regarding certain fees and bail funds for the period July 1, 2007 to June 30, 2009.

AUDIT RESULTS	7
1. CONSIDERATION SHOULD BE GIVEN TO ESTABLISHING AN ACCOUNTS RECEIVABLE SYSTEM	7
<p>We noted that although ODC has a system in place for collecting, disbursing, and accounting for partial payments of court-ordered assessments, its financial recordkeeping system does not have an accounts receivable component. Since this is a weakness at every district court location, the AOTC and the AODC should consider implementing an accounts receivable system to track collections rather than rely on the cash-based system currently in use. Without an accounts receivable system, courts lack control over a significant source of revenue and cannot readily identify the total amount to be collected, although detailed information is kept to identify what individuals owe. Of the total revenues of approximately \$78 million collected by all district courts during fiscal year 2009, over \$35 million of fees collected for all 62 district court locations in that year could have been processed through an accounts receivable system if the courts had one.</p>	
2. VICTIM WITNESS FEE ASSESSMENT COLLECTIONS NOT ALLOCATED AS FIRST PRIORITY	9
<p>Although ODC imposed Victim Witness fee assessments as required, it did not always apply partial payments made by the defendant to the Victim Witness fee assessment as a first priority. State law requires ODC to apply any payments made by persons to the Victim Witness fee assessment before any other criminal assessments are satisfied. As a result, collection of Victim Witness fee assessments is delayed.</p>	
3. INTERNAL CONTROL IMPROVEMENTS NEEDED OVER THE PROCESSING OF ABANDONED BAIL	10
<p>Our audit found that ODC needs to improve its internal controls to comply with state law and AOTC rules and regulations regarding the processing of abandoned bail. Specifically, ODC did not transfer bails to the Commonwealth that had been on hand for more than three years from the date the bail was available for release. As a result, the Commonwealth has been denied timely access and use of bails.</p>	

INTRODUCTION

Background

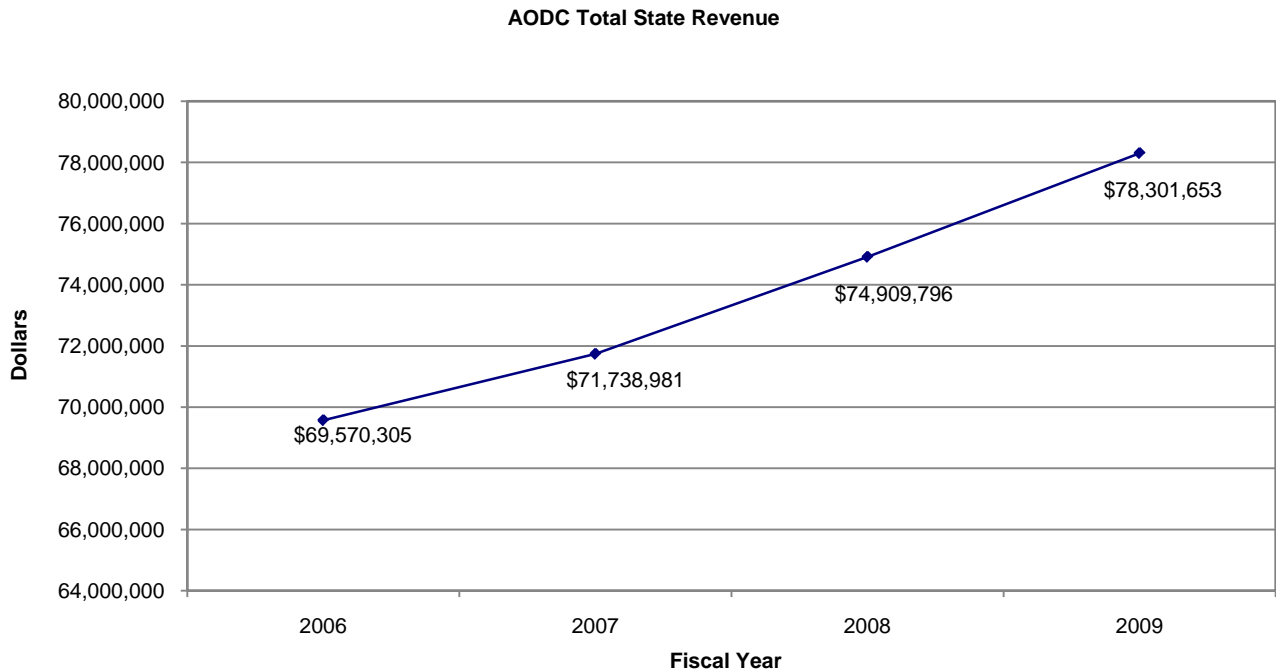
Massachusetts courts generate revenues from a variety of sources, and the amount of total revenues has increased over the years. Revenues are established by either a specific statute or a uniform fee schedule developed in accordance with Administrative Office of the Trial Court (AOTC) rules and regulations.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

Current law provides for the AOTC to retain a portion of the revenues. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$20 million from certain named fees¹ collected by the courts that exceed the amount of those fees collected for the base year of 2003 (the floor amount). Another section of the annual appropriations act allows the same Chief Justice to spend up to \$23 million of Probation Supervision Fees collected and deposited by the courts not subject to a floor amount. These amounts are monitored and allocated to specific courts by the AOTC Revenue Unit. The 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.

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

¹ At district courts, the applicable fees would include civil entry fees and related surcharges, small claims entry fees and related surcharges, and civil motor vehicle infraction fees.

new fees enacted in accordance with legislative action, general fee increases, and increased monitoring and collection of fees. A chart of the 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>

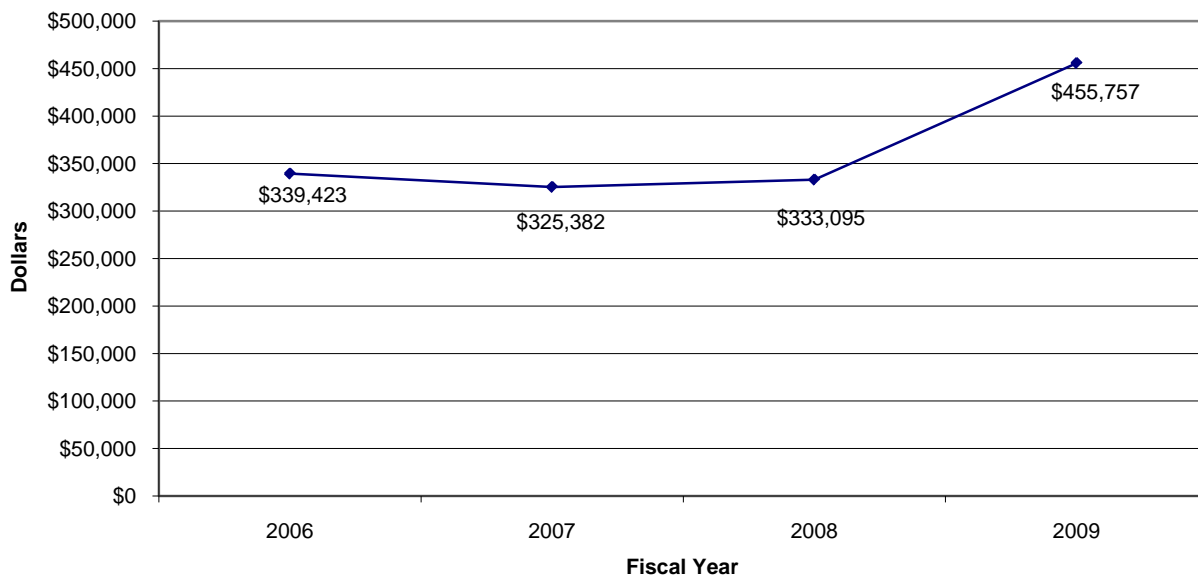
As shown in the preceding chart, the largest revenue source category, General Revenue, consists of a wide variety of items, including state fines, costs, surcharges, civil entry fees, copy fees, etc., that are deposited into the Commonwealth's General Fund. The next five revenue sources (Probation fees 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. The amount of the fee is \$20 per month plus a \$1 per month Victim Services surcharge. The fee does not apply to nonsupport convictions where support payments are a condition of probation. The fee can be waived or reduced upon a court hearing if the payment of the fee would constitute an undue hardship on the defendant or his/her family, with the defendant required to perform some amount of community service. Additionally, the court hearing can result in the fee being offset by the amount of restitution payments (if applicable) against the defendant.

- **Indigent Counsel Fee:** Established in accordance with Chapter 211D, Section 2, 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 Orange Division of the District Court Department (ODC) generated revenues that increased from \$339,423 in fiscal year 2006 to \$455,757 in fiscal year 2009, as shown in the following chart.



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

Revenue Source	2006	2007	2008	2009
Probation Fees	\$110,484	\$95,393	\$103,997	\$121,210
Indigent Counsel Fees	47,604	49,676	53,373	43,251
Victim Witness Fees	<u>12,790</u>	<u>15,397</u>	<u>16,224</u>	<u>16,376</u>
Total	<u>\$170,878</u>	<u>\$160,466</u>	<u>\$173,594</u>	<u>\$180,837</u>

In addition to the above cash collections at ODC, probationers also performed community service in lieu of paying probation and indigent counsel fees. Based on our review of probation office documents and reports as well as interviews with probation officials, approximately 13% 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 ODC. The scope of our audit included an examination of ODC's controls over administrative and operational activities, including certain fees and bail funds for the period July 1, 2007 to June 30, 2009.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included audit procedures and tests that we considered necessary under the circumstances.

Our audit objectives were to (1) assess the adequacy of ODC's internal controls over the assessment, collection, accounting, waiver, and community service in lieu of payment of certain fees and ODC's internal controls over bail funds and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding ODC'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 ODC's Judge's Lobby, Clerk-Magistrate's Office, and Probation Office. We reviewed criminal-case activity for the three named fees as well as bail activity. We also reviewed the fee waiver processes and community service in lieu of fees procedures to determine whether AODC policies and procedures were being followed.

To achieve our audit objectives, we performed analytical reviews of AODC revenues, conducted interviews with management and staff and reviewed prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and ODC's organizational structure. In addition, we obtained and reviewed copies of statutes, policies and procedures, accounting records, and other source documents. Our assessment of internal controls over financial and management activities at ODC was based on those interviews and the review of documents.

Our recommendations are intended to assist ODC in developing, implementing, or improving its internal controls and overall financial and administrative operations to ensure that ODC'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, ODC (1) maintained adequate internal controls over certain fee and bail fund activity; (2) properly assessed, recorded, collected, deposited, and accounted for the fees examined; and (3) complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

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

We noted that although the Orange Division of the District Court Department (ODC) 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 probationer's money that are found depending on the specific court location: the Probation Receipt Account (PRA) system and the centralized cash system, which handles collections from the Clerk-Magistrate's office as well as for people on probation. Although there are data elements captured in both the PRA and centralized cash systems that would be found in an accounts receivable system (e.g., total amount due and amounts collected to date), this information is not used to control overall activity and an accounts receivable control account is not used. Therefore, neither is a true accounts receivable system.

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

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

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

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

Recommendation

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

Auditee's Response

The First Justice provided the following response:

This is a need common to all courts and will be implemented once such a system is ready.

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

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

State law requires the imposition of a Victim Witness fee of \$45, \$50, or \$90 when a defendant is either convicted or pleads to a finding of sufficient facts in a case. The amount of the assessment depends on whether the conviction was for a delinquency, misdemeanor, or felony. Specifically, Section 8 of Chapter 258B of the General Laws, as amended, states:

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

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

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

By not prioritizing Victim Witness fee assessment payments, the collection of Victim Witness fee assessments is delayed. We discussed this matter with ODC officials, who stated that they would review the priority order for crediting partial payments and make any necessary adjustments.

Recommendation

ODC should review its current procedures, consult with the AODC, and determine whether Victim Witness fee assessments should be processed as a first priority upon collection.

Auditee's Response

The First Justice provided the following response:

The Commonwealth has not lost any revenue as a result of the application of some payments to court assessments in advance of the victim witness fee. Nevertheless it is important that that fee be collected first and your recommendation is being followed.

3. INTERNAL CONTROL IMPROVEMENTS NEEDED OVER THE PROCESSING OF ABANDONED BAIL

Our audit found that ODC needs to improve its internal controls to comply with state law and AOTC rules and regulations regarding the processing of abandoned bail. Specifically, ODC did not transfer bails to the Commonwealth that had been on hand for more than three years from the date the bail was available for release. As a result, the Commonwealth has been denied timely access and use of bails.

The court's detailed bail trial balance reported that there were 68 cash bails totaling \$37,463 on hand as of June 30, 2009. We sampled seven bails totaling \$3,900 and noted four instances totaling \$1,050 that should have been transmitted to the Office of the State Treasurer as abandoned property.

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

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 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 can not 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.

Although ODC personnel were aware of the Commonwealth's laws and regulations and ODC had procedures in place to process abandoned bail, staffing constraints resulted in individual bails not receiving appropriate attention.

When ODC was made aware of these bail issues, it commenced a review of the associated criminal case files in order to dispose of bails in accordance with AOTC regulations and state law.

Recommendation

ODC should perform periodic reviews of bail records to ensure future compliance with state law and AOTC regulations governing bail. At a minimum, ODC should notate on its bail trial balance the applicable dates for notification to sureties and defendants, and transmittal to the Commonwealth. This may enable ODC to better comply with the provisions of the General Laws and AOTC requirements.

Auditee's Response

The First Justice provided the following response:

The recommendation concerning abandoned bails is appropriate. While concerned that the small sample of bails analyzed may not have given an accurate view of the Court's actions, we will be more vigilant in this area.