



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

*Making government work better*

Official Audit Report – Issued January 29, 2015

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## Barnstable Division of the Superior Court Department

For the period July 1, 2012 through September 30, 2013





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

*Making government work better*

January 29, 2015

Scott Nickerson, Clerk of Courts  
Barnstable Division of the Superior Court Department  
3195 Main Street  
Barnstable, MA 02630

Brian Weber, Chief Probation Officer  
Barnstable Division of the Superior Court Department  
3195 Main Street  
Barnstable, MA 02630

Dear Clerk of Courts Nickerson and Chief Probation Officer Weber:

I am pleased to provide this performance audit of the Barnstable 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 September 30, 2013. My audit staff discussed the contents of this report with court personnel, whose comments are reflected in this report.

I would also like to express my appreciation to the Barnstable 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 "SMB", written in a cursive style.

Suzanne M. Bump  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

BSC	Barnstable Division of the Superior Court Department
CJAM	Chief Justice for Administration and Management
CJTC	Chief Justice of the Trial Court
DOR	Department of Revenue
DTA	Department of Transitional Assistance
OCC	Office of Community Corrections
OCM	Office of Court Management
OCP	Office of the Commissioner of Probation
OST	Office of the State Treasurer
PRA	Probation Receipt Accounting
RMV	Registry of Motor Vehicles
SCD	Superior Court Department

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## EXECUTIVE SUMMARY

The Barnstable Division of the Superior Court Department (BSC) presides over civil, criminal, and other matters falling within its territorial jurisdiction of Barnstable County. The audit was undertaken to determine whether (1) cash received by BSC’s Clerk of Courts’ Office (Clerk’s Office) and Probation Office was properly reported to the Trial Court; (2) BSC’s internal controls to safeguard evidence were adequate; (3) BSC’s internal controls to safeguard case files were adequate; (4) BSC monitored, assessed, waived, and collected monthly probation supervision fees and/or performance of community service in accordance with Chapter 276, Section 87A, of the Massachusetts General Laws and the “Directive on Collecting Probation Supervision Fees” issued by the Office of the Commissioner of Probation in December 2009; (5) BSC remitted unclaimed funds to the Office of the State Treasurer in accordance with Chapter 200A of the General Laws; (6) BSC properly disbursed bail funds; and (7) BSC notified certain state agencies when legal counsel fees were unpaid 60 days after appointment of legal counsel and withheld bail when legal counsel fees were unpaid in accordance with Chapter 211D of the General Laws.

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

<b>Finding 1a</b> <b>Page <a href="#">8</a></b>	The Probation Office does not always hold hearings or issue notices of surrender as required when probationers fall behind on the payment of the monthly probation supervision fee or performance of community-service hours. This means that probationers may not be complying with probation conditions and the Commonwealth may not be receiving the funds, or hours of community service, to which it is entitled.
<b>Finding 1b</b> <b>Page <a href="#">10</a></b>	The Probation Office does not have a centralized system to track all community service performed by probationers. Therefore, the office cannot readily determine how much service is owed, what it amounts to in dollars, and whether offenders will be able to fulfill requirements of court orders on schedule.
<b>Recommendations</b> <b>Page <a href="#">11</a></b>	<ol style="list-style-type: none"><li>1. The Probation Office should hold an administrative hearing after a probationer fails to pay the monthly probation supervision fee or perform the required community service for two consecutive months. After the hearing, the Probation Office should assess the probationer’s ability and willingness to pay to decide whether to hold a court hearing to determine whether payment of the fee would create an undue hardship. If so, the fee should be waived. If not, the Probation Office should either require the probationer to pay delinquent fees owed or issue a notice of surrender for failing to pay the fee.</li><li>2. The Probation Office should ensure that supervising probation officers promptly report all hours of community service performed to the bookkeeper for recording. The Probation Office should also consider implementing a centralized system that would allow it to better track and monitor community-service hours performed.</li></ol>

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<b>Finding 2</b> <b>Page <u>13</u></b>	The Clerk's Office is not notifying the Department of Transitional Assistance (DTA) when defendants do not pay the required legal counsel fee within 60 days from appointment of counsel.
<b>Recommendation</b> <b>Page <u>14</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 General Laws, including notifying DTA upon a defendant's failure to pay the legal counsel fee within 60 days from appointment of counsel.

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## 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 Barnstable Division of the Superior Court Department (BSC) presides over civil and criminal matters falling within its territorial jurisdiction of Barnstable County. BSC 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 September 30, 2013, BSC collected revenue totaling \$447,963,<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 June 30, 2013	July 1, 2013 through September 30, 2013	Total
<b>General Revenue</b>	\$ 229,769	\$ 65,278	\$ 295,047
<b>    Surcharges</b>	9,825	2,280	12,105
<b>Victim/Witness Fund</b>	7,825	1,875	9,700
<b>    Probation and     Administrative Supervision Fees</b>	89,372	18,047	107,419
<b>    Drug Analysis Fund</b>	2,580	600	3,180
<b>Reimbursement for Indigent Counsel</b>	17,122	3,390	20,512
<b>Total</b>	<u>\$ 356,493</u>	<u>\$ 91,470</u>	<u>\$ 447,963</u>

In addition to the funds collected and transferred to the Commonwealth, BSC was the custodian of 65 cash bails, totaling \$473,011, as of September 30, 2013.<sup>2</sup> BSC held custody of eight civil escrow accounts, totaling \$238,036, as of September 30, 2013. (Civil escrow accounts are considered assets held in trust by the court pending case disposition.)

BSC operations are funded by appropriations under OCM control from which BSC receives periodic allotments. According to the Commonwealth’s records, expenditures<sup>3</sup> associated with the operation of BSC were \$909,840 for the period July 1, 2012 through September 30, 2013.

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1. Some revenue, like probation supervision fees, is collected and transmitted by the Probation Office; however, BSC is given copies of these transmittals so it can reconcile revenue transmitted by the court division 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.  
 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 Barnstable Division of the Superior Court Department (BSC) for the period July 1, 2012 through September 30, 2013. In our test of probation supervision fees, it was necessary to go outside this period.

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 BSC's Clerk of Courts' Office (Clerk's Office) and Probation Office properly reported to the Trial Court?	Yes
2. Were BSC's internal controls to safeguard evidence adequate?	Yes
3. Were BSC's internal controls to safeguard case files adequate?	Yes
4. Did BSC monitor, assess, waive, and collect monthly probation supervision fees and/or performance of community service in accordance with Chapter 276, Section 87A, of the General Laws and the "Directive on Collecting Probation Supervision Fees" issued by the Office of the Commissioner of Probation (OCP) in December 2009?	No; see Finding <u>1</u>
5. Did BSC remit unclaimed funds to the Office of the State Treasurer (OST) in accordance with Chapter 200A of the General Laws?	Yes
6. Did BSC properly disburse bail funds?	Yes
7a. Did BSC notify all the proper state agencies when legal counsel fees were still unpaid 60 days after appointment of legal counsel?	No; see Finding <u>2</u>
7b. Did BSC withhold bail when legal counsel fees were unpaid in accordance with Chapter 211D of the General Laws?	Yes

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To achieve our audit 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 procedures such as the following:

- We interviewed BSC managers and other staff members and reviewed relevant documents, statutes, and regulations as well as BSC’s policies, procedures, and accounting records.
- We reviewed our prior audit report (No. 2008-1118-30) as well as internal audits conducted by the Trial Court and OCP to determine whether any weaknesses in internal controls had been identified that pertained to our current audit objectives.
- We selected transactions 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 and disbursements, evidence, probation supervision fees, and legal fees. Therefore, we did not project the results of our samples to the population. More specifically,
  - For cash received, we judgmentally selected a non-statistical sample of 4 months out of our 15-month audit period in the Clerk’s Office and in the Probation Office to test whether cash received was properly accounted for and reported to the Trial Court.
  - For high-risk evidence,<sup>4</sup> we selected a non-statistical judgmental sample of 10 exhibits out of a population of 76 to determine whether they were properly recorded and safeguarded.
  - For probation supervision fees, we selected a non-statistical judgmental sample of 20 active probationers out of a population of 207 and tested their files to determine whether monthly probation fees were current or waived or whether the probationer was performing community service as required by Chapter 276, Section 87A, of the General Laws and the “Directive on Collecting Probation Supervision Fees.”
  - For bails disbursed during our audit period, we selected a non-statistical judgmental sample of 20 out of a population of 122 and tested whether they were properly disbursed.
  - For safeguarding of case files, using our non-statistical judgmental sample of 20 bails disbursed, we verified through observation that when case files were removed, a sign-out card system was used.
  - For legal counsel fees, we used the non-statistical judgmental sample of 20 bails disbursed and determined that 12 of the 20 probationers owed legal counsel fees, 10 of which were at least 60 days delinquent. We determined whether legal counsel fees were paid before the bail was disbursed and whether appropriate state agencies were notified.
  - For abandoned property and unclaimed funds, we reviewed the detail trial balances in the Clerk’s Office and the Probation Office and tested 100% of the accounts that should have been transferred to OST.

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4. High-risk evidence includes money, guns, knives, bullets, and jewelry.

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- We obtained and analyzed case data from selected court case docket records and traced and compared them to Forecourt, BSC'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 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. 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 their hardcopy files and traced and compared the information to the Probation Receipt Accounting (PRA)<sup>5</sup> system for consistency and completeness. We interviewed agency officials who were knowledgeable about PRA data-input activities. Since a probationer's file is the source document used to update PRA and the principal 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 PRA for the purposes of our audit. We believe the information we obtained from the probationers' files was sufficient for the purposes of our analysis and findings.

The financial data we obtained from the Massachusetts Management Accounting and Reporting System about BSC'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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5. The Probation Office's software system used to monitor probationers. The system did not allow the office to print a list of probationers on probation as of the end of our audit period, so we retained a list of probationers on probation as of the date of our performance of the test, which was March 12, 2014.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### **1. The court does not always collect and monitor monthly probation supervision fees as required and needs to improve tracking of community service.**

When probationers fall behind on their monthly payment obligation, the Probation Office of the Barnstable Division of the Superior Court Department (BSC) does not always perform administrative hearings or issue a notice of surrender to address nonpayment. In addition, the Probation Office has no centralized method in place to track probationers' performance of community-service hours to ensure that probationers are fulfilling their legal obligation to compensate the state for probation supervision services. As a result, probationers may not be complying with their probation conditions; the Commonwealth may not be receiving fees or community service to which it is entitled; and the Probation Office cannot readily determine the value, performance, and likelihood of completion of community-service hours.

#### **a. BSC does not always hold administrative hearings with probationers who have fallen behind on their payments.**

The Probation Office does not always perform administrative hearings with probationers who have fallen behind two consecutive months on the payment of their monthly probation supervision fee to assess their ability and willingness to pay the fee or perform community service. Nor does the office always issue notices of surrender to probationers who have fallen behind three consecutive months on the payment of the fee or performance of community-service hours. As a result, the office does not have adequate assurance that probationers are complying with their probation conditions, and the Commonwealth may not be receiving the funds from monthly probation supervision fees, or the hours of community service, to which it is entitled.

We judgmentally sampled 20 criminal cases in which an individual was placed on probation and was ordered to pay a monthly probation supervision fee or perform unpaid community-service work. We examined these 20 cases to determine whether the Probation Office enforced the requirement of monthly probation supervision fee payment and/or community service by the probationers.

Of these 20 cases, there were 6 where probationers had fallen behind two consecutive months on the payment of the monthly probation supervision fee. However, 2 of the 6 probationers in these

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cases had their supervision fees waived and instead were ordered to perform community service. The supervising probation officers for 4 of these 6 probationers had not held administrative hearings to address their delinquent status as required by the Office of the Commissioner of Probation (OCP). All 4 of these probationers were delinquent for over three months; therefore, according to OCP policy, the supervising probation officers should have issued notices of surrender for failure to pay.

### **Authoritative Guidance**

Chapter 276, Section 87A, of the Massachusetts General Laws, as amended (see Appendix A), requires the imposition of a designated fee, depending on which type of probation the probationer is placed on. The monthly probation supervision fee can be waived (in which case community service must be performed) upon order of the court after a finding of fact establishing that the probationer cannot pay the fee.

In December 2009, OCP issued the "Directive on Collecting Probation Supervision Fees," which detailed steps the Probation Office must take if a probationer is delinquent on the payment of the monthly probation supervision fee. After the probationer has failed to pay two consecutive months of monthly probation supervision fees, the supervising probation officer must meet with the probationer to review the reasons the probationer has failed to pay the fee and the probationer's ability and willingness to pay it, as well as to establish a plan to catch up. The Probation Office must schedule a court hearing to determine whether the fee is creating an undue hardship on the probationer and should be waived. If the probationer appears to be willing and able to pay, the supervising probation officer can allow the probationer up to two weeks to make full payment of the fee. If a probationer fails to pay the monthly probation supervision fee for a third consecutive month, the supervising probation officer must issue a notice of surrender (i.e., bring the probationer's case into court to argue that the probationer has violated the terms and conditions of probation) for failing to pay the fee.

### **Reasons for Not Performing Administrative Hearings When Probationers Become Delinquent**

The Probation Office stated that administrative hearings were not being held regularly because of staffing constraints caused by a hiring freeze.

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**b. BSC does not effectively track community service performed by probationers.**

The Probation Office staff records the performance of community service in probationers' files, but the office lacks a centralized system to track all the hours of community service performed through the Office of Community Corrections (OCC)<sup>6</sup> or independent work arrangements made outside OCC. As a result, the Probation Office cannot readily determine how many community-service hours are owed, what community service amounts to in dollars, and whether offenders will be able to fulfill the requirements of court orders on schedule.

The Probation Receipt Accounting (PRA) system that was used during the audit period to track a probationer's payment of the monthly probation supervision fee was also used to update community-service hours when the supervising probation officer informed the bookkeeper of community service performed by the probationer. The bookkeeper recorded the number of hours performed in PRA in lieu of the probation supervision fee and calculated the cash equivalent value of community service in order to calculate the balance owed on the probation term.

**Authoritative Guidance**

The Probation Office is responsible for monitoring community service performed by individuals under Chapter 276, Section 87A, of the General Laws, titled "Conditions of Probation; Probation Fee":

*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. . . .*

Though the General Laws do not address the issue of a centralized record, they do require adequate monitoring, and best business practices would require the use of a centralized tracking system. Adequate monitoring requires the maintenance of accurate records.

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6. OCC is the office within the Trial Court's Probation Department that administers the Community Service Program throughout Massachusetts.

## Reasons for Ineffective Tracking of Probationers' Community-Service Hours

Since BSC does not have a centralized system, the Probation Office documents hours of community service in each probationer's case file. The bookkeeper relies on the probation officers to summarize probationers' community-service hours for recording. However, the probation officers report this information to the bookkeeper toward the end of an individual's probation period rather than monthly. As a result, the bookkeeper cannot determine the aggregate number of community-service hours owed and equivalent dollar value before that point.

Accurate recording of community-service hours requires effective communication between the bookkeeper and probation officers.

## Recommendations

1. The Probation Office should hold an administrative hearing after a probationer fails to pay the monthly probation supervision fee for two consecutive months or fails to perform the required community-service hours in lieu of payment. After the hearing, the Probation Office should assess the probationer's ability and willingness to pay the fee to decide whether a court hearing should be held to determine whether payment of the fee would create an undue hardship on the probationer. If so, the fee should be waived. If not, the Probation Office should either require the probationer to pay delinquent fees owed or issue a notice of surrender for failing to pay the monthly probation supervision fee after three months.
2. The Probation Office should ensure that supervising probation officers promptly report all hours of community service performed by each probationer for recording so that the bookkeeper can readily determine the status of probationers' accounts. The Probation Office should also consider implementing a centralized system that would allow it to better track and monitor community-service hours performed by probationers.

## Auditee's Response

In response to the issue regarding administrative hearings for unpaid probation supervision fees, the Chief Probation Officer stated, in part,

*The main objective of an administrative hearing is to help guide a probationer who has fallen out of compliance with his conditions of probation return to compliance without bringing the case before the court.*

*The reality of the situation at this location is the majority of employment opportunities are seasonal. Fishermen, landscapers, construction workers, hospitality workers, and other*

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*occupations thrive during the tourist season. Many of our probationers only work during certain times of the year. They pay their probation fee when they are working and routinely fall behind when they are not. The Probation Officers at this location are knowledgeable and experienced. I have given them the latitude which allows persons to fall behind if they believe they will make up the arrears when they are working. As the only supervisor at the location I review each case every 6 months. If anyone is 6 or more months behind in their fee I order the [probation officer] to schedule an administrative hearing. **It is important to note that no probationer is terminated from supervision unless their probation fee has been satisfied in full or the court waived a portion or all of the fee on the record. . . .***

*With less staff and no Assistant [Chief Probation Officer], the office collected over \$84,000 more in probation supervision fees during the initial 3 years I was here as the [Chief Probation Officer]. It is my feeling that this office is accomplishing the goals of the directive from 2009 by instituting local practices which are both effective and realistically able to be achieved with the resources which we have.*

In response to the issue of properly tracking community service performed by probationers, the Chief Probation Officer wrote that his office had begun using a new software system (MassCourts, which is being adopted throughout the Trial Court) since the end of our audit fieldwork and that attempting to enter monthly hours in the old system would therefore not be useful. He stated that since the software transition, the Clerk of Courts' Office (the Clerk's Office) had been responsible for monitoring money and community-service hours and that normally the Clerk's Office received a probationer's certificate of completion of community service at the end of the probation period. He added, "Community service hours which are completed by probationers at this court location are being monitored and accounted for."

### **Auditor's Reply**

Based on his response, we believe the Chief Probation Officer has been diligent in conducting semiannual reviews and ensuring that probationers are not prematurely terminated from supervision. Additionally, we acknowledge that despite reduced staffing, the Probation Office has increased its collection of probation supervision fees. However, since the OCP procedures are mandatory, if he feels that his office's practices are more effective and realistic for its region, the Chief Probation Officer should contact OCP to ask whether an exemption can be granted. Moreover, probation cases affected by these practices should be fully documented as such, and those not affected should comply with the OCP directive.

We agree with the Chief Probation Officer that the Clerk's Office is responsible for recording monthly probation fee assessments, payments, and community service in the MassCourts system and that this system has replaced the previous system (operated by the Probation Office) for recording that information. However, probation officers are still responsible for making sure offenders comply with the terms and conditions of probation, including performing monthly community service instead of paying the monthly probation supervision fee. Since the record of community service performed is not submitted to the Clerk's Office until the end of an offender's probation, we reiterate our recommendation that the Probation Office institute a system that will monitor and track monthly community service for better accountability.

## **2. The BSC Clerk's Office is not notifying the Department of Transitional Assistance when defendants do not pay legal counsel fees on time.**

The Clerk's Office is not notifying the Department of Transitional Assistance (DTA) when a defendant does not pay the legal counsel fee within 60 days of appointment of counsel. As a result, the Commonwealth may not be receiving all the money to which it is entitled.

From our test of 20 bail funds disbursed, we determined that 12 had legal fees assessed. We examined these 12 to determine whether the court notified the proper state agencies, including DTA, within 60 days of the assessment of legal counsel fees.

In 10 of the 12 cases (83%) we examined, the legal counsel fees remained unpaid for at least 60 days after appointment of counsel. The defendants in these 10 cases were not reported to DTA for failure to pay the legal counsel fees. The Clerk's Office did notify the Department of Revenue (DOR) and the Registry of Motor Vehicles (RMV), the other two agencies requiring notification, when legal counsel fees were unpaid within 60 days from appointment of counsel.

### **Authoritative Guidance**

Chapter 211D, Section 2A(h), of the General Laws (see Appendix B) requires the Clerk of Courts to notify RMV, DTA, and DOR upon a defendant's failure to pay the legal counsel fee within 60 days from its assessment.

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

Clerk's Office personnel stated that they were not aware that Chapter 211D of the General Laws had been amended in 2011 to include reporting unpaid fees to DTA because DTA had previously 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 upon a defendant's failure to pay the legal counsel fee within 60 days from appointment of counsel.

## Auditee's Response

The Clerk of Courts responded, in part,

*As your auditors found, we did report all non-payment of legal counsel fees to the Department of Revenue and the Registry of Motor Vehicles as required and would have notified DTA if we were made aware of the law change.*

*I would like to state that when I was notified of the law change by your auditors, I immediately made my criminal department aware of the requirement and notices were sent. Our new MassCourts case management system now includes sending a notice to DTA and we have been in compliance since we were informed of the issue by the auditors in April or May of 2014.*

## OTHER MATTERS

### **Physical Security Concerns Need to Be Addressed**

The Barnstable Division of the Superior Court Department (BSC) conducts annual risk assessments of its activities to identify any areas of concern and to develop internal controls to mitigate those risks. BSC has identified certain risks concerning access to, and security for, the Clerk of Courts' Office (the Clerk's Office) and the Probation Office because of the lack of secure storage space. However, since the building that houses BSC is owned by Barnstable County and controlled by the Barnstable County Commissioners, the Clerk's Office and the Probation Office cannot independently implement all the improvements that are necessary to mitigate those risks. The Clerk of Courts has collaborated with county officials on these issues, but at this time, no workable plan has been achieved. Consequently, we believe that the Superior Court Department and/or the Trial Court should consider working with the Barnstable County Commissioners to see to what extent the physical security and storage matters raised by the Clerk of Courts and Chief Probation Officer can be addressed.

## **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: Affidavit of Indigency; Waiver Authorizing Access to Verifying Information; Quarterly Reports on Implemented Procedures**

*(h) 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.*