



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

Making government work better

Official Audit Report – Issued January 25, 2012

Chicopee District Court

For the period July 1, 2009 through November 30, 2010



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Massachusetts courts generate revenues from a variety of sources, and the amount of total revenues has increased over the years. Revenues are established by either a specific statute or a uniform fee schedule developed in accordance with Administrative Office of the Trial Court (AOTC) rules and regulations. Revenues are collected by local courts and are transmitted monthly to municipalities in the courts' jurisdiction and to the Commonwealth through the AOTC. Although revenues are generally paid in cash, certain circumstances allow for the performance of community service (unpaid work at not-for-profit or governmental entities) in lieu of a cash payment.

Current law provides for courts to retain a portion of the revenues, which generally help offset funding shortfalls to the courts' appropriation accounts. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$27 million from certain named fees collected, provided that the first \$53 million of revenue shall be deposited in the General Fund and not retained. Another section of the annual appropriations act allows the same Chief Justice to spend up to \$26 million of Probation Supervision fees collected and deposited by the courts. These amounts are monitored and allocated to specific courts by a Trial Court Revenue Unit. The Administrative Office of the District Court Department (AODC) and the Office of the Commissioner of Probation have also increased monitoring of revenues by instituting additional reporting processes.

Revenues generated by the AODC have increased over the years. During the period fiscal year 2007 to fiscal year 2010, revenues increased 9%. This is attributable to a variety of reasons, including new fees enacted in accordance with legislative action, general fee increases, and increased monitoring and collection of fees. For the purposes of our audit, we selected three of the largest dollar value criminal case monetary assessment revenues for further examination at various district courts; specifically, the Probation, Indigent Counsel, and Victim Witness fees. Additionally, we chose to examine bail activity at the district court locations based on issues identified at previous court audits conducted by the Office of the State Auditor, as bail can also be a source of revenue if the defendants do not appear in court as required by the terms of their release from jail.

The Chicopee Division of the District Court Department (CDC) presides over civil and criminal matters falling within its territorial jurisdiction. Of the 62 district courts throughout the Commonwealth, CDC is one that we selected for further review of the above fees. The purpose of our audit was to review CDC's internal controls and compliance with state laws and regulations regarding certain fees and bail funds for the period July 1, 2009 to November 30, 2010.

Based on our review, we determined that except for the issues noted in the Audit Results section of this report, for the period July 1, 2009 through November 30, 2010, CDC (1) maintained adequate internal controls over certain fee and bail fund activity; (2) properly assessed, recorded, collected, deposited, and accounted for the fees examined; and (3) complied with applicable laws, rules, and regulations for the areas tested.

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INTRODUCTION

Background

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

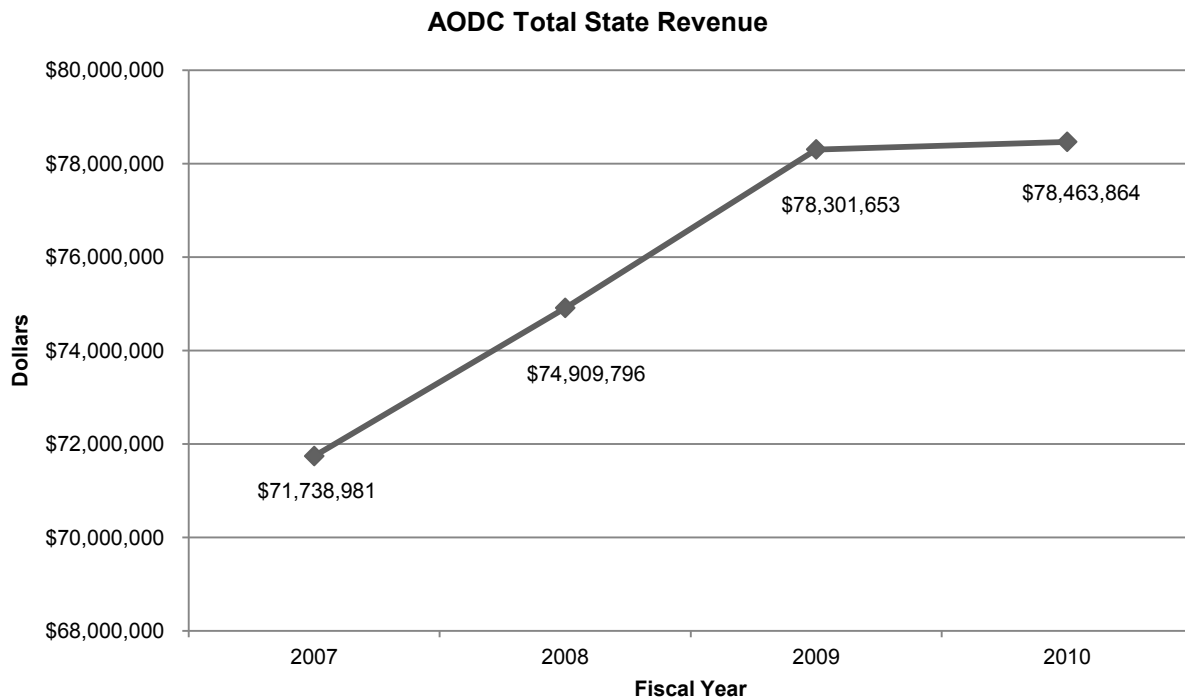
Current law provides for the AOTC to retain a portion of the revenues. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$27¹ million from certain named fees² collected by the courts, provided that the first \$53 million of revenue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

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

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

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

Revenues generated by the AODC have increased over the years. During the period fiscal year 2007 to fiscal year 2010, revenues increased 9%. This is attributable to a variety of reasons, including new fees enacted in accordance with legislative action, general fee increases, and increased monitoring and collection of fees. A chart of the AODC revenue collections during fiscal years 2007 through 2010 from the Commonwealth's accounting system and the AOTC Revenue Unit follows.



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

Revenue Source	2007	2008	2009	2010
General Revenue	\$36,110,747	\$37,746,391	\$41,494,270	\$39,741,288
Probation Fees	18,766,141	19,335,234	18,533,157	21,596,067
Indigent Counsel Fees	6,634,205	7,088,134	7,278,272	6,975,071
Victim Witness Fees	3,033,415	2,994,960	2,910,873	2,611,567
Civil Surcharges	2,620,719	2,893,583	3,368,295	2,874,464
Alcohol Fees	1,801,824	1,991,220	1,958,131	1,930,377
Head Injury Fees	1,602,282	1,633,554	1,632,128	1,690,879
All Other	<u>1,169,648</u>	<u>1,226,720</u>	<u>1,126,527</u>	<u>1,044,151</u>
Total	<u>\$71,738,981</u>	<u>\$74,909,796</u>	<u>\$78,301,653</u>	<u>\$78,463,864</u>

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

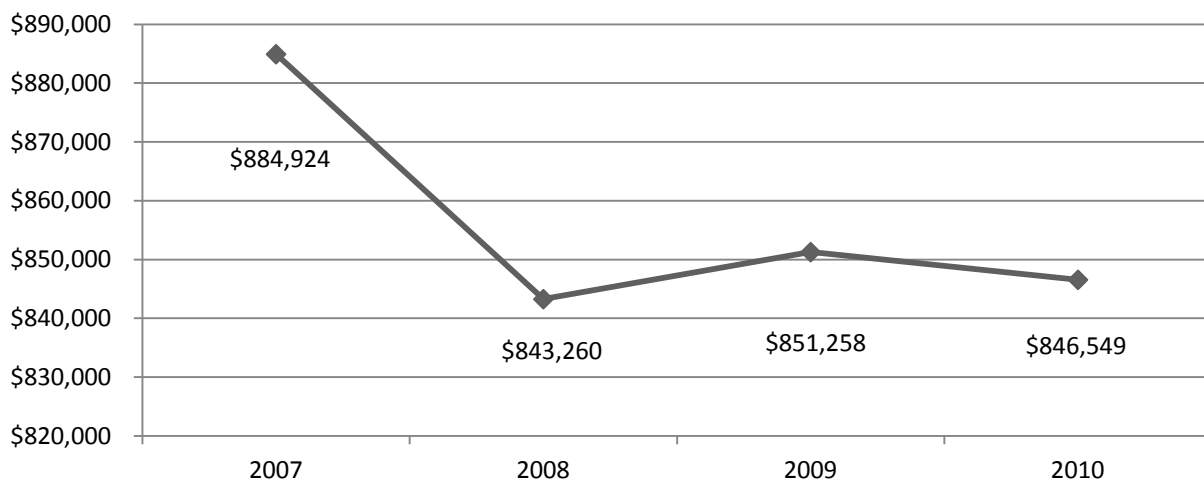
The fees we selected for further examination (Probation, Indigent Counsel, and Victim Witness) are established by various statutes and can have various fee amounts depending on the circumstances. An explanation of the fees follows.

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

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

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

The Chicopee Division of the District Court Department (CDC) generated revenues that decreased from \$884,924 in fiscal year 2007 to \$846,549 in fiscal year 2010, as shown in the following chart. The decrease is mostly due to a decline in civil case entry filing fees over the period.



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

Revenue Source	2007	2008	2009	2010
Probation Fees	\$220,391	\$230,332	\$234,232	\$287,923
Indigent Counsel Fees	114,061	109,122	96,652	93,310
Victim Witness Fees	<u>36,969</u>	<u>38,316</u>	<u>34,442</u>	<u>30,604</u>
Total	<u>\$371,421</u>	<u>\$377,770</u>	<u>\$365,326</u>	<u>\$411,837</u>

In addition to the above cash collections at CDC, probationers also performed community service in lieu of paying probation and indigent counsel fees. Based on our review of probation office documents and reports as well as interviews with probation officials, approximately 15% of the fee assessments were satisfied with community service. With respect to Victim Witness fees, state law requires either payment of the fee or waiver of the fee if it would cause a severe financial hardship. The district courts do not summarize information on the number of waivers of the Victim Witness fees; therefore no information is available regarding the number of waivers granted. However, our observations while conducting audit fieldwork indicated that the fee was generally assessed and not waived.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls over certain operations of CDC. The scope of our audit included an examination of CDC's controls over administrative and operational activities, including certain fees and bail funds for the period July 1, 2009 through November 30, 2010.

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.

Our audit objectives were to (1) assess the adequacy of CDC's internal controls over the assessment, collection, accounting, waiver, and community service in lieu of payment of certain fees and CDC's

internal controls over bail funds and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding CDC's compliance with applicable state laws, rules, and regulations; other state guidelines; and AOTC and AODC policies and procedures with respect to certain fees and bail funds.

Our review encompassed the activities and operations of CDC's Judge's Lobby, Clerk-Magistrate's Office, and Probation Office. We reviewed criminal-case activity for the three named fees as well as bail activity. We also reviewed the fee waiver processes and community service in lieu of fees procedures to determine whether AODC policies and procedures were being followed.

To achieve our audit objectives, we performed analytical reviews of AODC revenues, conducted interviews with management and staff, and reviewed prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and CDC's organizational structure. In addition, we obtained and reviewed copies of statutes, policies and procedures, accounting records, and other source documents. We also requested court management to sign a Representation Letter, which is a standard auditing document that confirms certain representations made to us during our audit. Court personnel were advised against signing this letter on advice from AOTC, as they thought it was too broadly worded. Since this is a performance audit, not a financial audit, Government Auditing Standards do not require us to consider this a limitation of our audit scope. Our assessment of internal controls over financial and management activities at CDC was based on those interviews and the review of documents.

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

Based on our review, we determined that except for the issues noted in the Audit Results section of this report, for the period July 1, 2009 through November 30, 2010, CDC (1) maintained adequate internal controls over certain fee and bail fund activity; (2) properly assessed, recorded, collected, deposited, and accounted for the fees examined; and (3) complied with applicable laws, rules, and regulations for the areas tested.

AUDIT RESULTS

1. PRIOR AUDIT RESULTS RESOLVED

Our prior audit report (No. 2008-1167-30), which covered financial and management controls over certain operations of the Chicopee Division of the District Court Department (CDC) for the period July 1, 2006 to September 30, 2007, disclosed the following deficiencies, which CDC has remedied:

a. Risk Assessments and Internal Control Plan

Our prior audit found that CDC did not perform a risk assessment and correlate the results of that assessment to its internal control plan. We recommended that CDC document its risk assessments and make any necessary modifications to its internal control plan to correlate the risks to the internal control procedures. CDC should conduct annual risk assessments and update its internal control plan based on the results of these risk assessments, as necessary.

Our follow-up review found that CDC implemented our prior audit recommendations. Specifically, CDC staff conducted a risk assessment and correlated the results of the assessment to its internal control plan. Therefore, we consider this issue to be resolved.

b. Abandoned Bail

Our prior audit found that CDC needed to improve its internal controls to comply with AOTC requirements over reviewing the status of bail accounts and promptly transmitting abandoned bail to the Office of the State Treasurer. We recommended that CDC review its bail accounts, identify and transfer those abandoned to the Office of the State Treasurer, and periodically review accounts in the future.

Our follow-up review found that CDC implemented procedures to comply with our prior recommendations. Specifically, CDC reviewed the status of bail accounts, transferred abandoned bail to the Office of the State Treasurer, and periodically reviews bail accounts to determine that accounts are current. Therefore, we consider this issue to be resolved.

2. INTERNAL CONTROL IMPROVEMENTS NEEDED TO COMPLY WITH PROBATION FEE WAIVER REQUIREMENTS

We found that the CDC did not always document the granting of waivers of probation fees in accordance with state law and Administrative Office of the District Court (AODC) guidance. A waiver of the probation fee allows the probationer to perform community service instead of paying the required monthly probation fee. Failure to follow the required procedure has resulted in a breakdown in internal controls and inadequate assurance that probationers are complying with the terms of their conditions of probation. Further, undocumented waivers do not substantiate an undue financial hardship on behalf of the defendant; therefore, the Commonwealth may not be receiving the funds to which it is entitled. State law and AODC guidance require the local courts to document waivers of cash payments for monthly probation fees and the imposition of community service in lieu of these payments.

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

The court shall assess upon every person placed on supervised probation, including all persons placed on probation for offenses under section 24 of chapter 90, a monthly probation supervision fee, hereinafter referred to as "probation fee", in the amount of \$60 per month. Said person shall pay said probation fee once each month during such time as said person remains on supervised probation. The court shall assess upon every person placed on administrative supervised probation a monthly administrative probation supervision fee, hereinafter referred to as "administrative probation fee", in the amount of \$45 per month. Said person shall pay said administrative probation fee once each month during such time as said person remains on administrative supervised probation. The court may not waive payment of either or both of said fees unless it determines after a hearing and upon written finding that such payment would constitute an undue hardship on said person or his family due to limited income, employment status or any other factor. Following the hearing and upon such written finding that either or both of said fees would cause such undue hardship then: (1) in lieu of payment of said probation fee the court shall require said person to perform unpaid community work service at a public or nonprofit agency or facility, as approved and monitored by the probation department, for not less than one day per month and (2) in lieu of payment of said administrative probation fee the court shall require said person to perform unpaid community work service at a public or nonprofit agency or facility, as approved and monitored by the probation department, for not less than four hours per month.

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

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

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

At CDC, when the court issues an order placing the offender on probation, it does not always specifically order the individual to pay a monthly probation fee. Rather, the order is often written as offering the defendant the choice between paying the fee or performing community service. In these instances, the Chief Probation Officer (or probation officer assigned to the case) is responsible for determining whether the individual will pay a probation fee or perform community service. Delegating the decision process to the Probation Officer, without bringing the case back into court for a judge's order, causes a breakdown of internal controls resulting in inadequate assurance of the following: that an undue financial hardship actually exists, that the Commonwealth is receiving all the funds to which it is entitled, and that probationers are complying with the terms of their court-ordered conditions of probation. Audit tests of 13 criminal case files noted four instances (31%) where the court order allowed the probationer to either pay the fee or perform community service, as subsequent circumstances dictate, without a modified court order.

CDC personnel indicated that although they are aware of the statutory requirement, the process of returning the case to the court every time the probationer is unable to pay is too cumbersome, as it delays other important court work. CDC personnel also feel that probation officers are the most knowledgeable of an individual's ability to pay and would therefore be the most qualified to make that determination. Therefore, the court delegates the responsibility to its probation officers in order to cut down on the amount of court time taken for such determinations. Once the probation officer determines which method is required, the probationer cannot subsequently change the method without going before the judge. AODC officials noted that many persons, whom the court has determined are indigent and would therefore qualify for community service in lieu of paying a probation supervision fee, choose to pay the probation supervision fee rather than perform the community service, resulting in increased revenue to the Commonwealth.

Recommendation

To improve internal controls and ensure compliance with state law and AODC guidance, CDC should modify its procedures to document, by court order, the specific terms with which the probationer is expected to comply. The order should definitively state whether a probationer shall either pay a probation fee or, in the case of an undue hardship, perform community service. If a probationer's status changes from payment of the fee to community service, such change should result from a court order. CDC should seek relief in the form of a waiver from the requirements imposed by statute and AODC guidance or request legislative change through AODC and AOTC.

Auditee's Response

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

We agree with this result. No longer will probation officers decide whether a probationer is responsible for paying the monthly probation fee or performing monthly community service. Rather, probation officers will require every person placed on probation to pay the monthly probation fee unless there is a court order which waives the fee and necessitates the probationer's performance of monthly community service.

3. INTERNAL CONTROL IMPROVEMENTS NEEDED OVER THE PROCESSING OF BAIL ASSOCIATED WITH CRIMINAL CASES IN DEFAULT

Our audit found that CDC needs to improve its internal controls to comply with state law and AODC rules and regulations regarding the processing of bail applying to criminal cases in default status. Specifically, CDC did not always follow state law as well as additional guidance

provided by the AODC, which encourages forfeiting bail if defendants do not comply with the terms of their release on bail.

CDC's detailed bail trial balance reported 221 cash bails totaling \$134,675 on-hand as of November 30, 2010. We sampled 15 bail accounts totaling \$3,610 and identified five bail accounts totaling \$1,925 that could have been forfeited to the Commonwealth because the defendants defaulted on their court appearances.

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

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

Additionally, the Chief Justice for the AODC issued a memorandum dated January 29, 2009 that provided guidance on a number of issues, including the importance of forfeiting bail timely. The memorandum recognized that some judges exercise the discretion allowed by state law of not immediately forfeiting bail if a defendant defaults. However, it recommended that courts adopt one of three approaches when a defendant does default, as follows.

1. *Immediately forfeit the bail;*
2. *Simultaneously schedule a bail forfeiture hearing for a definite future date; or*
3. *Immediately enter a conditional forfeiture order that the bail is to be forfeited on a specific future date unless the default and forfeiture is vacated before then. Under the last approach, the clerk's office may simply calendar the case to complete the forfeiture paperwork on that date, without needing to bring the matter before the court again for further judicial authorization. Any of these approaches will ensure that the forfeiture decision is not forgotten. Whenever a criminal defendant is defaulted, courtroom clerks should inquire if the judge wishes to order one of these courses.*

The five bail accounts in question from our sample had the most current default dates as falling between August 11, 2010 and November 8, 2010. Three of the cases indicated the first instance of default, one case indicated a second instance, and one case indicated a third default. For all five cases, there was no forfeiture of the bail, scheduling of a forfeiture hearing at a definite

future date, or conditional forfeiture ordered, as recommended by the above AODC memorandum.

We discussed these issues with CDC personnel, who told us that they were aware of the Commonwealth's laws and regulations, but visiting judges often use their discretion and choose not to forfeit bails when defendants default.

Recommendation

Visiting judges should be reminded of the need to follow one of the AODC's courses of action with regard to defendants who default. Additionally, the courtroom clerk and bail bookkeeper should follow up on instances of default to help ensure compliance with the AODC requirements.

Auditee's Response

The Clerk Magistrate provided the following response:

To correct this deficiency, the Clerk worked with the Bookkeeper to identify those cases presently in default. Subsequently, every one of those bails was forfeited, and the office now stands in full compliance.

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

Although CDC imposed Victim Witness fee assessments as required, it did not always apply partial payments made by the defendant to the Victim Witness fee assessment as a first priority. State law requires CDC to apply any payments made by defendants to the Victim Witness fee assessment before any other criminal assessments are satisfied. As a result, collection of Victim Witness fee assessments is delayed.

State law requires the imposition of a Victim Witness fee of \$45, \$50, or \$90 when a defendant is either convicted or pleads to a finding of sufficient facts in a case. The amount of the assessment depends on whether the conviction involved delinquency, misdemeanor, or felony. Specifically, Section 8 of Chapter 258B of the General Laws, as amended, states:

When a determination of the order of priority for payments required of a defendant must be made by the court or other criminal justice system personnel required to assess and collect such fines, assessments or other payments, the victim and witness assessment mandated by this section shall be the defendant's first obligation.

Prior to 2003, Victim Witness fee collections were deposited into a separate fund, the Victim Witness Assistance Fund. The Acts and Resolves of 2003, Chapter 26, Section 45, dissolved the separate fund and allocated these funds to the General Fund. However, the provision assigning first priority for collection remains.

The Victim Witness assessment is usually one of a number of fees a defendant pays, and these fees are usually partially paid in various amounts over a period of time. Audit tests of Victim Witness fee assessments ordered on criminal cases found that CDC would not always apply an individual's partial payments first to Victim Witness fees. Rather, CDC would satisfy monthly probation fees in advance of the fee.

Because Victim Witness fee assessment payments were not prioritized, the collection of Victim Witness fee assessments was delayed. When CDC personnel were made aware of this statutory requirement, they immediately began prioritizing the application of payments to unpaid Victim Witness assessments.

Recommendation

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

Auditee's Response

The Clerk Magistrate provided the following response:

In July of 2011, the Clerk's Office converted to the Mass. Courts Financial Module, and internal auditors instructed the full-time and part-time cashiers that, of any money collected in criminal cases, the Victim Witness Assessment is in all instances the Defendant's first obligation. The cashiers have since acted accordingly.