



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

Making government work better

Official Audit Report – Issued October 6, 2014

Bristol Division of the Superior Court Department

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





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

Making government work better

October 6, 2014

Marc Santos, Clerk of Courts
Bristol Division of the Superior Court Department
441 County Street
New Bedford, MA 02740

Mary Santos, Chief Probation Officer
Bristol Division of the Superior Court Department
186 S. Main Street, Suite 302
Fall River, MA 02720

Dear Clerk of Courts Santos and Chief Probation Officer Santos:

I am pleased to provide this performance audit of the Bristol 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 June 30, 2013. My audit staff discussed the contents of this report with court personnel, and their comments are reflected in this report.

I would also like to express my appreciation to the Bristol 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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EXECUTIVE SUMMARY

The Bristol Division of the Superior Court Department (BSC) presides over civil, criminal, and other matters falling within its territorial jurisdiction of Bristol County. This audit was undertaken to determine whether (1) cash received by BSC's Clerk of Courts' Office (the 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 assessed, waived, and collected monthly probation supervision fees and monitored 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 2010; (5) BSC remitted unclaimed funds to the Office of the State Treasurer (OST) 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.

Based on our audit, we have concluded the following for the period July 1, 2012 through June 30, 2013:

- (1) Cash deposited in the bank by the Clerk's Office was properly reported to the Trial Court, but because of internal control deficiencies in the Clerk's Office, the amount of cash reported as received may not have been accurate (Finding 1).
- (2) BSC's internal controls to safeguard evidence needed improvement (Finding 1).
- (3) BSC's internal controls to safeguard case files needed improvement (Finding 1).
- (4) BSC's collection and monitoring of monthly probation supervision fees and/or performance of community service needed improvement; however, its assessment and waiving of monthly probation supervision fees were in accordance with applicable standards (Finding 2).
- (5) BSC remitted unclaimed funds to OST in accordance with Chapter 200A of the General Laws.
- (6) BSC properly disbursed bail funds.
- (7) BSC's withholding of bail when legal counsel fees were unpaid was not in accordance with Chapter 211D of the General Laws. In addition, when legal counsel fees were unpaid 60 days after appointment of legal counsel, BSC only notified two of the three state agencies it was required to notify under Chapter 211D of the General Laws (Finding 4).

In addition, in the course of our audit, we determined that the Clerk's Office had not updated its internal control plan (ICP) or its risk assessment, as required by state law and Trial Court guidelines.

Summary of Findings

- The Clerk's Office did not secure cash that was collected throughout the day, and it lacked segregation of duties over cash received. As a result, cash is at risk of theft that may go undetected; the Commonwealth may not be receiving funds to which it is entitled; and the amount of cash reported to the Commonwealth as received may not be accurate.
- The Clerk's Office does not adequately safeguard evidence in its possession. The evidence log that the Clerk's Office maintains to track evidence in its possession does not contain sufficiently detailed descriptions, including type, amount/quantity, and exact location. As a result, the Clerk's Office cannot compare the log to evidence kept in various locations in the Fall River and Taunton courts to ensure that the evidence related to its criminal cases that should be in its possession, which could include high-risk evidence like drugs, money, and weapons, is properly accounted for.
- BSC does not have a tracking system in place to monitor the removal of case files. Since the court maintains only one copy of each case file, if a case file were lost, stolen, or misplaced, the Clerk's Office would not be able to produce the file when required to do so for official purposes (e.g., when a criminal case was being tried).
- When a probationer falls behind two consecutive months on the payment of the monthly probation supervision fee or performance of community-service hours, the Probation Office does not always perform an administrative hearing to assess the probationer's 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 has inadequate 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.
- The Probation Office does not effectively track all of the hours of community service performed through the Office of Community Corrections (OCC) or independent work arrangements made outside OCC. As a result, the Probation Office cannot readily determine how many community-service work 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 Clerk's Office has not updated its ICP or conducted a risk assessment, as required by state law and Trial Court guidelines, since January 2010. As a result, it cannot be certain that it has properly identified all potential risks to meeting its objectives and has taken appropriate measures to mitigate those risks. In addition, internal controls over cash received, evidence in BSC custody, and the removal and return of case files were deficient, and the integrity of court records and assets was diminished.

- BSC is not consistently complying with the statutory requirements regarding the collection of \$150 legal counsel fees when defendants are appointed legal counsel. As a result, the Commonwealth may not be receiving all the money to which it is entitled.

Recommendations

- BSC should update its risk assessment and modify its ICP to correlate the risks to its internal control policies and procedures.
- BSC should take the measures necessary to ensure that all of the cash it collects is properly safeguarded and that adequate segregation of duties is established over the cash received.
- The Clerk's Office should update its evidence log to include the exact location, detailed description, and type of evidence maintained for all cases for which it has evidence in its custody.
- The Clerk's Office should reconcile evidence in its custody.
- The Clerk's Office should ensure that an adequate tracking system is in place to monitor the removal and return of case papers. The office should also consider keeping a backup copy of each case file.
- 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.
- The Probation Office should ensure that supervising probation officers promptly report all hours of community service performed by each probationer, as well as the payment of monthly probation supervision fees, to the bookkeeper for recording in the department's Probation Receipt Accounting system so that the bookkeeper can readily determine the status of probationers' accounts.
- The Clerk's Office should update its ICP and risk assessment so that it can be certain that it has properly identified all potential risks to meeting its objectives and has designed and implemented internal control policies and procedures to mitigate those risks.
- Upon a surety's request for the return of bail, the Clerk's Office should review the case file and Forecourt before releasing the outstanding bail to the surety, in order to ensure that the defendant has paid the legal counsel fee. The office should not return the bail to the surety until the legal counsel fee is paid in full.

- If the legal counsel fee is not paid within 60 days of appointment of counsel, the Clerk's Office should notify the Registry of Motor Vehicles, the Department of Transitional Assistance, and the Department of Revenue of the amount owed by the defendant.
- The Clerk's Office and the Probation Office should communicate with each other any changes to a probationer's terms of probation or partial payments of fees.

OVERVIEW OF AUDITED AGENCY

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 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 Bristol Division of the Superior Court Department (BSC) presides over civil and criminal matters falling within its territorial jurisdiction of Bristol 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 June 30, 2013, BSC collected revenue totaling \$695,934,¹ 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
General Revenue	\$ 411,103
Probation and Administrative Supervision Fees	210,993
Victim/Witness Fund	28,077
Surcharge*	18,060
Reimbursement for Indigent Counsel	10,220
Drug Analysis Fund	13,240
Indigent but Able to Contribute	3,150
Head Injury**	1,000
Highway Fines	50
Miscellaneous	41
Total	<u>\$ 695,934</u>

* A 25% surcharge required on the payable portion of any criminal fine, except motor vehicle offenses not punishable by incarceration.

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

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.

In addition to the funds collected and transferred to the Commonwealth, BSC was the custodian of 252 cash bails, totaling \$2,381,100, as of June 30, 2013.² BSC held custody of 19 civil escrow accounts, totaling \$799,652, as of June 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, expenditures³ associated with the operation of BSC were \$1,461,633 for the period July 1, 2012 through June 30, 2013.

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.

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 Bristol Division of the Superior Court Department (BSC) for the period July 1, 2012 through June 30, 2013. In some cases, it was necessary to examine data outside the designated audit period in order to meet our audit objectives.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

BSC presides over civil, criminal, and other matters falling within its territorial jurisdiction of Bristol County. This audit was undertaken to determine whether (1) cash received by BSC's Clerk of Courts' Office (the 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 assessed, waived, and collected monthly probation supervision fees and monitored 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 2010; (5) BSC remitted unclaimed funds to the Office of the State Treasurer (OST) 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.

To achieve our objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls. In addition, we performed 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. 2007-1119-3O) 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 audit objectives.
- 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 civil or criminal case (including the assessment and collection of various fees and fines, civil judgments, and criminal case adjudication), we did not rely on Forecourt for the purposes of our audit. We believe the information we obtained from case docket records was sufficient for the purposes of our analysis and findings. In most instances, we did not rely on computer-processed data for our audit objectives. We relied on hardcopy source documents, interviews, and other non-computer-processed data as supporting documentation on which we based our conclusions.
- We obtained and analyzed information regarding probationers from the probationers' hardcopy files and traced and compared them to the Probation Receipt Accounting system (PRA)⁴ 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.
- We selected transactions primarily by using random, non-statistical sampling, in order to eliminate bias by giving all items in the population an equal chance of being chosen, for our examination of cash received, case files, bail funds disbursed, evidence, and probation supervision fees. Therefore, we did not project the results of our samples to the population. More specifically,
 - For cash received, out of the 12 months in our audit period, we randomly selected 4 months in the Clerk's Office and 2 months in the Probation Office to test whether cash received was properly reported to the Trial Court.
 - For evidence, we randomly selected 40 of the 260 criminal cases listed on the evidence log as of February 11, 2014⁵ to determine whether adequate controls were in place to safeguard evidence. However, because of the internal control deficiencies with regard to evidence noted during our audit, we cannot be certain that the evidence log is complete.

⁴ The Probation Department's software system used to monitor probationers. The system did not allow the department 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.

⁵ The evidence log is continuously updated; therefore, the Clerk's Office was unable to provide us with a log as of June 30, 2013.

- For case files, we randomly selected 60 of the 1,468 cases filed during the fiscal year ended June 30, 2013 to determine whether adequate controls were in place to safeguard case files.
- For probation supervision fees, we randomly sampled 30 criminal cases in which an individual had been placed on probation and ordered to pay a monthly probation supervision fee as of March 12, 2014. We used this sample to test whether the court was assessing, waiving, collecting, and monitoring probation supervision fees and/or community service as required by Chapter 276, Section 87A, of the General Laws and OCP's "Directive on Collecting Probation Fees."
- For remittance of unclaimed funds, we examined all bail, escrow, and restitution that might have been eligible for remittance to OST as of June 30, 2013. Of the 12 bail funds that were more than three years old, 2 were eligible for remittance and were examined. Of the 4 escrow cases that were more than three years old, 3 were eligible for remittance and were examined. There were no restitution accounts noted as eligible for remittance.
- For bail funds disbursed, we randomly selected 20 of the 200 bail funds disbursed during the fiscal year ended June 30, 2013 to determine whether the court was properly disbursing bail.
- For legal fees, from the aforesaid 20 bail funds,⁶ we determined that there were seven instances in which legal fees were assessed. We reviewed the seven instances to determine whether legal fees were paid before bail was released and whether legal fees determined to be unpaid 60 days after appointment of legal counsel were reported to the proper state agencies.

Based on our audit, we have concluded the following for the period July 1, 2012 through June 30, 2013:

- (1) Cash deposited in the bank by BSC's Clerk's Office was properly reported to the Trial Court, but because of internal control deficiencies in the Clerk's Office, the amount of cash reported as received may not have been accurate (Finding 1).
- (2) BSC's internal controls to safeguard evidence needed improvement (Finding 1).
- (3) BSC's internal controls to safeguard case files needed improvement (Finding 1).
- (4) BSC's collection and monitoring of monthly probation supervision fees and/or performance of community service needed improvement; however, its assessment and waiving of monthly probation supervision fees were in accordance with applicable standards (Finding 2).
- (5) BSC remitted unclaimed funds to OST in accordance with Chapter 200A of the General Laws.
- (6) BSC properly disbursed bail funds.
- (7) BSC's withholding of bail when legal counsel fees were unpaid was not in accordance with Chapter 211D of the General Laws. In addition, when legal counsel fees were unpaid 60 days

⁶ The court could not produce a report to provide us with a population of bail disbursements with legal fees assessed; therefore, we selected our sample from bail money that was released.

after appointment of legal counsel, BSC only notified two of the three state agencies it was required to notify under Chapter 211D of the General Laws (Finding 4).

In addition, in the course of our audit, we determined that the Clerk's Office had not updated its internal control plan or its risk assessment, as required by state law and Trial Court guidelines.

DETAILED AUDIT RESULTS AND FINDINGS WITH AUDITEE'S RESPONSE

Audit Findings

1. Internal controls over cash received, evidence in custody, and safeguarding of case files in the Clerk of Courts' Office need improvement.

Internal controls in the Clerk of Courts' Office (the Clerk's Office) need improvement in order to adequately safeguard cash, evidence, and case files in the custody of the Bristol Division of the Superior Court Department (BSC). Specifically, segregation of duties over cash is not implemented, and cash received throughout the day is not secured. Additionally, the evidence log that the Clerk's Office maintains to track evidence in its possession does not contain sufficiently detailed descriptions, including type, amount/quantity, and exact location, and therefore the Clerk's Office is unable to compare the evidence in its custody to the log. As a result, the Clerk's Office cannot be sure that evidence related to its criminal cases that should be in its possession, which could include high-risk evidence like drugs, money, and weapons, is properly accounted for. Finally, BSC does not have a tracking system in place to monitor the removal of case files.

As a result of these internal control deficiencies, cash, evidence, and case files in the Clerk's Office are at risk of loss or theft which may go undetected; the Commonwealth may not be receiving funds to which it entitled; and cash reported to the Commonwealth as received may not be accurate. In addition, high-risk evidence could be misplaced or misappropriated and such losses may not be detected because of the evidence log's deficiencies. This creates a risk that the Clerk's Office will not be able to locate such evidence when required to produce it for official purposes (e.g., when a criminal case decision is appealed and the evidence is needed during the appellate stage of the case).

a. BSC has insufficient internal controls over cash received in the Clerk's Office.

The Clerk's Office did not secure cash that was collected throughout the day, and it lacked segregation of duties over cash received. Through inquiries of various employees and observation of the cash-receipt process, we noted that cash collected throughout the day was kept unsecured in folders on top of the cashiers' desks. In addition, a single employee (the bookkeeper) was responsible for verifying the daily cash received, preparing the daily deposit slip, recording the cash received in the cash journal, and reconciling the monthly bank deposit.

As a result of these issues, cash is at risk of theft that may go undetected. The possibility of undetected theft means the Commonwealth may not be receiving funds to which it is entitled.

Furthermore, the amount of cash reported to the Commonwealth as received may not be accurate.

Authoritative Guidance

In its Internal Control Guide, the Office of the State Comptroller (OSC) requires state departments to institute controls to protect their equipment, information, documents, and other resources that could be wrongfully used, damaged, or stolen. To ensure this protection, Section 8.3 of the Trial Court's Fiscal Systems Manual states that "separate cash tills with locking tops must be maintained for each cashier for which he or she is fully accountable."

Additionally, OSC's Internal Control Guide describes the importance of segregation of duties as follows:

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

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

b. BSC has insufficient internal controls over evidence in the Clerk's Office.

The Clerk's Office does not adequately safeguard evidence in its possession. The evidence log that the Clerk's Office maintains to track evidence does not contain sufficiently detailed descriptions, including type, amount/quantity, and exact location. As a result, the Clerk's Office cannot compare the log to evidence kept in various locations in the Fall River and Taunton courts to ensure that the evidence related to its criminal cases that should be in its possession, which could include high-risk evidence like drugs, money, and weapons, is properly accounted for.

BSC maintains custody of evidence exhibits, including cash, drugs, and guns, in locked safes; however, at least two employees have access to the safes.

As a result of these internal control deficiencies, high-risk evidence could be misplaced or misappropriated and such losses may not be detected because of the evidence log's deficiencies. This creates a risk that the Clerk's Office will not be able to locate such evidence when required to produce it for official purposes (e.g., when a criminal case decision is appealed and the evidence is needed during the appellate stage of the case).

BSC has developed guidelines to account for the receipt of evidence properly in an evidence log; however, the evidence that was logged was not sufficiently identified, particularly when it came to quantities and types of controlled substances, money, and weapons, as well as specific storage locations.

The evidence log listed 260 criminal cases that had exhibits. Each criminal case had one or more exhibits. The evidence log listed the docket number, the defendant name, the disposal date, and a general description of the exhibits and their location. We randomly sampled 40 criminal cases from the evidence log and examined all the exhibits listed on the log that were related to the cases selected. For 30 of the 40 cases sampled, the description was simply "box" or "envelope." In addition, the evidence log did not specify the person from whom each item was received or each item's specific location.

Authoritative Guidance

The Massachusetts General Laws (see Appendix A for excerpts from Chapters 278A, 276, and 94C) require that evidence be safeguarded, documented, and preserved while the convicted individual remains in state custody or on probation or parole.

Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, states, in part, the following regarding "the minimum level of quality acceptable for internal control systems in operation throughout the state agencies and departments":

Access to resources and records is to be limited to authorized individuals as determined by the agency head. Restrictions on access to resources will depend upon the vulnerability of the resource and the perceived risk of loss, both of which shall be periodically assessed. The agency head shall be responsible for maintaining accountability for the custody and use of resources and shall assign qualified individuals for that purpose. Periodic comparison shall be made between the resources and the recorded accountability of the resources to reduce the risk of unauthorized use or loss and protect against waste and wrongful acts. The vulnerability and value of the agency resources shall determine the frequency of this comparison.

BSC's internal control plan (ICP) provides guidelines for maintaining an adequately documented evidence log:

An evidence log must be maintained . . . to record the receipt of all case evidence. Necessary information includes a description of the evidence, person(s) from whom it was received and the docket number of each case.

c. BSC does not adequately safeguard case files in the Clerk's Office.

Through inquiries of various employees and observation of the removal and return of case files, we noted that BSC did not have a tracking system in place to monitor the removal of case files. Since the court maintains only one copy of each case file, if a case file were lost, stolen, or misplaced, the Clerk's Office would not be able to produce the file when required to do so for official purposes (e.g., when a criminal case was being tried).

Authoritative Guidance

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

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

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

Reasons for Issues with Internal Controls

The Clerk's Office has not updated its ICP or risk assessment, as discussed below in Finding 3. As a result, it cannot be certain that it has properly identified all potential risks to meeting its objectives and designed and implemented internal control policies and procedures to mitigate those risks. In addition, the Clerk's Office has not sufficiently implemented some of the requirements of its existing ICP, such as the requirements regarding information that must be included in the evidence log.

Recommendations

- BSC should update its risk assessment and modify its ICP to correlate the risks to its internal control policies and procedures.
- BSC should take the measures necessary to ensure that all of the cash it collects is properly safeguarded and that adequate segregation of duties is established over the cash received.
- The Clerk's Office should update its evidence log to include the exact location, detailed description, and type of evidence maintained for all cases for which it has evidence in its custody.
- The Clerk's Office should reconcile evidence in its custody.
- The Clerk's Office should ensure that an adequate tracking system is in place to monitor the removal and return of case papers. The office should also consider keeping a backup copy of each case file.

Auditee's Response

The Bristol Superior Court Clerk's Office has accounted and will continue to account, for all cash that it collects and receives, along with maintaining satisfactory segregation of duties. To this end, this office may consider any additional measures necessary that may improve the proper safeguarding of said cash as well as the segregation of duties over the cash collected/received. . . .

The Bristol Superior Court Clerk's Office has accounted for and will continue to account, for all of the evidence in its possession, including the use of our evidence log sheet that is often duplicated and attached to the physical evidence location. To continue this effort, this office may consider and additional measures that may improve this process. . . .

The Bristol County Clerk's Office has maintained, and will continue to maintain, a workable tracking system regarding the removal of case files. Relative to this issue, the clerk's office may consider any additional measures that may improve this procedure.

Auditor's Reply

In its response, BSC asserts that it has accounted for, and will continue to account for, all cash receipts and all evidence in its possession and that it maintains, and will continue to maintain, a workable tracking system for its case files. Despite these assertions, as noted in this report, we found that BSC had not established adequate controls for these activities. Without such controls, BSC cannot be certain that these activities are functioning as intended, and there is a higher-than-acceptable risk that significant problems, such as theft of funds or evidence or a loss of records, could occur. Consequently, we again encourage BSC to implement our recommendations regarding these issues.

As the Clerk's Office works toward updating its ICP and risk assessment (see Finding 3), it should ensure that it properly identifies all potential risks to meeting its objectives and design and should implement internal control policies and procedures to mitigate those risks. It should also make sure that it implements the requirements of its ICP.

2. BSC 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 does not always perform administrative hearings or issue a notice of surrender to address nonpayment. In addition, the Probation Office has no consistent 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. Exceptions were noted in the collection and monitoring of the monthly probation supervision fee.

The Probation Office does not regularly perform administrative hearings with probationers who have fallen behind two consecutive months on the payment of their monthly probation supervision fee or performance of community-service hours 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 has inadequate 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 randomly sampled 30 criminal cases in which an individual was placed on probation and was ordered to pay a monthly probation supervision fee. We examined these 30 cases to determine whether the Probation Office enforced the requirement of monthly probation supervision fee payment and/or community service by the probationers. There were 20 instances where probationers' payments were not up to date. In 9 of these 20 cases, or 45%, no administrative

hearing was held after two months. In 7 cases, or 35%, the Probation Office did not issue a notice of surrender.

Authoritative Guidance

Chapter 276, Section 87A, of the General Laws, as amended (see Appendix B), requires the imposition of a designated fee, depending on which type of probation the probationer is placed on.

During fiscal year 2010, the Office of the Commissioner of Probation issued a directive titled “Directive on Collecting Probation Supervision Fees,” which detailed steps the Probation Office should take if a probationer is delinquent on the payment of the monthly probation supervision fee. After the probationer has failed to pay the fee for two consecutive months, 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 monthly probation supervision fee.

Reasons for Inadequate Collection and Monitoring of the Monthly Probation Supervision Fee

The Probation Office stated that this issue was due to staffing constraints caused by a hiring freeze.

Recommendations

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.

Auditee's Response

The Probation Office has fallen behind the three-month policy as it relates to the collection of money. This has occurred due to numerous duties, time-consuming reports and a caseload of approximately 85 plus per probation officer. Although not completed within this time frame, the probation officers do address money/community service obligations with their probationers and do schedule Administrative Hearings and Probation Surrenders to address these violations. To rectify this problem, the probation officer should check money obligations monthly from MassCourts. This office has now linked the probation cases with the clerk's paperwork, making this verification easier. If a probationer is unable to make payment on a monthly basis, the probation officer can request a waiver of fees or community service in lieu of the probation supervision fee by completing a modification form and submitting it for the Judge's approval within three months.

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

The Probation Office does not effectively track all of the hours of community service performed through the Office of Community Corrections (OCC)⁷ or independent work arrangements made outside OCC. As a result, the Probation Office cannot readily determine how many community-service work hours are owed, what community service amounts to in dollars, and whether offenders will be able to fulfill the requirements of court orders on schedule.

Our review was intended to confirm that the Probation Office staff tracks whether probationers are performing community service during each period in which it is required. We reviewed the probationers' files and copies of community-service records provided to the Probation Office by OCC or by the independent agency where the probationer was performing community service to determine whether Probation Office staff verified the community-service hours.

We randomly sampled 30 criminal cases in which an individual was placed on probation and was ordered to pay a monthly probation supervision fee. Of the 30 cases we examined, there were 20 cases in which probationers' payments were not up to date. Of these 20 cases, 6 were ultimately changed from being ordered to pay probation supervision fees to being ordered to perform

⁷ OCC is the office within the Trial Court's Probation Department that administers the Community Service Program throughout Massachusetts.

community service. In 1 of those 6 cases, the number of community-service hours performed per the probationer's file did not agree with the record provided by the OCC. In 4 out of the 6 cases examined, the number of community-service hours performed per the Probation Office's Probation Receipt Accounting system (PRA) did not agree with the record provided by the OCC or with the probationer's file.

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," stating, "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.

Reasons for Ineffective Tracking of Probationers' Community Service

Rather than using a centralized system, BSC documents hours of community service in each probationer's case file, and it does not always update PRA. Some probation officers consistently notify the bookkeeper when community service is performed, but others do not do so until the end of the probation period. Therefore, the bookkeeper cannot readily determine the aggregate amount of community service owed and its dollar value.

Recommendation

The Probation Office should ensure that supervising probation officers promptly report all hours of community service performed by each probationer, as well as the payment of monthly probation supervision fees, to the bookkeeper for recording in PRA so that the bookkeeper can readily determine the status of probationers' accounts.

Auditee's Response

This department has recently developed two forms that the probation officers will submit to the Probation Office Manager. The first form indicates how many hours the probationer has completed as of September 29, 2014. The second form will be submitted

monthly (beginning in October), outlining how many hours have been completed for that particular month.

3. The Clerk's Office has not updated its ICP or performed a risk assessment.

The Clerk's Office has not updated its ICP or conducted a risk assessment, as required by state law and Trial Court guidelines, since January 2010. As a result, it cannot be certain that it has properly identified all potential risks to meeting its objectives and has taken appropriate measures to mitigate those risks. In addition, internal controls over cash received, evidence in BSC custody, and the removal and return of case files were deficient, and the integrity of court records and assets was diminished.

Authoritative Guidance

Chapter 647 of the Acts of 1989 states, in part, "Internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the Office of the Comptroller." After Chapter 647 was passed, OSC issued written guidance in the form of its Internal Control Guide. In this guide, the OSC stressed the importance of internal controls and need for departments to develop an ICP, defined as follows:

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

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

The key concepts that provide the necessary foundation for an effective Trial Court Internal Control System must include: risk assessments; documentation of an internal control plan; segregation of duties; supervision of assigned work; transaction documentation; transaction authorization; controlled access to resources; and reporting unaccounted for variances, losses, shortages, or theft of funds or property. . . .

*[The internal control plan] must be documented in writing and readily available for inspection by **both** the Office of the State Auditor and the [Trial Court] Fiscal Affairs department, Internal Audit Staff. The plan should be developed for the fiscal, administrative and programmatic operations of a department, division or office. It must explain the flow of documents or procedures within the plan and its procedures cannot conflict with the **Trial Court Internal Control Guidelines**. All affected court personnel must be aware of the plan and/or be given copies of the section(s) pertaining to their area(s) of assignment or responsibility.*

Reasons for Problems with ICP and Risk Assessment

Clerk's Office officials told us that the office was understaffed because of a hiring freeze and that this had not been the highest priority. Also, BSC is converting to a new software program called MassCourts that will be used to monitor all court activities, including, but not limited to, the documentation of all case files, cash received, and cash disbursed. The implementation of MassCourts has been the primary focus of the office staff.

Recommendation

The Clerk's Office should update its ICP and risk assessment so that it can be certain that it has properly identified all potential risks to meeting its objectives and has designed and implemented internal control policies and procedures to mitigate those risks.

Auditee's Response

An updated Clerk's Office Internal Control Plan and Risk Assessment is in rough draft process and will be completed this Fall. The current Internal Control Plan and Risk Assessment of 2010 has, in the interim, been effective in allowing this office to identify any and all potential risks and taking responsive measures to mitigate them.

4. BSC is not properly collecting court-ordered legal counsel fees.

BSC is not consistently complying with the statutory requirements regarding the collection of \$150 legal counsel fees⁸ when defendants are appointed legal 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 7 cases had legal fees assessed. We examined these 7 cases to determine

- whether the legal fees were paid prior to the bail being released; and
- whether the court notified the proper state agencies of legal fees that were unpaid 60 days after appointment of counsel.

For 3 (43%) of the 7 of the cases for which bail was posted and a legal fee was assessed, the Clerk's Office returned bail to the surety before the legal counsel fee was paid, contrary to statutory requirements.

⁸ The legal counsel fee is an amount, usually \$150, that an indigent defendant who is provided with a court-appointed lawyer is responsible for paying.

We also noted a lack of communication between the Clerk's Office and the Probation Office. Of the remaining 4 cases we examined, there was 1 case in which legal counsel fees were waived by a judge, but the Clerk's Office did not notify the Probation Office, which caused the Probation Office's records to be incorrect. This communication issue could result in the Probation Office collecting fees that have been waived by a judge. Additionally, the Probation Office is authorized to collect partial or full payment of legal fees from probationers, but it does not release the payments to the Clerk's Office until the legal fee is paid in full; therefore, the Clerk's Office may collect legal counsel fees that have already been partially paid in the Probation Office.

In 4 of the 7 cases we examined, legal counsel fees were unpaid for a period of at least 60 days. These four cases were not reported to the appropriate state agencies as required by the General Laws: 1 case was not reported to the Registry of Motor Vehicles (RMV) and Department of Revenue (DOR), and none of the 4 cases was reported to the Department of Transitional Assistance (DTA).

Inquiry with the Clerk of Courts revealed that, contrary to the statutory requirement, the Clerk's Office does not notify DTA when a legal counsel fee goes unpaid for more than 60 days from its assessment.

Authoritative Guidance

Chapter 211D, Section 2A(h), of the General Laws (see Appendix C) requires that the Clerk's Office notify RMV, DTA, and DOR upon a defendant's failure to pay the legal counsel fee within 60 days from its assessment. The statute also requires that the defendant pay the legal counsel fee before bail is released to the surety.

Reasons for Problems with Fee Collection

As part of the process of releasing bail funds, the Clerk's Office should verify in Forecourt that legal counsel fees have been paid, but the office is currently not ensuring that this occurs. The Clerk's Office and the Probation Office use different software programs to record the collection of fees, and each office's access to the other's software is limited, so information recorded by the Clerk's Office is not always available to the Probation Office and vice versa.

Recommendations

- Upon a surety's request for the return of bail, the Clerk's Office should review the case file and Forecourt before releasing the outstanding bail to the surety, in order to ensure that the defendant has paid the legal counsel fee. The office should not return the bail to the surety until the legal counsel fee is paid in full.
- If the legal counsel fee is not paid within 60 days of appointment of counsel, the Clerk's Office should notify RMV, DTA, and DOR of the amount owed by the defendant.
- The Clerk's Office and the Probation Office should communicate with each other any changes to a probationer's terms of probation or partial payments of fees.

Auditee's Response

The Bristol County Clerk's Office requires all sureties to pay the \$150 legal counsel fee with a separate payment (usually by bank check) prior to the return of any bail funds so that the surety in question will receive the entire amount of the bail funds. In the rare occasion when the surety is unable to provide this additional payment, the \$150 legal counsel fee is deducted from the bail amount returned. There are times when this legal counsel fee is not collected if at the time of disposition the sentencing judge waives its imposition.

Auditor's Reply

While the Clerk's Office has a policy in place regarding the return of bail in cases where a legal counsel fee has been assessed, this policy is not always followed, as evidenced by the fact that 43% (three out of the seven) of the bails we tested were returned to sureties before the defendants paid the legal counsel fee. Additionally, the Clerk's Office is silent on the statutory requirement of notifying certain state agencies when the legal counsel fee remains unpaid more than 60 days from appointment of legal counsel. Therefore, we reiterate our recommendation that the Clerk's Office needs to improve its legal counsel fee processes.

APPENDIX A

Massachusetts General Laws Involving Evidence Retention, Disposal, Forfeiture, and Destruction

Chapter 278A, Section 16, of the Massachusetts General Laws (Post Conviction Access to Forensic and Scientific Analysis: Retention and Preservation of Evidence or Biological Material by Governmental Entities; Regulations)

This law was put into effect on May 17, 2012. The law states the following regarding evidence retention:

Any governmental entity that is in possession of evidence or biological material that is collected for its potential evidentiary value during the investigation of a crime, the prosecution of which results in a conviction, shall retain such evidence or biological material for the period of time that a person remains in the custody of the commonwealth or under parole or probation supervision in connection with that crime, without regard to whether the evidence or biological material was introduced at trial. Each governmental entity shall retain all such evidence or biological material in a manner that is reasonably designed to preserve the evidence and biological material and to prevent its destruction or deterioration. The evidence or biological material need not be preserved if it is to be returned to a third party or if it is of such a size, bulk or physical character as to render retention impracticable.

Chapter 276, Section 3, of the General Laws (Search Warrants, Rewards, Fugitives from Justice, Arrest, Examination, Commitment and Bail. Probation Officers and Board of Probation: Seizure, Custody and Disposition of Articles; Exceptions)

If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence in any trial. As soon as may be, thereafter, all property seized under clause First of section one [property or articles stolen, embezzled or obtained by false pretenses, or otherwise obtained in the commission of a crime] shall be restored to the owners thereof; and all other property seized in execution of a search warrant shall be disposed of as the court or justice orders and may be forfeited and either sold or destroyed, as the public interest requires, in the discretion of the court or justice, except:

...

- (b) Rifles, shotguns, pistols, knives or other dangerous weapons which have been found to have been kept, concealed or used unlawfully or for an unlawful purpose shall be forfeited to the commonwealth and delivered forthwith to the colonel of the state police for destruction or preservation in the discretion of the colonel of the state police.*
- (c) Money seized under clause Third of section one [“property or articles the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty-eight”] shall be forfeited and paid over to the state treasurer.*
- (d) Any property, including money seized under section one, the forfeiture and disposition of which is specified in any general or special law shall be disposed of in accordance therewith.*

Chapter 94C, Section 47, of the General Laws (Controlled Substances Act: Forfeiture of Property)

This law states the following regarding the forfeiture of drugs and money related to a crime committed under the Controlled Substances Act:

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.

...

(5) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty [unlawful manufacture, distribution, dispensing, possession with intent to manufacture, and trafficking of controlled or counterfeit substances].

(6) All drug paraphernalia.

...

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

...

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or

(7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.

The final order of the court shall provide that said moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.

All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

- (e) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete*

records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

APPENDIX B**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.

APPENDIX C**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.