



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

Making government work better

Official Audit Report – Issued February 2, 2016

Wrentham Division of the District Court Department—Review of Probation Supervision Fees: Transactions and Monitoring of Fulfillment by Probationers

For the period July 1, 2012 through December 31, 2013





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February 2, 2016

Emogene Johnson-Smith, First Justice
Wrentham Division of the District Court Department
60 East Street
Wrentham, MA 02093

Dear First Justice Johnson-Smith:

I am pleased to provide this report on the Wrentham Division of the District Court Department. This report details scope of our overall audit of the Trial Court as well as the objectives, procedures, findings, and recommendations related to our audit testing at this specific court court for the period July 1, 2012 through December 31, 2013. My staff discussed the contents of this report with court personnel, whose comments we considered in drafting this report.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

OCC	Office of Community Corrections
OCP	Office of the Commissioner of Probation
PSF	probation supervision fee
WDC	Wrentham Division of the District Court Department

EXECUTIVE SUMMARY

This report reflects audit testing performed at the Wrentham Division of the District Court Department (WDC) as part of an audit of the Trial Court’s administration and oversight of probation supervision fee (PSF) assessments. A PSF is a monthly fee that judges are statutorily required to assess for a criminal offender placed on probation (a probationer), to be paid for the length of his or her probation term. Section 87A of Chapter 276 of the Massachusetts General Laws allows for PSFs to be waived in certain instances; normally, in order to grant a waiver, the court must document the existence of financial problems or other issues that would make paying the monthly fee an undue hardship for the probationer. In these situations, the statute requires the probationer to perform unpaid monthly community service for as long as the potential undue hardship exists.

Our overall audit of the Trial Court’s administration of PSFs (Report No. 2014-5160-3J) included audit testing at 16 district-court locations, including WDC, to assess the process the Trial Court has established for PSFs, determine whether PSF-related transactions were properly documented in court records, and determine whether probationers were adequately monitored to ensure that they were fulfilling the PSF requirement. This report presents the results of our audit testing at WDC specifically. Audit findings for the entire audit project are presented in a separate report for that project.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 9	WDC allows some probationers to pay probation supervision fees—even if they have been assigned community service instead—without the required judge’s order. This means that personnel have unnecessarily spent time establishing the community-service account and that nonprofits that counted on the community service are not receiving it.
Recommendations Page 10	<ol style="list-style-type: none">1. WDC should flag community-service orders in MassCourts to ensure that court personnel do not accept payments from probationers who have been assigned community service instead.2. When a probationer can no longer comply with the judge’s order to perform community service, WDC should ensure that the decision of whether to change the type of penalty is made by a judge, not by other court employees.

Finding 2a Page <u>11</u>	Some judges allow probation officers to choose whether a probationer should pay a monthly PSF or perform community service, contrary to the General Laws.
Finding 2b Page <u>12</u>	The Probation Office does not have a centralized method to effectively track hours of community service performed.
Recommendations Page <u>13</u>	<ol style="list-style-type: none">1. WDC should comply with the requirements of Section 87A of Chapter 276 of the General Laws for the imposition and waiving of PSFs and the restitution made for nonpayment. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a monthly PSF or whether a finding of fact has been held to allow the fee to be waived and community service performed instead.2. WDC should establish a centralized method of tracking community service performed.3. The Probation Office should promptly report all hours of community service performed by each probationer, regularly throughout the probation term, to the Clerk-Magistrate's Office for recording in MassCourts so that both offices can readily determine the status of probationers' accounts.

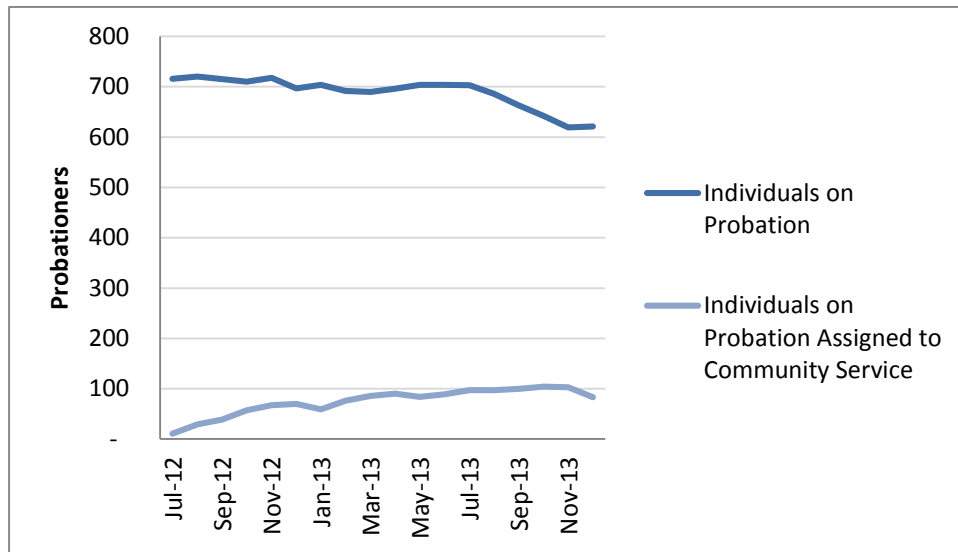
OVERVIEW OF ENTITY

The Wrentham Division of the District Court Department (WDC) presides over civil, criminal, and other matters falling within its territorial jurisdiction: the towns of Foxborough, Franklin, Medway, Millis, Norfolk, Plainville, Walpole, and Wrentham. It 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-Magistrate's Office. WDC's Probation Office is responsible for enforcing court orders when an individual before the court is placed on probation.

When an individual is placed on probation, Section 87A of Chapter 276 of the Massachusetts General Laws requires courts to assess the individual a \$50 (administrative) or \$65 (supervised) monthly probation supervision fee (PSF). Supervised probation requires more interaction with a probation officer than administrative probation, which may only require the individual to report to the officer quarterly or at the end of the probation term. It also generally has a longer duration than administrative probation. The statute allows judges to waive the fee in full if the individual is making monthly restitution payments that are greater than or equal to the fee. It also allows the judge to waive the fee if the court "determines after a hearing and upon written finding that such payment would constitute an undue hardship on [a probationer] or his family due to limited income, employment status or any other factor." That waiver requires the individual to perform unpaid monthly community service.

During the audit testing period (July 1, 2012 through December 31, 2013), WDC reported 1,206 new probation cases and 1,320 discharged probation cases, leaving 621 probation cases at the end of this period. As of December 31, 2013, 54% of the probationers were on supervised probation and 46% were on administrative probation. Additionally, WDC records indicated that approximately 10% of these probationers were required to perform unpaid community service.

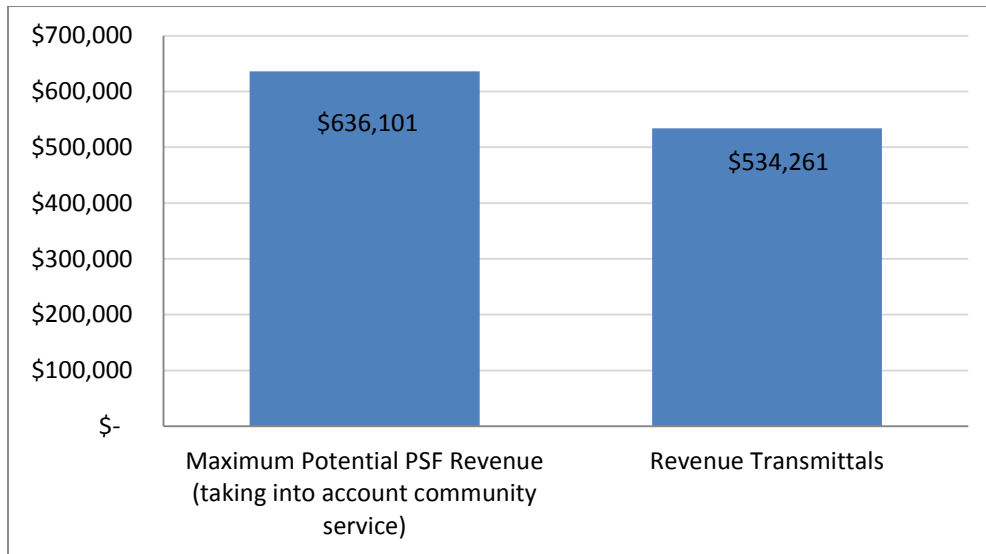
The graph below reflects the month-end number of probationers and how many of them were assigned community service.



During the testing period, WDC collected and transmitted \$534,261 of PSFs to the State Treasurer. Taking into account the number of individuals required to perform community service, WDC’s actual transmittals were approximately 84% of the estimated potential PSF revenue. We calculated this estimate by combining WDC’s monthly reports of probation activity; totaling the numbers of individuals on administrative and supervised probation at the end of each month; and multiplying those numbers by either \$50 or \$65, as applicable. The estimate does not include probationers whose supervision may have been transferred to another court but who are carried on the original court’s record. The difference between this percentage and 100% could be the result of subsequent court-ordered remittals¹ of PSFs (either the full amount or any remaining unpaid PSF balance).

1. Remittal occurs when the court terminates a person’s probation because s/he has not complied with the terms and conditions of probation (sometimes resulting in incarceration), or when the court waives the balance of a PSF for a documented reason at the end of the probation term.

The following chart compares estimated potential PSF revenue with actual PSF revenue transmittals (after the community-service percentage is accounted for):



OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Trial Court’s administration and oversight of monthly probation supervision fees (PSFs) for the period July 1, 2012 through December 31, 2013. The scope of that audit includes an assessment of the process the Trial Court has established for PSFs and whether court divisions are adequately recording, monitoring, and fulfilling court-ordered assessments of PSFs at 16 selected district-court locations, which together account for \$7.5 million (23%) of the \$32.8 million in PSF collections transmitted to the state for the 18 months covered by the audit. The Wrentham Division of the District Court Department (WDC) was one of the 16 court locations selected. WDC accounted for \$534,261 in PSF revenue transmitted during those 18 months.

The procedures we completed at WDC were part of the overall Trial Court PSF audit, which we conducted 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.

The objective of our work at each court location was limited to determining the extent to which the court was complying with the responsibilities established by Section 87A of Chapter 276 of the General Laws, as well as guidance issued by the Trial Court; the Office of the Commissioner of Probation (OCP); and the court location itself, if it had issued any.

Below is a list of our objectives related to the procedures completed at WDC, indicating each question we intended our audit testing to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in our findings.

Objective	Conclusion
1. Are PSFs assessed in the correct amounts, and when a PSF is waived, does the court record include a written finding that the fee would constitute an undue hardship that requires monthly community service instead?	No; see Finding 2a
2. Are PSF assessments properly recorded by the Clerk-Magistrate’s Office?	Yes
3. Are probation officers enforcing the requirement that probationers pay PSFs?	Yes

Objective	Conclusion
4. Is the performance of community service, when allowed by the court in lieu of monthly PSF payments, adequately tracked, promptly reported, and accurately recorded?	No; see Findings <u>1</u> and <u>2b</u>

Our analysis of WDC’s information and data was intended to determine whether PSF transactions and the court’s monitoring of probationers’ PSF obligations were adequately supported by the court records; it was not designed to detect all weaknesses in the court’s internal control system. Further, our procedures did not include tests of internal controls to determine their effectiveness, because in our judgment, such testing was not necessary to determine the accuracy or reliability of PSF records. Our understanding of internal controls and management activity at WDC was based on our interviews and document reviews. Our audit testing was limited to what we considered appropriate when determining the cause of any PSF noncompliance.

To achieve our objectives, we performed the following procedures:

- We interviewed officials and other staff members from the Trial Court, OCP, and WDC and reviewed relevant documents, statutes, and regulations as well as WDC’s policies, procedures, and accounting records.
- We reviewed internal audits conducted by the Trial Court and OCP to determine whether any weaknesses that had been identified pertained to our current objectives.
- We obtained statistical data regarding probationer counts from OCP and compared the data to counts in WDC’s monthly report of probation activity for the testing period.
- We obtained from the Trial Court PSF assessment data (financial docket reports) for WDC, which we compared to WDC case files for accuracy.
- We obtained and reviewed records of community service from OCP’s Office of Community Corrections, which operates the Trial Court’s community-service program.
- We obtained and analyzed case data from selected court criminal case docket records and traced and compared them to MassCourts (WDC’s case-management system) for consistency and completeness. We also interviewed court officials who were knowledgeable about MassCourts data-input activities. Since the court case docket record is the source document used to update MassCourts and the principal document that identifies all court activity for 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 MassCourts for the purposes of our audit testing. We believe the information we obtained from case docket records was sufficient for the purposes of our analysis and findings. We relied on hardcopy source documents, interviews, and other non-computer-processed data as supporting documentation on which we based our conclusions.

- We obtained and analyzed information regarding probationers from the Probation Office's hardcopy files and traced and compared it to MassCourts for consistency and completeness. Since the Probation Office file is the source document that identifies all the probationer's activity (including documentation of assessment, waiving, and collection of monthly PSFs and monitoring of monthly PSFs and/or performance of community service), we did not rely on computer-processed data. We believe the information we obtained from the Probation Office files was sufficient for the purposes of our analysis and findings.
- For our examination of PSFs, we selected transactions primarily by using random, nonstatistical sampling in order to eliminate bias by giving all items in the population an equal chance of being chosen. Therefore, we did not project the results of our samples to the population. More specifically,
 - For recording and fulfillment of court-ordered PSF assessments, we randomly selected 60 out of 988 cases on the financial docket reports to test whether the PSF activity was accurately and promptly recorded by the Clerk-Magistrate's Office and whether, when PSFs were waived, judges provided written findings of fact and required probationers to perform monthly community service instead.
 - For performance of community service (when allowed by the court as a means of fulfilling the PSF assessment), we randomly selected 10 out of 82 probationers assigned community service to verify that probation officers were monitoring and tracking the probationers' progress toward completion.

Any financial data we obtained from the Massachusetts Management Accounting and Reporting System about WDC's activities during the testing period were not used in our testing; the data were used solely for the purpose of presenting background information in our report. Consequently, we did not assess the reliability of these data.

DETAILED FINDINGS WITH COURT RESPONSE

1. The court allows some probationers to pay probation supervision fees, rather than performing community service, without the required judge's order.

The Wrentham Division of the District Court Department (WDC) allowed some probationers to pay probation supervision fees (PSFs), even though they had been ordered to perform monthly unpaid community service instead, without obtaining the required consent from a judge. This results in inefficient use of the Probation Office's limited staff resources, since court personnel may be unnecessarily completing the paperwork and other tasks necessary to establish the community-service account. Additionally, nonprofit and public-service agencies (e.g., homeless shelters, schools, and city parks) that count on this community service are not getting the benefit.

As part of our testing, we obtained a list of WDC's probationers who had been ordered to perform community service in lieu of making monthly PSF payments. We randomly selected a sample of 10 criminal cases from this list. We determined that 7 of these 10 probationers (70%) had either partially or fully paid the PSF rather than performing the equivalent amount of community service. We believe that this high percentage calls into question the effectiveness of WDC's PSF waiver process.

Authoritative Guidance

According to Section 87A of Chapter 276 of the Massachusetts General Laws, if a judge finds that assessing a PSF would constitute an undue hardship on a probationer or his/her family, the probationer must instead perform monthly community service as part of his/her penalty.

*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. [emphasis added]*

Additionally, probationers must obtain consent from the court to change from community service to payments, according to Section 5 of the Trial Court's Fiscal Systems Manual.

If a community service order is changed (judicial order required) from a monetary assessment to a non-monetary assessment or vice versa, the appropriate community service docket codes must be entered in the MassCourt system. . . . Any change to a fiscal obligation requires the case to be modified only by a judicial order in the courtroom.

Reason for Noncompliance

MassCourts records all PSFs as money owed, even when it has actually been determined that the probationer owes community service instead. Community-service hours performed are not documented in MassCourts (as a reduction in the amount owed) until the probation ends or the probationer's community-service hours are reported as complete (which also may not occur until the end of the probation term). Therefore, if a probationer makes a monetary payment toward his or her PSF balance, the Clerk-Magistrate's Office cannot readily see that this is not the approved payment method.

Recommendations

1. WDC should flag community-service orders in MassCourts to ensure that court personnel do not accept payments from probationers who have been assigned community service instead.
2. When a probationer can no longer comply with the judge's order to perform community service, WDC should ensure that the decision of whether to change the type of penalty is made by a judge, not by other court employees.

Court's Response

After consulting with the Chief Probation Officer and Clerk-Magistrate, the First Justice provided the following response:

By permitting the probationer the option of either performing the required hours of community work service or paying the equivalent cash amount as each installment becomes due, the probationer is able to take advantage of periodic temporary employment opportunities that he or she would have to forgo if they could not temporarily switch their court obligations from community work service to a cash payment. My experience as a judge informs me that the probation population, many of whom are indigent, are often times unemployed for at least some period of time during the term of their probation. Many probationers have seasonal job opportunities, rather than any kind of steady employment.

Permitting the probationer this option of paying the probation supervision fee or performing community service does not appear to be inconsistent with the statute which specifically provides that a waiver of probation supervision fees "shall be in effect only during the period of time that said person is unable to pay his monthly probation fee." G.L. c. 276A, § 87A.

Finally, requiring the probationer to appear in person in court so that an order could issue (thereby possibly giving up a day of employment) may be a meaningless event, as once payment is offered, it seems clear that the probationer has evidenced his or her ability to pay. I am unaware of any scenario where the offer of payment would be rejected, and community service required.

Auditor's Reply

We agree with WDC that statutory provisions require waiving of PSFs only during the time that they are documented to be an undue hardship. However, we found that a high percentage of PSF waivers were granted by WDC to probationers who could actually afford to pay the monthly fee, suggesting that WDC's PSF waiver process is flawed. According to the WDC records for the 7 cases where this happened, WDC waived PSFs for hardship reasons and required the probationers to perform monthly community service. Additionally, allowing the probationer to substitute payment when ordered to perform monthly community service is contrary to the Trial Court's policy requiring changes to be brought back before the court and "modified only by a judicial order." We therefore stand by our finding and recommendations.

2. WDC does not always waive monthly PSFs as required or effectively track community service.

a. WDC does not always waive probation supervision fees as required.

Some WDC judges allow a person's probation officer to choose whether s/he should pay a monthly PSF or perform community service, a procedure that is contrary to Section 87A of Chapter 276 of the General Laws. Specifically, the sentencing judge imposes either a monthly probation fee or unpaid community service on the probationer. However, the judge allows the supervising probation officer to decide which penalty is appropriate without documenting a finding-of-fact hearing that would determine whether the probationer was able to pay the monthly probation fee. Because probation officers can choose to allow probationers to perform community service instead of paying PSFs, the usual requirements of the Office of the Commissioner of Probation, such as conducting administrative and surrender hearings for nonpayment of PSFs, may be bypassed. As a result, the Commonwealth may be forgoing PSFs that probationers would have been able to pay.

We randomly selected 60 probation case files in which an individual had been placed on probation and ordered to pay a monthly PSF or perform community service during the testing period. The purpose of our review was to determine whether the court was adequately documenting PSF waivers and requiring community service of probationers who could not pay PSFs.

Of the 60 probationers selected, we identified 15 for whom the judge had added "or community service" to the probation sentence, allowing the probation officer to decide which penalty—a fee or community service—was appropriate.

Authoritative Guidance

Section 87A of Chapter 276 of the General Laws requires the imposition of a designated fee, depending on which type of probation the probationer is placed on. The PSF 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.

Reasons for Assessment Issues

Court officials stated that judges at WDC had been ordering PSFs this way for years and it had become an accepted practice to do so.

b. WDC does not effectively track community service performed by probationers.

The court does not have a centralized method to effectively track all the hours of community service performed through the Office of Community Corrections (OCC)² or independent work arrangements made outside OCC. As a result, WDC cannot readily determine how many community-service 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.

Our review was intended to confirm that the Probation Office staff tracks whether probationers perform community service during each month in which it is required. We reviewed the probationers' files and copies of community-service records provided to the Probation Office by OCC to determine whether the Probation Office staff verified the community-service hours.

We reviewed 10 criminal cases in which an individual was placed on probation and was ordered to perform community service rather than paying a PSF. From the 10 cases we examined, only one probationer actually performed community service, and the probationer's community-service hours were not updated in MassCourts as they were performed; they were updated at the end of the probation term.

2. OCC is the office within the Office of the Commissioner of Probation that administers the Trial Court's community-service program.

Authoritative Guidance

The Probation Office is responsible for monitoring community service performed by individuals under Section 87A of Chapter 276 of the General Laws. Though the General Laws do not address the issue of a centralized tracking method, they do require adequate monitoring, and best business practices would require the use of a centralized tracking system. Adequate monitoring requires the maintenance of accurate records.

Reasons for Ineffective Tracking

Rather than tracking specific types, dates, and amounts of community service via a single centralized method, WDC has a system wherein the Probation Office staff keeps files to record community service performed by individual probationers. The staff files a Community Service Completion Certificate with the court when a probationer has finished community service or probation. The hours of service performed are not updated in MassCourts until the end of probation. Therefore, the court cannot readily determine the aggregate amount of community service owed and its dollar value.

Recommendations

1. WDC should comply with the requirements of Section 87A of Chapter 276 of the General Laws for the imposition and waiving of PSFs and the restitution made for nonpayment. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a monthly PSF or whether a finding of fact has been held to allow the fee to be waived and community service performed instead.
2. WDC should establish a centralized method of tracking community service performed.
3. The Probation Office should promptly report all hours of community service performed by each probationer, regularly throughout the probation term, to the Clerk-Magistrate's Office for recording in MassCourts so that both offices can readily determine the status of probationers' accounts.

Court Response

After consulting with the Chief Probation Officer and Clerk-Magistrate, the First Justice responded as follows.

Finding 2a

The opportunity to pay probation supervision fees even after community service is imposed can be beneficial to the probationer and his employment status, and may not appear to conflict with the statute.

The finding of fact hearing and waiver of the probation fee is documented by the Clerk in the written docket sheet, by the Probation officer in his or her notes, and on the recording of the court proceeding. However, I intend forthwith to ask all of the judges assigned to sit in the Wrentham District Court to document a finding of fact hearing and the waiver by diligently using the existing Administrative Office of the District Court form on the Assessment or Waiver of Moneys in Criminal Case. . . .

Finding 2b

The Probation Office in the Wrentham District Court has a centralized method of effectively tracking all hours of community service assigned, performed and owed. For fifteen years, the Wrentham Probation Office Supervisor has kept a spreadsheet of each probationer assigned to perform community service. . . . All Wrentham Probation employees have real time access to the spreadsheet through a shared network drive so they can keep up to date, accurate records and perform effective monitoring.

Since the Probation Office Supervisor updates the spreadsheet as soon as she receives information from the Community Services program, at least several times a week, the Probation Office employees can determine at any time how a probationer is doing with a community service obligation, the monetary value of the obligation, and whether the obligation will be fulfilled on schedule. . . .

Through the use of a Community Service Completion form, Probation reports to the court at the end of a term of probation on the compliance with community service hours. It has been the practice of the court to have Probation monitor probationers to encourage compliance with the community service obligation by the end of a probation term. Currently the Trial Court is working on a change to its case management system which will permit Probation to report community service hours shortly thereafter in that system rather than on the Community Service Completion Form, and therefore available to the judge and clerk at any time. On an interim basis we are discussing how the court wishes Probation to provide community service information to the clerk's office on a more routine basis rather than awaiting the end of the probationary period.

Auditor's Reply

During our fieldwork, we interviewed WDC staff about the PSF assessment and waiver process. At no time were we made aware of WDC's community-service spreadsheet. Upon receiving a hard copy of a portion of this spreadsheet, we found that although it provides some insight into a probationers' community service, it does not sufficiently track PSF community-service hours assigned or worked, makes no reference to the equivalent amount in PSF dollars, and is silent on any community-service monitoring being conducted by the Probation Office staff. The spreadsheet does not distinguish PSF community service from any other community service ordered by the court on a case. In addition, it reports the cumulative hours performed, but does not show whether the probationer has performed the required amount of community service for any one specific month. These are all issues that we also found in a

similar community-service spreadsheet provided to courts by OCC, as discussed in our other reports for this project.

We commend the Probation Office for considering interim changes to report community-service completion to the court more routinely.