



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

*Making government work better*

Official Audit Report – Issued March 3, 2015

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## Plymouth Division of the Superior Court Department

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





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

*Making government work better*

March 3, 2015

Robert S. Creedon Jr., Clerk of Courts  
Plymouth Division of the Superior Court Department  
72 Belmont Street  
Brockton, MA 02301

John L. Mansfield, Chief Probation Officer  
Plymouth Division of the Superior Court Department  
72 Belmont Street  
Brockton, MA 02301

Dear Clerk of Courts Creedon and Chief Probation Officer Mansfield:

I am pleased to provide this performance audit of the Plymouth Division of the Superior Court Department. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2012 through December 31, 2013. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

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

Sincerely,

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

Suzanne M. Bump  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

CJAM	Chief Justice for Administration and Management
CJTC	Chief Justice of the Trial Court
Clerk's Office	Clerk of Courts' Office
DOR	Department of Revenue
DTA	Department of Transitional Assistance
FSM	Fiscal Systems Manual
ICP	internal control plan
OCM	Office of Court Management
OCP	Office of the Commissioner of Probation
OSC	Office of the State Comptroller
OST	Office of the State Treasurer
PSC	Plymouth Division of the Superior Court Department
RMV	Registry of Motor Vehicles
SCD	Superior Court Department

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## EXECUTIVE SUMMARY

The Plymouth Division of the Superior Court Department (PSC) presides over civil, criminal, and other matters falling within its territorial jurisdiction of Plymouth County. 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 of Court's Office (the Clerk's Office).

This audit was undertaken to review certain aspects of PSC's operations and determine whether PSC had established adequate internal controls and was complying with applicable laws, regulations, policies, procedures, and other guidance in the areas reviewed.

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

<b>Finding 1a</b> <b>Page <a href="#">9</a></b>	There is insufficient segregation of duties over activities involving the collection, accounting, and depositing of cash: the duties of the two cashiers and the bookkeeper involved in these activities are not effectively segregated. This causes a higher-than-acceptable risk of undetected theft.
<b>Finding 1b</b> <b>Page <a href="#">10</a></b>	Records documenting the receipt and deposit of cash collections are not consistently completed or retained. Without sufficient records, cash received cannot be verified and is at risk of loss or misappropriation, and discrepancies may go undetected.
<b>Finding 1c</b> <b>Page <a href="#">12</a></b>	Deposits and reconciliations of monthly Probation Office bank statements are not always done on time. At least 8 out of the 18 bank reconciliations during the audit period, and 13 of the 48 deposits we reviewed, were performed late. This means that cash shown on the office's bank statements may not reflect the amount it actually collected, which in turn could prevent the Commonwealth from receiving all the funds to which it is entitled.
<b>Recommendations</b> <b>Page <a href="#">13</a></b>	<ol style="list-style-type: none"><li>1. PSC should take the measures necessary to ensure adequate segregation of duties over cash received, redirecting staff responsibilities as necessary to comply with the Trial Court's Fiscal Systems Manual.</li><li>2. PSC should properly complete and retain all documentation that supports cash collections. Also, PSC should consult with the Trial Court on the possibility of obtaining sufficient and secure storage space.</li><li>3. Bank-account statements should be reconciled monthly to ensure timely submission to the Trial Court and to prevent errors and discrepancies from occurring and/or going undetected.</li><li>4. Cash collections should be deposited daily in accordance with Trial Court requirements.</li></ol>

<b>Finding 2</b> <b>Page <u>14</u></b>	PSC does not have a formal tracking system in place to monitor the locations of case files. As a result, if a case file were lost, stolen, or misplaced, the Clerk's Office would not be able to produce the file when necessary.
<b>Recommendations</b> <b>Page <u>15</u></b>	<ol style="list-style-type: none"><li>1. The Clerk's Office should ensure that an adequate tracking system is in place to monitor the locations of case files.</li><li>2. Outstanding case files should be returned to their dedicated filing spaces as promptly as possible to reduce the risk of loss or theft.</li><li>3. The office should consider keeping a backup copy of each case file.</li></ol>
<b>Finding 3</b> <b>Page <u>16</u></b>	Some judges allow the supervising probation officer to decide which penalty (a probation fee or community service) is appropriate for a probationer without holding a finding-of-fact hearing first. Therefore, probationers may not be complying with their probation conditions, and the Commonwealth may not be receiving the funds, or the hours of community service, to which it is entitled.
<b>Recommendation</b> <b>Page <u>17</u></b>	PSC should comply with the requirements of Chapter 276 of the General Laws for the imposition and waiving of probation supervision fees and the restitution made for nonpayment of those fees. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a monthly probation supervision fee or whether a finding of fact has been held to allow the fee to be waived and community service performed instead.
<b>Finding 4</b> <b>Page <u>17</u></b>	The Clerk's Office is not notifying the Department of Transitional Assistance (DTA) of unpaid legal counsel fees within 60 days after defendants are appointed legal counsel. As a result, the Commonwealth may not be receiving all the money to which it is entitled.
<b>Recommendation</b> <b>Page <u>18</u></b>	The Clerk's Office should establish the necessary internal controls to ensure that it fully complies with all the reporting requirements of Chapter 211D, Section 2A(h), of the Massachusetts General Laws, including notifying DTA when defendants do not pay legal counsel fees within 60 days from appointment of counsel.
<b>Finding 5</b> <b>Page <u>19</u></b>	The Clerk's Office and the Probation Office are not updating their internal control plans (ICPs) or conducting risk assessments annually. Both offices updated their ICPs and conducted risk assessments in January 2014, but the previous updates were in 2010. As a result, there is inadequate assurance that the Clerk's Office and Probation Office are taking measures to identify all potential risks to their operations and developing measures to mitigate these risks in a timely manner.
<b>Recommendation</b> <b>Page <u>20</u></b>	The Clerk's Office and the Probation Office should update their ICPs and risk assessments annually.

## OVERVIEW OF AUDITED ENTITY

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

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

The Plymouth Division of the Superior Court Department (PSC) presides over civil and criminal matters falling within its territorial jurisdiction of Plymouth County. PSC 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’s Office.

During the audit period, July 1, 2012 through December 31, 2013, PSC collected revenue totaling \$736,849,<sup>1</sup> which it disbursed as either general or specific state revenue as shown in the following table:

Revenue Type	July 1, 2012 through December 31, 2013
<b>General Revenue</b>	\$ 529,207
<b>Probation and Administrative Supervision Fees</b>	137,952
<b>Victim/Witness Fund</b>	15,420
<b>Surcharges</b>	25,345
<b>Reimbursement for Indigent Counsel</b>	17,373
<b>Drug Analysis Fund</b>	3,345
<b>Head Injury*</b>	850
<b>Other</b>	7,357
<b>Total</b>	<u>\$ 736,849</u>

\* A \$250 mandatory assessment upon a conviction, a continuation without a finding, probation, admission to sufficient facts, or a guilty plea for operating a motor vehicle under the influence, operating negligently, or operating a boat under the influence. A portion (the amount varies depending on the charge) of the \$250 mandatory assessment is deposited by the Office of the State Treasurer (OST) in the Head Injury Treatment Services Trust Fund, and the remaining amount of the assessment is credited to the Commonwealth’s General Fund. OST is the custodian of the trust fund, for which the funds collected are to be used to develop and maintain residential and nonresidential rehabilitation services for head-injured persons as the Commissioner of Rehabilitation directs.

In addition to the funds collected and transferred to the Commonwealth, PSC was the custodian of 377 cash bails, totaling \$2,913,380, as of December 31, 2013.<sup>2</sup> PSC held custody of 28 civil escrow accounts, totaling \$564,547, as of December 31, 2013. (Civil escrow accounts are considered assets held in trust by the court pending case disposition.) One bail bond in the amount of \$300,000 is recorded in the Detail Account Trial Balance and physically maintained in a securely locked safe at PSC.

1. Some revenue, like probation supervision fees, is collected and transmitted by the Probation Office; however, PSC is given copies of these transmittals so it can reconcile revenue transmitted by court divisions to the Commonwealth’s records.
2. Bail is the security given to the court by defendants or their sureties to obtain release to ensure appearance in court, at a future date, on criminal matters. Bail is subsequently returned, upon court order, if defendants adhere to the terms of their release.

PSC operations are funded by appropriations under OCM control from which PSC receives periodic allotments. According to the Commonwealth's records, expenditures<sup>3</sup> associated with the operation of PSC were \$2,062,974 for the period July 1, 2012 through December 31, 2013.

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

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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Plymouth Division of the Superior Court Department (PSC) for the period July 1, 2012 through December 31, 2013. In some cases, it was necessary to examine data outside the designated audit period in order to meet our audit objectives.

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.

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

Objective	Conclusion
1. Was cash that was received by PSC's Clerk of Courts' Office (the Clerk's Office) properly reported to the Trial Court?	Yes
2. Was cash that was received by PSC's Probation Office properly reported to the Trial Court?	No; see Finding <u>1</u>
3. Did PSC have adequate internal controls to safeguard evidence?	Yes
4. Did PSC have adequate internal controls to safeguard case files?	No; see Finding <u>2</u>
5. Did PSC assess, waive, and collect monthly probation supervision fees and monitor monthly probation supervision fees and/or performance of community service in accordance with Chapter 276, Section 87A, of the General Laws?	No; see Finding <u>3</u>
6. Did PSC remit unclaimed funds to the Office of the State Treasurer (OST) in accordance with Chapter 200A of the General Laws?	Yes
7. Did PSC properly disburse bail funds?	Yes
8. Did PSC notify certain state agencies when legal counsel fees were unpaid 60 days after appointment of legal counsel and withhold bail when the fees were unpaid in accordance with Chapter 211D of the General Laws?	No; see Finding <u>4</u>

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In the course of our audit, we also determined that the Clerk's Office and Probation Office were not updating their internal control plans or risk assessments, as required by state law and Trial Court guidelines (Finding 5).

To achieve our objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls. In addition, we performed the following procedures:

- We interviewed PSC managers and other staff members and reviewed relevant documents, statutes, and regulations as well as PSC's policies, procedures, and accounting records.
- We reviewed our prior audit reports (Nos. 2006-1122-3O and 2009-1122-7T) as well as internal audits conducted by the Trial Court and the Office of the Commissioner of Probation to determine whether any weaknesses in internal controls had been identified that pertained to our current audit objectives.
- We obtained and analyzed case data from selected court case docket records and traced and compared them to Forecourt, PSC's case-management system, for consistency and completeness. We interviewed agency officials who were knowledgeable about Forecourt data-input activities. Since the court case docket record is the source document used to update Forecourt and the principal document that identifies all court activity about a civil or criminal case (including the assessment and collection of various fees and fines, civil judgments, and criminal case adjudication), we did not rely on Forecourt for the purposes of our audit. We believe the information we obtained from case docket records was sufficient for the purposes of our analysis and findings. In most instances, we did not rely on computer-processed data for our audit objectives. 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 probationers' hardcopy files and traced and compared them to Forecourt for consistency and completeness. Since the probationer's file is the source document that identifies all the probationer's activity (including documentation of assessment, waiving, and collection of monthly probation supervision fees and monitoring of monthly probation supervision fees and/or performance of community service), we did not rely on computer-processed data. We believe the information we obtained from the probationers' files was sufficient for the purposes of our analysis and findings.
- We selected transactions primarily by using random, non-statistical sampling, in order to eliminate bias by giving all items in the population an equal chance of being chosen, for our examination of cash received, case files, bail funds disbursed, evidence, probation supervision fees, remittance of unclaimed funds, and legal counsel fees. Therefore, we did not project the results of our samples to the population. More specifically,
  - For cash received, out of the 18 months in our audit period, we randomly selected 6 months in the Clerk's Office and 6 months in the Probation Office to test whether cash received was properly reported to the Trial Court.

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- For safeguarding of evidence, we reviewed all four exhibits held by the court during our audit period to determine whether adequate controls were in place.
  - For safeguarding of case files, we randomly selected 13 of 84 active case files to determine whether adequate controls were in place.
  - For probation supervision fees, we randomly sampled 25 criminal cases in which an individual had been placed on probation and ordered to pay a monthly probation supervision fee or perform community service during the audit period. We used this sample to test whether the court was assessing, waiving, collecting, and monitoring probation supervision fees and/or community service as required by Chapter 276, Section 87A, of the General Laws.
  - For remittance of unclaimed funds, we examined all bail, escrow, and restitution funds that might have been eligible for remittance to OST as of December 31, 2013. Of the five bail funds that were more than three years old, all were eligible for remittance and were examined. We examined one escrow case that was more than three years old and was eligible for remittance. There were no restitution accounts noted as eligible for remittance.
  - For bail funds disbursed, we randomly selected 26 of the 169 bail funds disbursed during the audit period to determine whether the court was properly disbursing bail.
  - For legal counsel fees, we used the aforesaid 26 bail funds disbursed and determined that 12 of their 26 probationers owed legal counsel fees. We determined whether the fees were paid before bail was released and whether appropriate state agencies were notified of unpaid fees within 60 days after appointment of counsel.

The financial data we obtained from the Massachusetts Management Accounting and Reporting System about PSC's activities during our audit period were not used in our audit 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.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### 1. Internal controls over the Probation Office's cash-management activities need improvement.

Internal controls in the Probation Office at the Plymouth Division of the Superior Court Department (PSC) need improvement in order for PSC to properly safeguard and account for cash collections. Specifically, responsibilities comprising the receiving, depositing, recording, and reconciling of cash received are not adequately segregated. Additionally, the office does not consistently complete or retain records documenting the receipt and deposit of cash collections, and it does not reconcile bank statements monthly and submit them to the Trial Court within the required timeframe.

As a result of these internal control deficiencies, cash received is at risk of loss or misappropriation and discrepancies may go undetected. Furthermore, monthly Probation Office bank statements, which amounted to an average of \$23,388 during our audit period, may not accurately reflect the amount of cash collected, and therefore the Commonwealth may not be receiving all the funds to which it is entitled.

#### a. PSC has inadequate segregation of duties over activities involving the receipt and accounting of cash collections.

Through inquiries of various employees and observation of the cash-receipt process, we noted that the duties of the two cashiers and the bookkeeper were not separated: when the cashiers are absent, the bookkeeper performs their duties, and vice versa. For instance, when the cashiers are absent or away from the counter, the bookkeeper receives cash and writes receipts; conversely, when the bookkeeper is absent, a cashier receives and opens the daily mail, prepares the daily deposit, and takes it to the bank. Because of this lack of segregation of duties, the employees cannot properly serve as a check on each other's work, and cash is at a higher-than-acceptable risk of undetected theft.

#### Authoritative Guidance

Regarding segregation of duties, Section 11.3 of the Trial Court's Fiscal Systems Manual (FSM) states,

*To ensure proper control over the Courts' collection of funds, strict segregation of duties in the collection process must be maintained. This policy requires that a Court's*

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*cashier and bookkeeper be different employees. For Courts having several cashiers, this policy also requires that no more than two (2) employees work as cashiers on the One-Write Receipting System [checkbook] during a single day. . . . Preferably, the employee who opens daily mail must not serve as cashier.*

Additionally, the Office of the State Comptroller (OSC) Internal Control Guide describes the importance of segregation of duties as follows:

*The fundamental premise of segregated duties is that an individual or small group of individuals should not be in a position to initiate, approve, undertake, and review the same action. These are called incompatible duties when performed by the same individual. The list below offers some examples of incompatible duties:*

- *Managing operations of an activity and record-keeping for the same activity*
- *Custody of assets and recording receipt of those assets*
- *Authorization of transactions and custody or disposal of the related assets or records*
- *Operating and programming computer system*

### **Reason for Lack of Segregation of Duties**

Officials at the Probation Office stated that the lack of segregation of duties between the bookkeeper and cashiers was due to the office being severely understaffed.

#### **b. PSC does not adequately safeguard records that support Probation Office cash collections.**

PSC does not have copies of all the records supporting its cash collections. For our review, we randomly selected 6 months of cash receipts from the Clerk of Courts' Office (the Clerk's Office) and the Probation Office from our 18-month audit period to determine whether cash was adequately safeguarded and accurately reported to the Trial Court by each office.

We randomly selected 48 deposits out of 100 total deposits noted in Probation Office records for the six-month period to determine compliance with the FSM. Our review of the Probation Office's recordkeeping practices for cash revealed numerous internal control deficiencies:

- The Probation Office does not retain deposit slips; therefore, none of the 48 deposits reviewed had accompanying deposit slips. The bank deposit slip shows the amount of money deposited and a detailed list of checks making up the daily collections.
- Four of the 48 deposits reviewed were missing authenticated bank deposit receipts. The bank deposit receipt is the bank's verification of the Probation Office's deposit slip.

- Seven of 48 One-Write Receipt Registers for the six-month period were missing and therefore could not be reviewed. The One-Write Receipt Registers are used by cashiers to write receipts to probationers for payments and to also account for the day's cash received.
- On six separate days when there were only two cashiers, one Daily Cash Sheet was prepared that combined both cashiers' activity, which is contrary to Trial Court policy. The Daily Cash Sheet is used as a tool of accountability for each employee who receives cash on any given day.
- Eight of the 48 Daily Cash Sheets for the six-month period were missing and therefore could not be reviewed. Furthermore, our overall review of the sheets revealed that they were not properly completed as required by the Trial Court. Cashiers did not consistently enter all the standard information required on the sheets. We found numerous instances of missing items such as the cashier's signature, the bookkeeper's signature, the total amounts of cash and checks received, the court department, the court division, the type of court, and whether the One-Write Receipting System was used.

### Authoritative Guidance

With regard to Daily Cash Sheets, daily deposit of funds, One-Write Receipt Registers, bank deposit slips, and bank deposit receipts, Section 11.3 of the FSM states,

*Each cashier must close out his/her own cash drawer by counting the cash and checks receipted and completing a Daily Cash Sheet. One Daily Cash Sheet must be completed by each cashier. . . .*

*All funds, including all checks, must be **receipted and** deposited on the same business day before the end of the bank's business day. . . . [emphasis added]*

*Complete the information requested at the top of the Daily Cash Sheet ("Court Department," "Court Division," "Court Office," "Date," "Organization Number" and "Type of Court"). Check the box next to "One-Write Receipting System" to indicate your receipting system. . . .*

4. *File, chronologically, both the central and any satellite courts(s) Daily Cash Sheet(s) along with local bank deposit slip copies and deposit receipts.*
5. *File, chronologically, the One-Write Receipt Register Sheets . . . for both the central and any satellite court(s) in the storage binder provided for that purpose.*

**NOTE:** *The Daily Cash Sheets, One-Write Receipt Registers, bank deposit slip copies and deposit receipts must be retained for at least three years after an audit by the Office of the State Auditor, according to the Administrative Office of the Trial Court **Record Retention Schedule**. . . .*

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## Reasons for Inadequate Safeguarding

PSC personnel told us that records that support cash collections were not maintained or could not be located because of a lack of secure and adequate storage space. However, courts are required to follow the FSM in whatever buildings they occupy.

### **c. PSC did not perform timely deposits or reconciliations of monthly Probation Office bank statements.**

Bank reconciliations and deposits were not always performed on time. For the 18-month audit period, the bookkeeper performed 10 monthly Probation Office bank reconciliations, and the Trial Court's Audit Department performed 8 monthly bank reconciliations on behalf of the Probation Office. Four of the 10 reconciliations performed by the bookkeeper were late (completed an average of 44 days beyond the 10-day allowable preparation period). Four of the 8 monthly bank reconciliations performed by the Audit Department (August, September, October, and November 2013) were late (completed January 2014); 2 of the 8 had unknown completion dates. In addition, 13 (27%) of the 48 deposits reviewed were not made on the same day they were received; these ranged from one to five days late.

Furthermore, monthly Probation Office bank statements, which amounted to an average of \$23,388 during our audit period, may not accurately reflect the amount of cash collected, and therefore the Commonwealth may not be receiving all funds to which it is entitled. Further, cash that is not promptly deposited is at greater risk of theft.

The lack of timely bank reconciliations did result in an instance of unaccounted-for funds, which was not detected for four months. Specifically, a deposit of \$535 collected on June 17, 2011 was never deposited in the bank; this was not detected until October 3, 2011, when the bookkeeper was performing belated bank reconciliations. The incident occurred outside our audit period and was not resolved as of the end of our audit fieldwork; it was still under investigation by the Trial Court Audit Department at that time. The incident was subsequently reported to the Office of the State Auditor on November 4, 2011 in accordance with Chapter 647 of the Acts of 1989.

## Authoritative Guidance

While the Trial Court's policy requires the bookkeeper to prepare and submit monthly bank-account reconciliations by the 10th day of each month, it provides a short grace period to allow sufficient

time for the court division's receipt of bank statements. Section 11.6 of the FSM (Monthly Closing and Reporting), which details the steps the bookkeeper must take when reconciling, comments on untimely delivery of bank statements:

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

### Reasons for Untimely Deposits and Reconciliations

Officials at the Probation Office stated that severe staffing constraints prohibited the bookkeeper from completing timely bank reconciliations and making daily deposits.

### Recommendations

1. PSC should take the measures necessary to ensure that adequate segregation of duties is established over cash received, redirecting staff responsibilities as necessary to comply with the FSM.
2. PSC should properly complete and retain all documentation that supports cash collections. Also, PSC should consult with the Trial Court on the possibility of obtaining sufficient and secure storage space.
3. Bank-account statements should be reconciled monthly to ensure timely submission to the Trial Court and to prevent errors and discrepancies from occurring and/or going undetected.
4. Cash collections should be deposited daily in accordance with Trial Court requirements.

### Auditee's Response

With regard to segregation of duties, the Chief Probation Officer stated that the lack of segregation of duties had occurred because the office had been "severely understaffed since at least 2009" and key employees had been absent because of family illnesses. He added,

*In an effort to follow policy when staff is out the [Assistant Chief Probation Officer], [Chief Probation Officer], and bookkeeper prepare any daily deposits.*

*After conversion to MassCourts [new software being implemented throughout the court system] the Probation Department will update its Internal Control Plan to reflect all changes created by the courts conversion to MassCourts.*

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With regard to cash-collection receipts, the Chief Probation Officer responded,

*The deposit slips that break down the cash/money orders prior to deposit in the bank are kept in the supply closet. They are now taped to the daily cash sheet along with the deposit slip confirmation.*

*Please note that although some deposit slips could not be located, the actual deposit is not missing.*

*As far as the daily cash sheet all staff has been instructed to complete this form in its entirety.*

With regard to untimely deposits and reconciliations, the Chief Probation Officer responded,

*The missing deposit 6/17/2011 consisted of 430.00 cash and 105.00 money order. This deposit was reported as soon as it was discovered and is still under investigation.*

*As a routine the reconciliations are mostly completed and submitted in a timely manner. In the event that they are late, [the Chief Justice's Office] requests them quarterly to confirm completion.*

*The daily cash collections are completed daily.*

## **Auditor's Reply**

It is essential that control activities (such as timely bank reconciliations, accounting for cash collections, and segregation of duties concerning cash receipt) be maintained. Based on its response, the Probation Office is taking some measures to address our concerns but should also collaborate with the Trial Court to resolve these issues fully.

## **2. PSC does not adequately safeguard case files in the Clerk's Office.**

PSC does not have a formal tracking system in place to monitor the locations of case files. The case file contains all original documents, and only one file is maintained for each case. As a result, if a case file were lost, stolen, or misplaced, the Clerk's Office would not be able to produce the file when required to do so for official purposes (e.g., when a criminal case was being tried).

We randomly selected 13 of 84 active cases to determine whether adequate controls were in place to safeguard case files. The results of our search of selected case files showed that case files were not returned to their dedicated filing spaces at the end of the day. Only 5 of the 13 case files were properly filed in their designated filing spaces in the docket room. However, when we informed the Clerk's Office

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about the missing 8 case files, the office's case specialists were able to retrieve all of them in the same day. These files were returned to the docket room and placed in their designated filing spaces.

### **Authoritative Guidance**

Section 2.2 of the Trial Court's Internal Control Guidelines provides guidance for the security of assets:

*To achieve internal control objectives concerning the security of assets, department heads and other managers must implement procedures to ensure that case papers, cash/receipts on hand, books of account, ledgers and all other court records are safeguarded.*

Proper safeguarding of court records would include having a backup copy of files and a tracking system in place to monitor file locations. One practice established by other Massachusetts courts is to use a card tracking system (which includes inserting an index card, specifying the date removed and the individual who removed the file, in place of the file when it is removed) to monitor the locations of case papers.

### **Reasons for Inadequate Safeguarding**

Clerk's Office officials stated that they had used a card tracking system in years past but stopped using it in the mid-1990s because it was not successful for them. The officials added that the system was not practical for PSC because case files were not usually returned in the same day; files changed hands among court personnel, judges, and clerks; and the person who signed the case file out often was not the person who would return it.

### **Recommendations**

1. The Clerk's Office should ensure that an adequate tracking system is in place to monitor the locations of case files.
2. Outstanding case files should be returned to their dedicated filing spaces as promptly as possible to reduce the risk of loss or theft.
3. The office should consider keeping a backup copy of each case file.

### **Auditee's Response**

The Clerk of Courts stated that case files are tracked in Forecourt (the court's previous electronic case-management system), which indicates the locations of files that are in use for courtroom proceedings. The Clerk added that when cases are returned, the dockets are updated and returned to their dedicated filing spaces.

## Auditor's Reply

The Forecourt electronic case management system only tracks the stage of a case in the adjudication process, not its physical location. Without physical controls over case file location, files may be misappropriated or lost, and this may not be detected in a timely manner. Consequently, we again encourage the Clerk's Office to implement our recommendations on this issue.

### **3. PSC does not assess, collect, or waive monthly probation supervision fees in accordance with the Massachusetts General Laws.**

Some judges allow a defendant's probation officer to choose whether the defendant should pay a monthly probation supervision fee or perform community service, a procedure that is contrary to Chapter 276, Section 87A, of the Massachusetts General Laws. Specifically, the sentencing judge imposes either a monthly probation fee or unpaid community service on the defendant. However, the judge allows the supervising probation officer to decide which penalty is appropriate without holding 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 monthly probation fees, the usual requirements of the Office of the Commissioner of Probation (OCP) (such as conducting administrative and surrender hearings for nonpayment of supervision fees) may be bypassed. As a result of noncompliance with Chapter 276, Section 87A, of the General Laws and certain other OCP requirements, the Commonwealth may be forgoing probation supervision fees that probationers would have been able to pay.

We randomly selected 25 probation case files in which an individual had been placed on probation and ordered to pay a monthly probation supervision fee or perform community service during the audit period. The purpose of our review was to determine whether the court was adequately assessing, waiving, and collecting probation supervision fees and/or community service.

Of the 25 probationers selected, we identified 6 (24%) for whom the judge had added "and/or community service" to the probation sentence, allowing the probation officer to decide which penalty was appropriate.

## Authoritative Guidance

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

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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

According to court officials, PSC's busy schedule does not permit it to conduct finding-of-fact hearings establishing probationers' inability to pay.

### Recommendation

PSC should comply with the requirements of Chapter 276 for the imposition and waiving of probation supervision fees and the restitution made for nonpayment of those fees. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a monthly probation supervision fee or whether a finding of fact has been held to allow the fee to be waived and community service performed instead.

### Auditee's Response

The Chief Probation Officer responded,

*The Probation Department cannot interrupt court proceedings. We do not have discretion on what the Judge orders on a defendant's conditions when stating [Probation Supervision Fee / Community Work Service]. Judges sign waivers on all cases when given documentation. There should be legislative changes. This is and has been an ongoing problem state wide.*

### Auditor's Reply

While we do not suggest that the Probation Office interrupt court proceedings, we do recommend that it collaborate with judges and the Clerk's Office to ensure compliance with Chapter 276, Section 87A, of the General Laws. If the office finds the statute too restrictive, it should seek input from the Trial Court on getting an exemption from the requirement or on whether legislative changes are necessary.

### **4. The Clerk's Office does not notify the Department of Transitional Assistance when defendants do not pay legal counsel fees on time.**

The Clerk's Office is not complying with the statutory requirement of Chapter 211D, Section 2A(h), of the General Laws that it notify the Department of Transitional Assistance (DTA) of unpaid legal counsel fees within 60 days after a defendant is appointed counsel. As a result, the Commonwealth may not be receiving all the money to which it is entitled.

From our test of 26 bails disbursed, 12 had legal counsel fees assessed. We examined these 12 to determine whether the court notified the proper state agencies, including DTA, if the fee was unpaid within 60 days after its assessment.

In all 12 cases, the court did not notify DTA of the fee assessment if the fee was unpaid 60 days after the appointment of counsel. The Clerk's Office did notify the Department of Revenue (DOR) and the Registry of Motor Vehicles (RMV), the other two agencies requiring notification according to Chapter 211D, Section 2A(h), of the General Laws (Appendix B).

### **Authoritative Guidance**

Chapter 211D, Section 2A(h), of the General Laws requires the Clerk of Courts to notify RMV, DOR, and DTA of unpaid legal counsel fees within 60 days of appointment of counsel.

### **Reasons for Not Notifying DTA of Unpaid Legal Counsel Fees**

PSC officials told us that they were not aware that Chapter 211D, Section 2A(h), of the General Laws had been amended in 2011 to include notification to DTA within 60 days after appointment of counsel; previously DTA had been excluded from this requirement.

### **Recommendation**

The Clerk's Office should establish the necessary internal controls to ensure that it fully complies with all the reporting requirements of Chapter 211D, Section 2A(h), of the General Laws, including notifying DTA when defendants do not pay legal counsel fees within 60 days from appointment of counsel.

### **Auditee's Response**

The Clerk of Courts responded as follows:

*During the Audit period of July 1, 2012 through December 31, 2013 Plymouth Superior Court was in compliance with the mandates set forth by the Administrative Office of the Trial Court which at that time was notification to the Department of Motor Vehicles and Department of Revenue of unpaid legal counsel fees within 60 days of appointment of legal counsel.*

*Regarding notification to Department of Transitional Assistance of unpaid legal counsel fees within 60 days of appointment of legal counsel, this was added in 2014.*

*Plymouth Superior Court's Clerks Office will comply with all reporting requirements of both the Administrative Office of the Trial Court and Chapter 211D, Section 2A(h) of the General Laws.*

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## Auditor's Reply

Irrespective of the Trial Court's policy change, during our audit period the Clerk's Office was not complying with Chapter 211D of the General Laws, which requires reporting unpaid legal fees to DTA. Based on its response, the Clerk's Office is taking measures to ensure that it complies with the law.

### **5. The Clerk's Office and Probation Office do not perform annual risk assessments and update their internal control plans as necessary.**

Neither the Clerk's Office nor the Probation Office updates its internal control plan (ICP) or conducts risk assessments annually, as required by state law and Trial Court guidelines. The ICPs and accompanying risk assessments for both the Clerk's Office and the Probation Office were updated in January 2014; however, before this date, the last ICP update or risk assessment was in April 2010 for the Clerk's Office and February 2010 for the Probation Office.

As a result, the Clerk's Office and the Probation Office cannot be certain that they are properly identifying all potential risks to meeting their objectives and taking appropriate measures to mitigate these risks in a timely manner. Some of these risks are illustrated by the issues we identified in this report.

### Authoritative Guidance

Chapter 647 of the Acts of 1989 states, in part, "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." After Chapter 647 was passed, OSC issued written guidance in the form of its Internal Control Guide. In this guide, the OSC stressed the importance of internal controls and need for departments to develop an ICP, defined as follows:

PSC cannot maintain adequate internal control plans without performing risk assessments to identify the risks that internal controls must address.

*A high level, department-wide summarization of risks and controls for all of [a department's] business processes . . . supported by lower level detail. . . . Departments must update the ICP as often as changes occur in management, level of risk, program scope, etc., but at least annually.*

In turn, the Trial Court issued its Internal Control Guidelines, establishing requirements for department heads that are developing an ICP, including the following important internal control concepts:

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*The key concepts that provide the necessary foundation for an effective Trial Court Internal Control System must include: risk assessments; documentation of the 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. . . .*

*[The internal control plan] must be documented in writing and readily available for inspection by both the Office of the State Auditor and the [Trial Court] 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.*

## Reasons for Lack of Risk Assessments and ICP Updates

Officials from the Clerk's Office and the Probation Office stated that ICP updates and risk assessments have not occurred because both offices have been understaffed owing to a hiring freeze.

## Recommendation

The Clerk's Office and the Probation Office should update their ICPs and risk assessments annually.

## Auditee's Response

The Clerk of Courts responded as follows:

*Plymouth Superior Court Clerk's Office will review Internal Controls annually and make updates and revisions as required.*

The Chief Probation Officer responded as follows:

*[The reported Reasons for Lack of Risk Assessments] is incorrect, on February 2013 the risk assessment plan and internal control plan were delivered to the Office of the Commissioner of Probation. It was requested by the Regional Supervisor and was received.*

## Auditor's Reply

While conducting our audit, we requested the ICP and risk assessment from the Probation Office. The office gave us a copy of its 2010 ICP and risk assessment, which contained obsolete information. When we discussed this issue with the Chief Probation Officer on January 12, 2015, we were not told that an updated ICP based on a risk assessment had been prepared and submitted to OCP. We recommend that

copies of risk assessments and the current updated ICP be retained in the Probation Office for ready reference.

## OTHER MATTERS

### Physical Security Concerns

Through interviews and observations with managers at the Plymouth Division of the Superior Court Department, we were alerted to certain risks concerning access to, and security of, court documents. We found through a tour of the building that the condition of the courthouse, located at 72 Belmont Street, Brockton, Massachusetts, is such that case files are at risk of being destroyed. There are no fire detectors, alarms, or sprinklers, and some windows have faulty locks and cracked panes.

Since the building is owned and operated by Plymouth County and controlled by the Plymouth County Commissioners, the Clerk's Office and the Probation Office cannot independently implement all the improvements necessary to mitigate potential risks to court documents.

The Clerk's Office has collaborated with county officials regarding day-to-day issues. The Clerk's Office noted that the Trial Court is aware of the physical condition of the building, including the security and lack of secure storage space for court documents as well as other safety issues affecting the public and court personnel. According to the Clerk's Office, the Trial Court is in discussions with the Plymouth County Commissioners to address these matters.

## **APPENDIX A**

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

#### **Probation Fee, Supervised Probation**

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

#### **Probation Fee, Administrative Probation**

Established in accordance with Chapter 276, Section 87A, of the General Laws, this is a required fee if a defendant is placed on administrative supervised probation. If the defendant is found indigent, he or she must perform four hours of community-service work monthly. The fee is \$45 per month plus a \$5-per-month Victim Services surcharge. (The fee does not apply to nonsupport convictions where support payments are a condition of probation; individuals who are required to make child-support payments are not required to pay the monthly probation supervision fee.) The fee can be waived or reduced upon a court hearing if the payment of the fee would constitute an undue hardship on the defendant or his/her family, with the defendant required to perform some amount of community service. Additionally, the court hearing can result in the fee being offset by the amount of restitution payments (if applicable) against the defendant.

#### **Legal Counsel Fee**

Established in accordance with Chapter 211D, Section 2A, of the General Laws, this is a required fee when legal counsel is appointed for a defendant who is found to be “indigent” or “indigent but able to contribute [to the cost of counsel.]” The fee is \$150 and can be waived at the court’s discretion if it is

determined that the defendant will be unable to pay the fee within 180 days. If the fee is not waived, the judge may permit the defendant to perform 10 hours of community service for each \$100 owed. The amount can also be remitted (brought to zero) if the defendant is acquitted.

### **Legal Counsel Contribution**

Established in accordance with Chapter 211D, Section 2, of the General Laws and with Supreme Judicial Court Rule 3:10(10)(c), this is a contribution the court can impose when legal counsel is appointed for a defendant who is indigent but able to contribute to the cost of counsel. The amount of the contribution is determined by the court as the “reasonable amount” required toward the cost of counsel, in addition to the above legal counsel fee. The amount can also be remitted (brought to zero) if the defendant is acquitted.

## APPENDIX B

### **Chapter 211D, Section 2A(h), of the Massachusetts General Laws: Verification of Claim of Indigency; Waiver by Claimant Allowing Access to Information; Reassessments Following Appointment of Counsel; Reporting**

*The clerk of the court shall, within 60 days of appointment of counsel, report to the department of revenue, the department of transitional assistance and the registry of motor vehicles the amount of any legal counsel fee owed by the person for whom counsel was appointed under this chapter. The department of revenue shall intercept payment of such fee from tax refunds due to persons who owe all or a portion of such fee. The registry of motor vehicles shall not issue or renew a person's driver's license or motor vehicle registration for any vehicle subsequently purchased by such person until it receives notification from the clerk of the court that the fee has been collected or worked off in community service.*