



# The Commonwealth of Massachusetts

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**INDEPENDENT STATE AUDITOR'S REPORT ON  
CERTAIN ACTIVITIES OF THE  
BRISTOL DIVISION OF THE  
SUPERIOR COURT DEPARTMENT OF THE  
MASSACHUSETTS TRIAL COURT  
JULY 1, 2004 TO JUNE 30, 2006**

**OFFICIAL AUDIT  
REPORT  
APRIL 12, 2007**

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**INTRODUCTION****1**

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. Chapter 211B of the Massachusetts General Laws authorized the Superior Court Department to establish 14 Divisions, each having a specific territorial jurisdiction, to preside over matters that are brought before it. The Division's organizational structure consists of two main offices: the Clerk's Office, headed by a Clerk of the Courts, who is an elected official; and the Probation Office, which is headed by a Chief Probation Officer. The Clerk and Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Bristol Division of the Superior Court Department (BSC) presides over civil, criminal, and other matters falling within its territorial jurisdiction of Bristol County. During the audit period July 1, 2004 to June 30, 2006, BSC collected revenues totaling \$1,283,189, which it disbursed to the Commonwealth as either general or specific state revenue. In addition to processing civil entry fees and monetary assessments on criminal cases, BSC was custodian of approximately 227 cash bails amounting to \$1,702,150, 4 removal/medical malpractice bonds totaling \$400, and 21 civil escrow accounts held in trust totaling \$1,205,361 as of June 30, 2006.

BSC operations were funded by appropriations under the control of either the Division (local) or the Administrative Office of the Trial Court (AOTC) or the Office of the Commissioner of Probation (central). According to the Commonwealth's records, expenditures associated with the operation of the Division were \$1,962,629 for the 24-month period ended June 30, 2006.

The purpose of our audit was to review BSC's internal controls and compliance with state laws and regulations regarding administrative and operational activities, including cash management, bail funds, and revenue. Our review focused on the activities of the Clerk of the Courts and Probation Office for the period July 1, 2004 to June 30, 2006.

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Our audit found that BSC needed to improve its internal controls to comply with the Massachusetts General Laws regarding forfeiting bail when defendants default and do not make their required court appearances. Specifically, BSC was in possession of 13 bails totaling \$63,000 in which defendants were in default but their bail had not been ordered forfeited. As a result, the Commonwealth may not have received all of the bail funds to which it was entitled.

## INTRODUCTION

### *Background*

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 central administrative office managed by a Chief Administrative Justice (CAJ), who is responsible for the overall management of the Trial Court. The CAJ charged the central office, known as the Administrative Office of the Trial Court (AOTC), with developing a wide range of centralized functions and standards for the benefit of the entire Trial Court, including a budget for the Trial Court; central accounting and procurement systems; personnel policies, procedures, and standards for judges and staff; and the management of court facilities, security, libraries, and automation.

Chapter 211B of the Massachusetts General Laws authorized 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 has exclusive authority to convene medical malpractice tribunals. Regarding criminal matters, the SCD has exclusive original jurisdiction in first-degree murder cases. It also has jurisdiction over all felony matters and other crimes, although it shares jurisdiction over crimes where other Trial Court Departments have concurrent jurisdiction. Finally, the SCD has appellate jurisdiction over certain administrative proceedings. The SCD established 14 Divisions, each having a specific territorial jurisdiction, to preside over civil and criminal matters brought before it. The Division's organizational structure consists of two main offices: the Clerk's Office, headed by a Clerk of the Courts who is an elected official; and the Probation Office, headed by a Chief Probation Officer. The Clerk of the Courts and the Chief Probation Officer have responsibility for the internal administration of their respective offices.

The Bristol Division of the Superior Court Department (BSC) presides over civil and criminal matters falling within its territorial jurisdiction of Bristol County. During the audit period, BSC collected revenues totaling \$1,283,189, which it disbursed to the Commonwealth as either general or specific state revenue. The following table shows the breakdown of the \$1,283,189 in revenues collected and transferred to the Commonwealth:

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Revenue Type	July 1, 2005 to June 30, 2006	July 1, 2004 to June 30, 2005
General Revenue	\$516,026	\$433,043
Probation and Administrative Supervision Fees	122,204	113,307
Victim/Witness Fund	16,175	18,259
Civil Surcharges	20,438	19,510
Reimbursement for Indigent Counsel	625	2,470
Head Injury Program	250	500
Victims of Drunk Driving	50	-
Drug Analysis Fund	5,765	8,550
Miscellaneous	<u>-</u>	<u>6,017</u>
Total	<u>\$681,533</u>	<u>\$601,656</u>

Approximately \$31,459 of these funds consisted of suspended fines and costs that were collected by the Probation Office and submitted to the Clerk of the Courts Office for transmittal to the Commonwealth. The Probation Office transmits Probation Administrative Supervision Fees directly to the Commonwealth. The Probation Office also disbursed approximately \$261,715 of restitution money that it paid directly to the parties owed the funds.

The BSC Clerk of the Courts Office was also the custodian of approximately 227 cash bails amounting to \$1,702,150, and 4 removal/medical malpractice bonds amounting to \$400, as of June 30, 2006. Bail is the security given to the court by defendants or their sureties to obtain release and 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. Removal and medical malpractice bonds are required by statute to satisfy any potential claims for costs incurred in the case.

In addition to the funds collected and transferred to the Commonwealth, BSC was in control of 21 civil escrow accounts valued at \$1,205,361, as of June 30, 2006. These accounts are considered assets held in trust by the Court and kept in the custody of the Clerk of the Courts pending disposition by the Court.

BSC operations are funded by appropriations under the control of either the Division (local) or the AOTC or the Commissioner of Probation Office (central). Under local control for fiscal years 2005 and 2006 were appropriations for personnel-related expenses of the Clerk of the Courts' support staff and certain administrative expenses (supplies, periodicals, law books, etc.). Other administrative and personnel expenses of the Division were paid by centrally controlled appropriations. According to the Commonwealth's records, local and certain central expenditures associated with the operation of the Division for the 24-month period amounted to \$1,962,629<sup>1</sup>.

***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 the BSC. The scope of our audit included a review of BSC's controls over administrative and operational activities, including cash management, bail funds, and revenue for the period July 1, 2004 to June 30, 2006.

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 BSC's internal controls over cash management, bail funds, and revenues and (2) determine the extent of its controls for measuring, reporting, and monitoring effectiveness and efficiency regarding BSC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and SCD policies and procedures.

Our review centered on the activities and operations of BSC's Clerk of the Courts Office and the Probation Office. We reviewed bail and cash management activity and transactions involving the collection and processing of revenue to determine whether policies and procedures were being adhered to.

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<sup>1</sup> This amount does not include certain centrally controlled expenditures, such as facility lease and related operational expenses, as well as personnel costs attributable to court officers and security officers since they are not identified by court division in the Commonwealth's accounting system.

To achieve our audit objectives, we conducted interviews with management and staff and reviewed prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting (MMARS) reports, AOTC statistical reports, and BSC'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 BSC was based on those interviews and documents.

Our recommendations are intended to assist BSC in developing, implementing, or improving its internal controls and overall financial and administrative operations to ensure that BSC's systems covering bail funds, cash management and revenue collection, and processing activities operate in an economical, efficient, and effective manner and in compliance with applicable rules, regulations, and laws.

Based on our review, we have determined that, except for the matter noted in the Audit Results section of our report, BSC (1) maintained adequate internal controls over bail funds, cash management and revenue collection and processing activities, and (2) complied with applicable laws, rules, and regulations, for the areas tested.

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## AUDIT RESULTS

### IMPROVEMENTS NEEDED OVER BAIL FUNDS SUBJECT TO FORFEITURE

Our audit found that BSC needed to improve its internal controls to comply with the Massachusetts General Laws regarding forfeiting bail when defendants default and do not make their required court appearances. Specifically, BSC was in possession of 13 bails totaling \$63,000 in which defendants were in default but the bails had not been ordered forfeited. The court classified these cases as “Filed Pending Apprehension”. As a result, the Commonwealth may not have received all of the bail funds to which it was entitled.

Bail in cash and other forms is the security given to a court in order for defendants to obtain their release and to ensure their appearance in court at a future date. Chapter 276, Section 20D, of the General Laws stipulates that a “court or justice may admit such person to bail by bond or undertaking, with sufficient sureties, and in such sum as such court or justice deems proper, conditioned for his appearance before such court or justice, at a time specified in such bond or undertaking, and for his surrender to be arrested upon the warrant of the governor.”

Should the defendant fail to appear in court in accordance with the terms of release, Chapter 276, Section 20F, of the General Laws provides for the forfeiture of that bail to the Commonwealth and the arrest of the defendant. Further, Chapter 276, Section 80, of the General Laws provides that:

*At any time after default of the defendant, the court may order forfeited the money, bonds 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.*

The BSC Clerk of the Courts was in possession of 13 bails totaling \$63,000 for defendants that had defaulted and had warrants issued against them. The Clerk of the Courts stated that these cases are required to have motions brought by the prosecutor to start forfeiture proceedings. The Clerk also noted that he has kept the prosecutor aware of the status of these cases, but has no control over either what motions are brought or when they are brought before the court by the prosecution.

***Recommendation***

The Clerk of the Court should contact either the Superior Court Department or the AOTC Fiscal Affairs Division to determine whether alternative procedures are available to commence forfeiture proceedings so that these bails can be transmitted to the Commonwealth.

***Auditee's Response***

The Clerk of Courts provided the following response:

*During our exit interview, . . . I provided the background to you as to why these monies were held in this manner. Specifically, the previous District Attorney was reluctant to move on these matters, and preferred to wait until the subject was apprehended, regardless of how long that took.*

*Our current District Attorney appears more open to address this type of situation earlier in the process. Therefore, once a defendant is "filed pending apprehension," our office will send notice to both the surety and the District Attorney after a reasonable amount of time has passed, to schedule a hearing regarding the forfeiture of the related bail funds.*