

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. 2010-1147-30

**INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN FEES AND BAIL OF THE
WALTHAM DIVISION OF THE
DISTRICT COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2008 TO DECEMBER 31, 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 \$27 million from certain named fees collected, provided that the first \$53 million of revenue shall be deposited in the General Fund and not retained. Another section of the annual appropriations act allows the same Chief Justice to spend up to \$26 million of Probation Supervision fees collected and deposited by the courts. These amounts are monitored and allocated to specific courts by a Trial Court Revenue Unit. The Administrative Office of the District Court Department (AODC) and the Office of the Commissioner of Probation have also increased monitoring of revenues by instituting additional reporting processes.

Revenues generated by the AODC have increased over the years. During 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 defendants do not appear in court as required by the terms of their release from jail.

The Waltham Division of the District Court Department (WDC) presides over civil and criminal matters falling within its territorial jurisdiction. Of the 62 district courts throughout the Commonwealth, WDC is one that we selected for further review of the above fees. The purpose of our audit was to review WDC's internal controls and compliance with state laws and regulations regarding certain fees and bail funds for the period July 1, 2008 to December 31, 2009.

AUDIT RESULTS **7**

1. INTERNAL CONTROL IMPROVEMENTS NEEDED TO COMPLY WITH PROBATION FEE WAIVER REQUIREMENTS **7**

We found that WDC did not always document the granting of waivers of probation fees in accordance with state law and AODC guidance. A waiver of the probation fee allows the probationer to perform community service instead of paying the required monthly probation fee. As a result of the stipulated procedure for granting probation fee waivers not being followed, there is a breakdown in internal controls, WDC has inadequate assurance that probationers are complying with the terms of their conditions of probation, and the Commonwealth may not be receiving the funds to which it is entitled.

2. CONSIDERATION SHOULD BE GIVEN TO ESTABLISHING AN ACCOUNTS RECEIVABLE SYSTEM **11**

We noted that although WDC 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 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.

3. IMPROVEMENTS NEEDED TO STREAMLINE THE RECEIPT AND DISBURSEMENT OF COURT ASSESSMENTS AND FEES **13**

WDC has two cash collection points--one in the Clerk-Magistrate's Office and another in the Probation Office--making the process for receiving and disbursing funds duplicative at times. As a result, there is a certain amount of redundancy as well as an inefficient use of court resources. Provisions of the Massachusetts General Laws allow courthouses to have a single cash collection and disbursement point for both offices. In the past, the AODC consolidated cash receipts and disbursements into one location, but has held off changing any more courts to the consolidated system until the new accounting system, MassCourts with a financial module, completes testing and is ready for implementation.

4. VICTIM WITNESS FEE ASSESSMENT COLLECTIONS NOT ALLOCATED AS FIRST PRIORITY **14**

Although WDC 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 WDC 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.

5. INTERNAL CONTROL IMPROVEMENTS NEEDED OVER THE PROCESSING OF ABANDONED BAIL AND BAILS ASSOCIATED WITH CRIMINAL CASES IN DEFAULT 16

Our audit found that the WDC needs to improve its internal controls to comply with state law and AOTC rules and regulations regarding the processing of abandoned bail and bail applying to criminal cases in default status. Specifically, WDC did not transmit unclaimed bails released over three years ago to the Office of the State Treasurer as abandoned property and did not order bails forfeited when defendants failed to appear for their scheduled court date. Additionally, WDC did not always order bails forfeited when defendants failed to appear for their scheduled court date. As a result, the Commonwealth has been denied timely access and use of these funds and defendants or sureties that posted bail may not know it is available to be released.

INTRODUCTION

Background

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

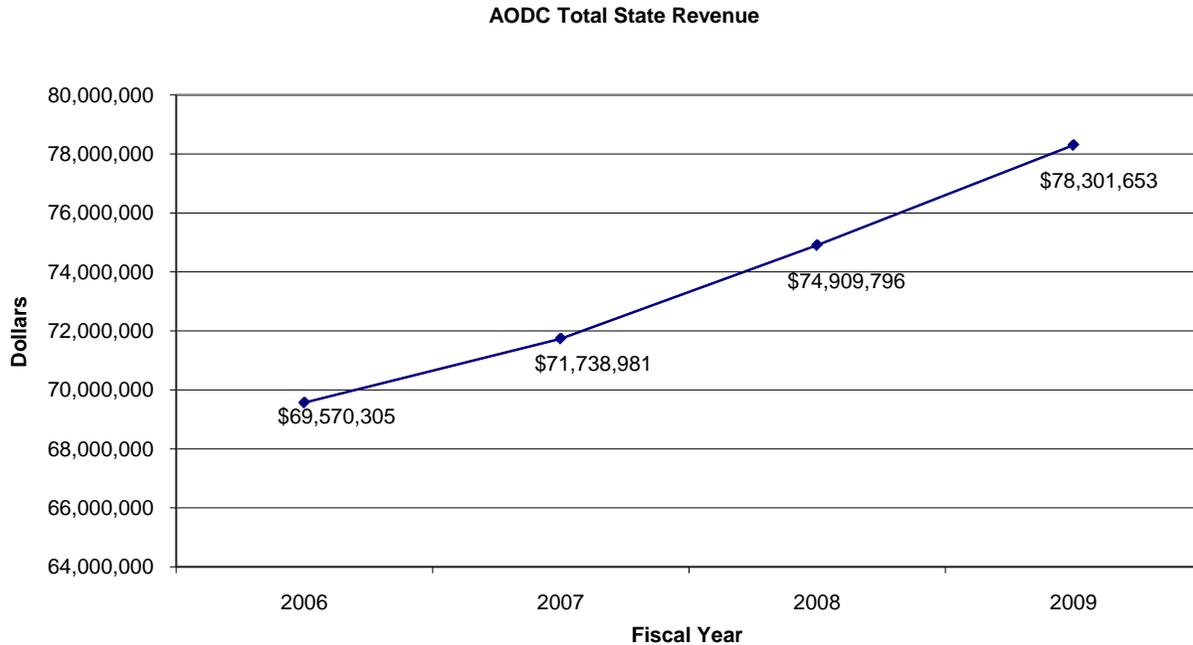
Current law provides for the AOTC to retain a portion of the revenues. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$27¹ million from certain named fees² collected by the courts, provided that the first \$53 million of revenue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

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

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

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

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



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

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

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

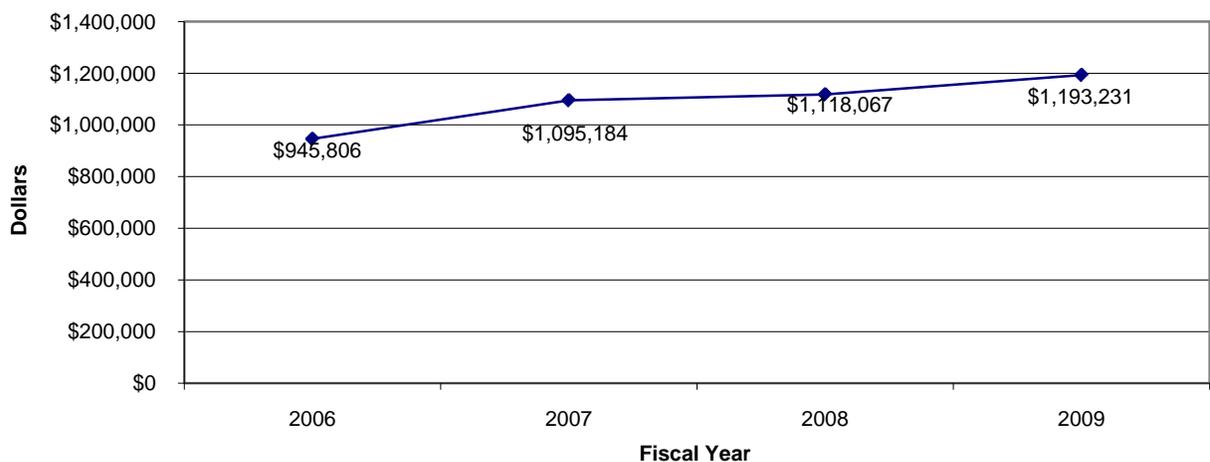
The fees we selected for further examination (Probation, Indigent Counsel, and Victim Witness) are established by various statutes and can have various fee amounts depending on the circumstances. An explanation of the fees follows.

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

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

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

The Waltham Division of the District Court Department (WDC) generated revenues that increased from \$945,806 in fiscal year 2006 to \$1,193,321 in fiscal year 2009, as shown in the following chart.



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

Revenue Source	2006	2007	2008	2009
Probation Fees	\$272,693	\$278,392	\$342,896	\$300,239
Indigent Counsel Fees	89,385	92,350	97,943	106,021
Victim Witness Fees	<u>28,730</u>	<u>34,459</u>	<u>36,577</u>	<u>43,912</u>
Total	<u>\$390,808</u>	<u>\$405,201</u>	<u>\$477,416</u>	<u>\$450,172</u>

In addition to the above cash collections at WDC, probationers also performed community service in lieu of paying probation and indigent counsel fees. Based on our review of probation office documents and reports as well as interviews with probation officials, as of December 31, 2009, approximately 14% 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 WDC. The scope of our audit included an examination of WDC's controls over administrative and operational activities, including certain fees and bail funds for the period July 1, 2008 to December 31, 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 WDC's internal controls over the assessment, collection, accounting, waiver, and community service in lieu of payment of certain fees and WDC's internal controls over bail funds and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding WDC'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 WDC'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 WDC'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 WDC was based on those interviews and the review of documents.

Our recommendations are intended to assist WDC in developing, implementing, or improving its internal controls and overall financial and administrative operations to ensure that WDC'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, WDC (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. INTERNAL CONTROL IMPROVEMENTS NEEDED TO COMPLY WITH PROBATION FEE WAIVER REQUIREMENTS

We found that the Waltham Division of the District Court Department (WDC) did not always document the granting of waivers of probation fees in accordance with state law and Administrative Office of the District Court (AODC) guidance. A waiver of the probation fee allows the probationer to perform community service instead of paying the required monthly probation fee. As a result of not following the stipulated procedure for granting probation fee waivers, there is a breakdown in internal controls, WDC has inadequate assurance that probationers are complying with the terms of their conditions of probation, there is a lack of assurance that an undue financial hardship exists, and the Commonwealth may not be receiving the funds to which it is entitled. State law and AODC guidance require the local courts to document certain steps when waiving cash payment of monthly probation fees and imposing community service to be performed.

State law requires the imposition of a designated fee, depending on whether the probationer is placed on supervised probation or administrative probation. The fee can be waived and community service performed, upon order of the court, as provided by Section 87A of Chapter 276⁴ of the Massachusetts General Laws, as amended:

The court shall assess upon every person placed on supervised probation, including all persons placed on probation for offenses under section 24 of chapter 90, a monthly probation supervision fee, hereinafter referred to as "probation fee", in the amount of \$60 per month. Said person shall pay said probation fee once each month during such time as said person remains on supervised probation. The court shall assess upon every person placed on administrative supervised probation a monthly administrative probation supervision fee, hereinafter referred to as "administrative probation fee", in the amount of \$20 per month. Said person shall pay said administrative probation fee once each month during such time as said person remains on administrative supervised probation. The court may not waive payment of either or both of said fees unless it determines after a hearing and upon written finding that such payment would constitute an undue hardship on said person or his family due to limited income, employment status or any other factor. Following the hearing and upon such written finding that either or both of said fees would cause such undue hardship then: (1) 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, for not less than one day per month and (2) in lieu of payment of said administrative probation fee the court shall require said person to perform unpaid

⁴ Effective July 1, 2009, the amount of the fee increased to \$45 per month. See the Introduction section of this report for more information.

community work service at a public or nonprofit agency or facility, as approved and monitored by the probation department, for not less than four hours per month.

AODC guidance was provided in a September 1, 2006 memorandum from the Chief Justice of the District Court Department to District Court Judges, Clerk-Magistrates, and Chief Probation Officers. The memorandum reiterated the statutory requirements and suggested the use of a form, Assessment or Waiver of Moneys in Criminal Case, as a way to document compliance with the statutory requirements, as follows:

- a. **First Justices.** *Please review with your respective Clerk-Magistrate and Chief Probation Officer your court's comprehensive approach to implementing the various legislative mandates for fines, fees, costs and assessments. You will also want to communicate that policy to the judges who sit from time to time in your court. General Laws c. 276 87A is clear that judges have a duty to waive the probation fee if it "would constitute an undue hardship on said person or his family," but the statute also requires that such waivers may be granted only "after a hearing and upon [a] written finding" of hardship, "only during the period of time that said person is unable to pay his monthly probation fee," and only if the judge requires the probationer "to perform unpaid community work service" of at least one day (or 4 hours in lieu of an administrative probation fee) per month*
- b. **Judges.** *It is important that each judge routinely use the mandatory "Assessment or Waiver of Moneys in Criminal Case form **whenever the judge disposes of a criminal case that involves the assessment or waiver of any required financial amount.** The form has several functions. It serves as a reference checklist; it documents that the complex statutory requirements relative to assessments have been complied with; it avoids any omissions or errors in recording what the judge has ordered; and it offers a simple way for the judge to make the written finding(s) required when a judge waives the victim/witness assessment or probation supervision fee*

At WDC, when the court issues an order placing the offender on probation, the associated monetary assessment or waiver thereof is not always specifically written or consistently documented between the Clerk-Magistrate's Office and Probation Office. Audit tests of 20 criminal case files noted two instances (10%) where the court order allowed the probationer to either pay the fee or perform community service, as subsequent circumstances dictate, without a modified court order. Also, there were another five instances (25%) where there were inconsistencies between the court-ordered payment of probation fees (as reflected in the Clerk-Magistrate's office records) and certain Probation Office records. In these cases, the Probation Office's Conditions of Probation forms were written to allow either the payment of the fee or performing community service rather than adhering to the court order citing payment of a monthly probation fee. These practices permit the Chief Probation Officer (or probation officer

assigned to the case) to be responsible for determining whether the individual will pay a probation fee or perform community service.

As a result of not following the stipulated procedure for granting probation fee waivers, there is a breakdown in internal controls, inadequate assurance that probationers are complying with the terms of their court-ordered conditions of probation, and inadequate assurance that an undue financial hardship exists or that the Commonwealth is receiving the all funds to which it is entitled.

WDC personnel indicated that although they are aware of the statutory requirement, the process is too cumbersome to have the cases brought back before the court each time the probationer is unable to pay the monthly fee, as it delays other important court work. They also feel that probation office staff is the most knowledgeable of an individual's ability to pay and would therefore be the most qualified to make that determination. Therefore, the court delegates the responsibility to its probation officers in order to cut down on the amount of court time taken for such modifications. AODC officials noted that many persons, whom the court has determined are indigent and would therefore qualify for community service in lieu of paying a probation supervision fee, choose to pay the probation supervision fee rather than perform the community service. This results in increased revenue to the Commonwealth.

Recommendation

To improve internal controls and ensure compliance with state law and AODC guidance, WDC should modify its procedures to document, by court order, the specific terms the probationer is expected to comply with. The order should definitively state whether a probationer shall either pay a probation fee or, in the case of an undue hardship, definitively state that the probationer perform community service. If a probationer's status changes from either paying a fee or doing community service, such change should be as a result of a court order. Additionally, the Probation Office and Clerk-Magistrate's Office should periodically compare case records to ensure that they contain corresponding information to eliminate the need to go before the court and retroactively adjust court orders.

Auditee's Response

The First Justice provided the following response:

To improve internal controls over the granting of waivers or remittance of probation fees, Waltham District Court will actively utilize the "Assessment or Waiver of Moneys in Criminal Cases" form promulgated by the District Court and in the event the court waives the fee due to indigency it will be documented on the waiver form and the case docket. This form is readily available in all sessions and session staff are reminded of its use and purpose. Additionally, a corresponding case docket entry and probation file entry is made whenever the court orders a waiver, reduction or other modification to the probation supervision fee assessment. In the summer of 2010, the Administrative Office of the Trial Court will begin installation of the full MassCourts case management system which will include as one of its features the electronic tracking of the assessment or waiver of court ordered payment.

The determination regarding whether a probation fee shall be waived in whole or in part will only be made by the court if it determined after a hearing with the above written finding that payment would constitute an undue hardship.

Waltham District Court understands that probation supervision fees must be paid as a first priority and that only after a finding of indigency and inability to pay may community service be offered as an option.

It should be noted that the majority of defendants appearing in the courts are indigent and have appointed counsel as a result of their indigency. Many indigent persons choose to pay a fee rather than perform community service. Therefore, when a judge issued an order to either pay the probation supervision fee or perform community service the judge was determining that the defendant was indigent but provided them the option of paying the probation supervision fee instead of performing community service. This has resulted in the collection of additional funds for the Commonwealth while allowing the indigent defendant the opportunity of performing community service.

Additionally, the Chief Probation Officer provided the following response:

The audit result states that WDC has inadequate assurance that probationers are complying with the terms of their conditions of probation, there is a lack of assurance that undue financial hardship exists and the Commonwealth may not be receiving the funds to which it is entitled.

I take exception to this statement. If you look at 2006, 2007, 2008, and 2009 fourth quarter statistics for WDC you will find that percentage of maximum potential collected for the Probation Supervision Fee is way above the statewide average. We take great pride in our collections of all the court costs, fines and restitution. We do work with the Clerk's Office in reconciling these cases each Wednesday, a designee from both the Probation Office and the Clerk's Office have been doing since I have been Chief, October 2006 to present, since the internal audit by AOTC, Probation provides a copy of the account history on each and every case.

The audit result also states there were instances where the court order allowed the probationer to either pay the fee or perform community service as subsequent circumstance dictate, without a modified order and there were some cases where it was

written on the Conditions of Probation that the probationer could either pay the supervision fee or do community service. This practice leaves the responsibility on probation to determine if the individual will pay or do community service.

At this time the Clerk-Magistrate and I will compare case records to ensure that corresponding information to eliminate the need to go before the court and retroactively adjust court orders.

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

We noted that although WDC 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 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:

The Waltham District Court presently follows existing Trial Court fiscal procedures for the collection and disbursement of funds. The current policy does not require a court to maintain an accounts receivable component as part of its' financial record keeping. Waltham District Court recognized that enhanced collection methods, which include an accounts receivable system, would improve the court's ability to collect, record and account for court ordered assessments, however without an electronic account management system, the Waltham District Court presently has insufficient resources to assume the challenges of a manual system. In the summer of 2010, the Administrative Office of the Trial Court will begin installation of the full MassCourts case management system which will include as one of its features a computerized accounts receivable system.

3. IMPROVEMENTS NEEDED TO STREAMLINE THE RECEIPT AND DISBURSEMENT OF COURT ASSESSMENTS AND FEES

WDC has two cash collection points--one in the Clerk-Magistrate's Office and another in the Probation Office--making the process for receiving and disbursing funds duplicative at times. As a result, there is a certain amount of redundancy as well as an inefficient use of court resources. Provisions of the General Laws allow courthouses to have a single cash collection and disbursement point for both offices.

During fiscal year 2009, the Clerk Magistrate's Office collected and transmitted revenues of over \$1.1 million to the Commonwealth and approximately \$46,750 to municipalities within WDC's jurisdiction. Much of these funds were first receipted through the Probation Office accounting system and subsequently disbursed to the Clerk Magistrate's Office for receipting into its accounting system. This receipting process requires both offices to record the receipt of the same funds, which includes validating the respective case papers.

Chapter 279, Section 1B, of the General Laws, as amended, allows courts to combine separate cash collection and disbursement functions of the Clerk-Magistrate's and Probation Offices into one, as follows:

Notwithstanding any other provision of law, the administrative justice of a department of the trial court may direct that both the clerk-magistrate's office and the probation office of one or more court divisions are to utilize a single funds collection and disbursement point within the courthouse.

Court personnel agree that having two collection sites is redundant, but indicated that the AODC is not switching any more courts to central cashiering at this point, as the next system upgrade will be the implementation of the MassCourts financial module. This module is currently being tested at certain court locations and will be implemented at other courts at a later date.

Recommendation

The AODC should continue testing the MassCourts financial module, whose implementation should help streamline receipt and disbursement activity at WDC.

Auditee's Response

The First Justice provided the following response:

Waltham District Court and Administrative Office of the Trial Court agrees with this finding. It is anticipated that with the implementation of full MassCourts case management system that a single collection point for all monies will be implemented at the Waltham District Court.

Additionally, the Chief Probation Officer provided the following response:

I am all for the recommendation made in the audit about a single cash collection and disbursement point in all courts. I hope that the MassCourts financial module gets expedited so any prior deficiencies that happened in the past are minimized and the redundancy of our present system becomes a thing of the past. I believe with all the technological capabilities we have, we can work smarter not harder when it comes to the collecting of monies.

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

Although WDC 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 WDC 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 WDC would not always apply an individual's partial payments first to Victim Witness fees. Rather, WDC would satisfy restitution payments in advance of the fee, since restitution is going to reimburse victims.

By not prioritizing Victim Witness fee assessment payments, the collection of Victim Witness fee assessments is delayed. When WDC staff were made aware of this statutory requirement, they immediately began prioritizing the application of payments to unpaid Victim Witness assessments.

Recommendation

WDC should continue giving first priority to Victim Witness fee assessments upon collection, unless any additional guidance is issued by the AODC.

Auditee's Response

The First Justice and Chief Probation Officer provided the following response:

The Waltham District Court will process Victim Witness Fees as the initial priority and any monies paid will be applied to Victim Witness Fees first.

In some cases restitution rather than the Victim Witness Fee was given first priority. All staff members were given a copy of the section Mass. General Laws Chapter 258 Section 8 which explains that the Victim Witness Fee must be given first priority. Since the audit, our Bookkeeper has followed Mass. General Laws Chapter 258 Section 8.

Please note in this audit some of the cases that were looked at where it appears that "other fees" were given priority to the Victim Witness Fee, they were not. We must be aware that in most cases the legal fee is assessed at the arraignment and could be paid before the case is adjudicated and this could appear that we collected this fee before the

Victim Witness Fee. But we did not because the Victim Witness Fee was not assessed until the case was adjudicated.

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

Our audit found that WDC needs to improve its internal controls to comply with state law and AOTC rules and regulations regarding the processing of abandoned bail and bail applying to criminal cases in default status. Specifically, WDC did not always notify persons who posted bail that the bail was available to be returned or transmit unclaimed bails released over three years ago to the Office of the State Treasurer (OST) as abandoned property. Additionally, WDC did not always order bails forfeited when defendants failed to appear for their scheduled court date. As a result, the Commonwealth has been denied timely access and use of these funds and defendants or sureties that posted bail may not know it is available to be released.

WDC's detailed bail trial balance reported that there were 139 cash bails totaling \$108,480 on hand as of December 31, 2009. Audit tests of 71 criminal cases associated with bails totaling \$43,300 appearing on the detailed trial balance identified two instances totaling \$350 that that should have been transmitted to the OST as abandoned property and 21 instances amounting to \$12,275 where the bail was released and available to be picked up, but letters were not sent to notify the defendant or surety of the release of bail. Additionally, we noted eight instances totaling \$5,450 in which WDC could have issued bail forfeiture orders, but abstained from such action.

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

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

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

If bail remains unclaimed one year after its release date, the Court division must attempt to contact the owner of the bail in writing by registered mail. If the appropriate individual 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.

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

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

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

Recommendation

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

Auditee's Response

The First Justice provided the following response:

The Waltham District Court acknowledges its responsibility to process bail forfeitures in a timely as possible manner. It is important to note that this finding shows no fiscal loss. It is simply a "cash flow" issue to insure that the Commonwealth receives abandoned bail as soon as feasible. Within the constraints of workforce reductions, this court is committed to doing so.

Additionally, the Clerk-Magistrate provided a three-page response that agreed with our observations and recommendations. The response also provided a historical perspective about changes that have taken place and their affect on operations of the Clerk-Magistrate's Office. Specifically, the Clerk noted that the complexity of cases has increased over the years, compounded by lack of personnel due to lay-offs and hiring freezes. Lastly, the Clerk-Magistrate suggested that there should be centralized representation of Clerk-Magistrate's Office needs in the AOTC management structure.