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INDEPENDENT STATE AUDITOR'S REPORT ON
CERTAIN FEES AND BAIL OF THE
WORCESTER DIVISION OF THE
DISTRICT COURT DEPARTMENT OF THE
MASSACHUSETTS TRIAL COURT
JULY 1, 2007 TO JANUARY 31, 2009

OFFICIAL AUDIT
REPORT
APRIL 26, 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 \$20 million from certain named fees collected that exceed the amount of those fees collected for the base year of 2003 (the floor amount). Another section of the annual appropriations act allows the same Chief Justice to spend up to \$23 million of Probation Supervision fees collected and deposited by the courts not subject to a floor amount. These amounts are monitored and allocated to specific courts by a Trial Court Revenue Unit. The District Court Department (DCD) and the Office of the Commissioner of Probation have also increased monitoring of revenues by instituting additional reporting processes.

Revenues generated by the DCD have increased over the years. During the period fiscal year 2005 to fiscal year 2008, revenues increased 16%. 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 defendant does not appear in court as required by the terms of their release from jail.

The Worcester Division of the District Court Department (WDC) presides over civil and criminal matters falling within its territorial jurisdiction. Of the 62 district courts throughout the Commonwealth, WDC is one that we selected for further review of the above fees. The purpose of our audit was to review WDC's internal controls and compliance with state laws and regulations regarding certain fees and bail funds for the period July 1, 2007 to January 31, 2009.

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Our audit disclosed that the WDC needs to improve its internal controls to comply with state law and Trial Court rules and regulations regarding the processing of forfeited and unclaimed bail. WDC did not promptly transfer forfeited bails to the Commonwealth and did not notify persons who posted bail that the bail was available to be returned. As a result, the Commonwealth has been denied timely access and use of forfeited bails and defendants or sureties that posted bail may not know it is available to be released.

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WDC places certain individuals on administrative probation and also imposes additional requirements not traditionally required of individuals placed on administrative probation. The additional requirements imposed results in more involvement with a probation officer, which would be more consistent with placing the person on the higher-level category of supervised probation. Additionally, people placed on administrative probation pay a lesser monthly probation fee than those placed on supervised probation. As a result, the Commonwealth may not be receiving all the funds to which it is entitled and probation officers are performing additional work, which may be misleading to oversight agencies monitoring Probation Office workload statistical information.

INTRODUCTION

Background

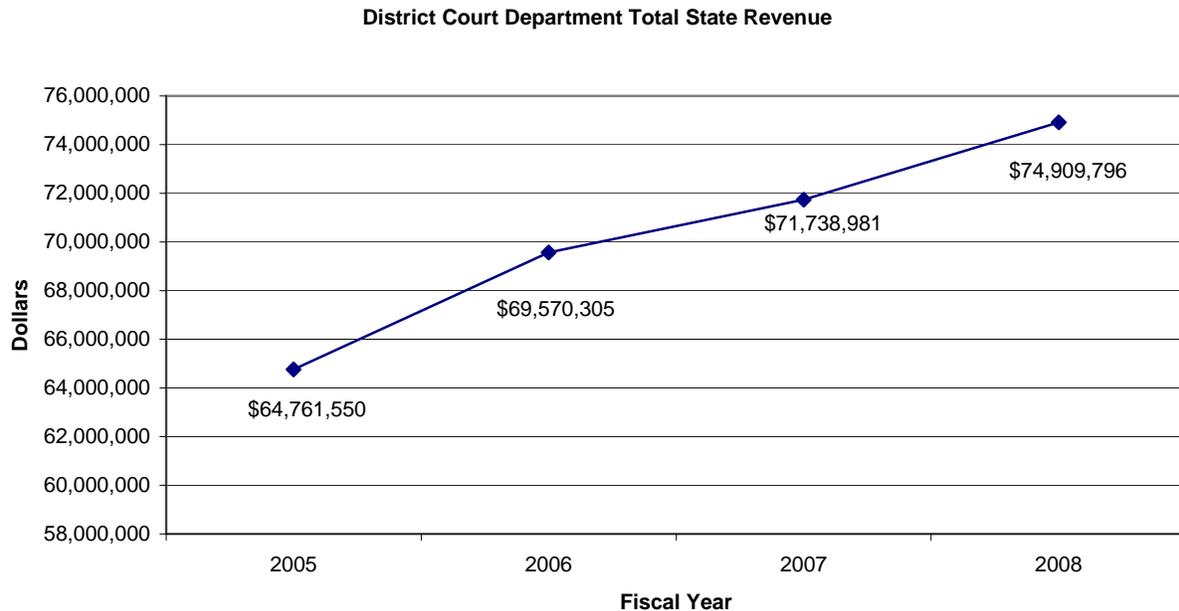
Massachusetts courts generate revenues from a variety of sources, and the amount of total revenues has increased over the years. Revenues are established by either a specific statute or a uniform fee schedule developed in accordance with Administrative Office of the Trial Court (AOTC) rules and regulations. 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 \$20 million from certain named fees¹ collected by the courts that exceed the amount of those fees collected for the base year of 2003 (the floor amount). Another section of the annual appropriations act allows the same Chief Justice to spend up to \$23 million of Probation Supervision fees collected and deposited by the courts not subject to a floor amount. These amounts are monitored and allocated to specific courts by the AOTC Revenue Unit. The District Court Department (DCD) 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.

Revenues generated by the DCD have increased over the years. During the period fiscal year 2005 to fiscal year 2008, revenues increased 16%. This is attributable to a variety of reasons, including

¹ 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.

new fees enacted in accordance with legislative action, general fee increases, and increased monitoring and collection of fees. A chart of the DCD revenue collections during fiscal years 2005 through 2008 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	2005	2006	2007	2008
General Revenue	\$31,490,167	\$34,621,161	\$36,110,747	\$37,746,391
Probation Fees	16,484,678	18,214,139	18,766,141	19,335,234
Indigent Counsel Fees	6,309,767	6,393,010	6,634,205	7,088,134
Victim Witness Fees	3,294,909	3,189,071	3,033,415	2,994,960
Civil Surcharges	2,268,430	2,468,156	2,620,719	2,893,583
Alcohol Fees	1,970,116	1,834,424	1,801,824	1,991,220
Head Injury Fees	1,730,014	1,636,350	1,602,282	1,633,554
All Other	<u>1,213,469</u>	<u>1,213,994</u>	<u>1,169,648</u>	<u>1,226,720</u>
Total	<u>\$64,761,550</u>	<u>\$69,570,305</u>	<u>\$71,738,981</u>	<u>\$74,909,796</u>

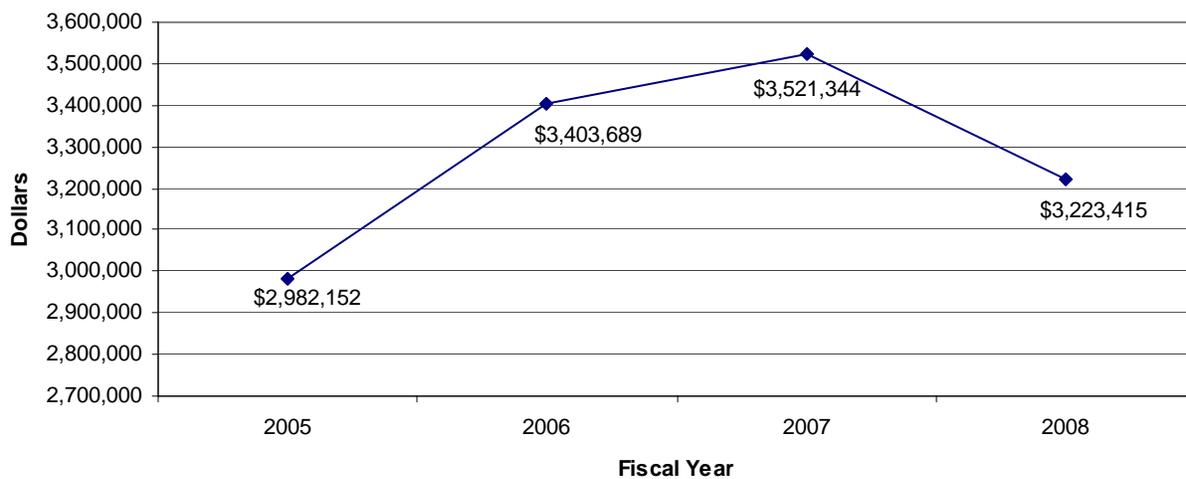
As shown in the preceding chart, the largest revenue source category, General Revenue, consists of a wide variety of items, including state fines, costs, surcharges, civil entry fees, copy fees, etc., that are deposited into the Commonwealth's General Fund. The next five revenue sources (Probation fees 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. The amount of the fee is \$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 Worcester Division of the District Court Department (WDC) generated revenues that increased from \$2,982,152 in fiscal year 2005 to \$3,223,415 in fiscal year 2008, as shown in the following chart.



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

Revenue Source	2005	2006	2007	2008
Probation Fees	\$763,466	\$811,531	\$794,951	\$758,894
Indigent Counsel Fees	350,875	333,840	348,761	294,905
Victim Witness Fees	<u>177,683</u>	<u>178,544</u>	<u>168,220</u>	<u>141,450</u>
Total	<u>\$1,292,024</u>	<u>\$1,323,915</u>	<u>\$1,311,932</u>	<u>\$1,195,249</u>

In addition to the above cash collections at WDC, probationers also performed community service in lieu of paying probation and indigent counsel fees. Based on our review of Probation Office documents and reports as well as interviews with probation officials, approximately 20% of the fee assessments were satisfied with community service. With respect to Victim Witness fees, state law requires either payment of the fee or waiver of the fee if it would cause a severe financial hardship. The district courts do not summarize information on the number of waivers of the Victim Witness fees, so we do not have information on the number of waivers of that fee that were granted. However, our observations while conducting audit fieldwork indicated that the fee was generally assessed and not waived.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor conducted an audit of the financial and management controls over certain operations of WDC. The scope of our audit included an examination of WDC's controls over administrative and operational activities, including certain fees and bail funds for the period July 1, 2007 to January 31, 2009.

Our audit was conducted in accordance with applicable generally accepted government auditing standards for performance audits and, accordingly, included audit procedures and tests that we considered necessary under the circumstances.

Our audit objectives were to (1) assess the adequacy of WDC's internal controls over the assessment, collection, accounting, waiver, and community service in lieu of payment of certain fees and WDC's internal controls over bail funds and (2) determine the extent of controls for measuring, reporting, and monitoring effectiveness and efficiency regarding WDC's compliance with applicable

state laws, rules, and regulations; other state guidelines; and AOTC and DCD policies and procedures with respect to certain fees and bail funds.

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

To achieve our audit objectives, we performed analytical reviews of DCD revenues, conducted interviews with management and staff, and reviewed prior audit reports, the Office of the State Comptroller's Massachusetts Management Accounting and Reporting System reports, AOTC statistical reports, and WDC's organizational structure. In addition, we obtained and reviewed copies of statutes, policies and procedures, accounting records, and other source documents. Our assessment of internal controls over financial and management activities at WDC was based on those interviews and the review of documents.

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

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

AUDIT RESULTS

1. PRIOR AUDIT RESULTS RESOLVED

Our prior audit report (No. 2005-1178-3S), which covered financial and management controls over certain operations of the Worcester Division of the District Court Department (WDC), for the period July 1, 2004 to December 31, 2004, disclosed that improvements were needed over the WDC's (a) receipt and disbursement of bails and (b) various internal control policies and procedures. Our follow-up review noted that these prior audit issues at WDC were corrected, as discussed below.

a. Receipt and Disbursement of Bail Funds

Our prior audit noted that WDC did not (1) document bail release authorizations or maintain a separate bail receipt file; and (2) maintain adequate documentation to support the return of bail to defendants or sureties who had lost their bail receipts, or retain documentation for bail returns made through the mail. We recommended that the court take steps to ensure that all policies and procedures established by the Administrative Office of the Trial Court (AOTC) are implemented in a timely manner, require two forms of identification to process bail returns when bail receipts are lost, and complete an *Affidavit of Ownership of Cash Bail* form for lost bail receipts involving bails of \$500 or more.

Our follow-up review found that WDC implemented our prior audit recommendations. Specifically, WDC implemented a bail receipt file and obtained necessary documentation to support the return of bails when defendants or sureties lost their bail receipts or made bail returns through the mail. Therefore, we consider this issue resolved.

b. Various Internal Control Policies and Procedures

Our prior audit found that WDC did not (1) develop an internal control plan or conduct periodic risk assessments; (2) complete timely bank reconciliations in the Probation Office; and (3) did not follow policies regarding the collection of funds and closing of completed cases in the Probation Office. We recommended that the court review (1) AOTC's internal control guidelines, conduct a risk assessment, develop an internal control plan and periodically update its risk assessment and plan; (2) make necessary adjustments to staffing requirements and workloads to ensure timely completion of bank reconciliations; and (3) formalize, in writing,

policies the ensure the segregation of functions between cash collections by probation officers and closing of court cases.

Our follow-up review found that WDC (1) developed an internal control plan after conducting a department wide risk assessment; (2) completed monthly bank reconciliations in the Probation Office timely; (3) formally documented it policy prohibiting the collection of funds by probation officers. Therefore, we consider this issue resolved.

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

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

State law requires the imposition of a designated fee, depending on whether the probationer is placed on supervised probation or administrative probation. The fee can be waived and community service performed, upon order of the court, as provided by Section 87A of Chapter 276 of the Massachusetts General Laws, as amended:

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

fee the court shall require said person to perform unpaid community work service at a public or nonprofit agency or facility, as approved and monitored by the probation department, for not less than one day per month and (2) in lieu of payment of said administrative probation fee the court shall require said person to perform unpaid 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.

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

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

At WDC, when the court issues an order placing the offender on probation, it does not always specifically order the individual to pay a monthly probation fee. Rather, the order is often written as either pay the fee or perform community service. In these instances it is then left to the Chief Probation Officer (or probation officer assigned to the case) as responsible for determining whether the individual will pay a probation fee or perform community service. As a result of the decision process being delegated to the Probation Office without bringing the case back into court for a judge's order, there is a breakdown of internal controls, and inadequate

assurance that an undue financial hardship exists or that the Commonwealth is receiving all the funds to which it is entitled.

WDC personnel indicated that although they are aware of the statutory requirement, the process is too cumbersome to have the cases brought back before the court each time the probationer is unable to pay the monthly fee, as it delays other important court work. Therefore, the court delegates the responsibility to the probation department in order to cut down on the amount of court time taken for such modifications. DCD officials noted that many persons whom the court has determined are indigent and would therefore qualify for community service in lieu of paying a probation supervision fee, choose to pay the probation supervision fee rather than perform the community service. This results in increased revenue to the Commonwealth.

Recommendation

To improve internal controls and ensure compliance with state law and DCD guidance, WDC should modify its procedures to document, by court order, the specific terms the probationer is expected to comply with. The order should definitively state whether a probationer shall either pay a probation fee or, in the case of an undue hardship, definitively state that the probationer perform community service.

Auditee's Response

The First Justice, Clerk-Magistrate, and the Chief Probation Officer provided the following response:

The WDC is reviewing the guidance and will implement appropriate corrective action.

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

We noted that although WDC has a system in place for collecting, disbursing, and accounting for partial payments of court-ordered assessments, its financial recordkeeping system does not have an accounts receivable system. Since this is a weakness at every district court location, the AOTC and the DCD should consider implementing an accounts receivable system to track collections rather than rely on the cash-based system currently in use. Without an accounts receivable system, courts lack control over a significant source of revenue. Of the total revenues of approximately \$75 million collected by all district courts during fiscal year 2008, over \$35

million in fees collected for all 62 district court locations in that year could have been processed through an accounts receivable system if the courts had one.

The accounting system used by Massachusetts courts is a cash-based system. There are two variations of the system used to collect probationer money that are found depending on the specific court location: the Probation Receipt Account (PRA) system and the centralized cash system, which handles collections from the Clerk-Magistrate's office as well as for people on probation. Although there are data elements captured in both the PRA and centralized cash systems that would be found in an accounts receivable system (e.g., total amount due and amounts collected to date), this information is not used to control overall activity and an accounts receivable control account is not used. Therefore, neither is a true accounts receivable system.

Sound business practices advocate the use of an accounts receivable system with a control account and supporting subsidiary detail accounts to control revenues. Such a system allows for the control of overall potential revenues as well as a summary of any adjustments made, such as expected cash receipts being reduced by either non-cash community service or adjustments in original amounts ordered by the court. An accounts receivable system would also be an important management tool to help age and analyze outstanding balances for further follow-up action and would provide an extra control feature to minimize risk of misstatement of court assets.

When the court system first established the PRA system over 25 years ago, computerization capabilities were at a much different level than they are now. The PRA system was established with more emphasis on meeting the needs of capturing information relating to the receipt of funds and subsequent payout and using this information to post to the cash receipts and disbursements journal. The centralized cash system was developed later, with an aim of minimizing redundancy between the Clerk-Magistrate's and Probation Office as well as creating one secure cash collection point for the court.

As a result of the courts' use of the current cash-based system, a number of weaknesses exist. Specifically, the system does not properly establish accountability for and control over the approximately \$35 million in DCD revenues that would traditionally be processed through an

accounts receivable system, and the total amount to be collected cannot be readily identified, although detailed information is kept to identify what individuals owe. Additionally, the courts do not have a central control point to highlight non-cash adjustments to receivable balances, such as for community service to be performed in lieu of the payment of fees. Lastly, the potential exists for unauthorized adjustments to be made in the system that would not be identified timely by employees in the normal course of their work.

The AOTC and the DCD have begun developing and testing a financial module to be added to the MassCourts system. This module should have an accounts receivable system incorporated into it and will be used to track probation fees and restitution.

Recommendation

The AOTC and the DCD should continue developing and testing the financial module for the MassCourts system. Once a determination is made that the module will work as expected, it should be implemented as part of the MassCourts system at the district courts.

Auditee's Response

The First Justice, Clerk-Magistrate, and the Chief Probation Officer provided the following response:

WDC is following current AOTC guidance with respect to its accounting system. Once a new system is available from AOTC, it will be implemented at WDC.

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

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

During the latest fiscal year, fiscal year 2008, the Clerk-Magistrate's Office collected and transmitted revenues of over \$3 million to the Commonwealth and approximately \$322,000 to municipalities within WDC's jurisdiction. Much of these funds were first receipted through the Probation Office accounting system and subsequently disbursed to the Clerk-Magistrate's Office

for receipting into its accounting system. This receipting process requires both offices to record the receipt of the same funds, which includes validating the respective case papers.

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

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

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

Recommendation

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

Auditee's Response

The First Justice, Clerk-Magistrate, and the Chief Probation Officer provided the following response:

WDC is following current AOTC guidance with respect to its accounting system. Once a new system is available from AOTC, it will be implemented at WDC.

5. INTERNAL CONTROL IMPROVEMENTS NEEDED OVER THE PROCESSING OF FORFEITED AND UNCLAIMED BAIL

Our audit found that WDC needs to improve its internal controls to comply with state law and Trial Court rules and regulations regarding the processing of forfeited and unclaimed bail. WDC did not promptly transfer forfeited bails to the Commonwealth and did not notify persons who posted bail that the bail was available to be returned. As a result, the Commonwealth has been denied timely access and use of forfeited bails and defendants or sureties that posted bail may not know it is available to be released.

The Court's detailed bail trial balance reported that there were 3,184 cash bails totaling \$840,371 on hand as of January 31, 2009. We sampled 12 bails totaling \$16,000 and noted 4 instances totaling \$2,400 that were forfeited but not sent to the Commonwealth for up to 39 months. Additionally, there were 5 instances amounting to \$2,450 where the bail was released and available to be picked up, but letters were not sent to notify the defendant or surety of the release of bail.

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

Forfeited bail – bail, which a judge declares a defendant or surety has lost or surrendered to the Commonwealth in open Court, usually as a result of the defendant defaulting for failing to appear.

Unclaimed bail – bail whose return has not been requested by its defendant or surety within one year of the authorized release date.

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

If a judge in open court orders the bail forfeited, the bail is reclassified as State General Fund Revenue and must be remitted by the tenth day of the following month to the Office of the State Treasurer (in accordance with M.G.L. Chapter 276, Section 80)...

If bail remains unclaimed one year after its release date, the Court division must attempt to contact the owner of the bail in writing by registered mail. If the appropriate individual can not be found and the bail remains unclaimed for three (3) years after the release date, the bookkeeper transmits the bail to the Office of the State Treasurer as abandoned property in accordance with Massachusetts General Law (M.G.L.) Chapter 200A, Section 6.

Although court personnel were aware of the Commonwealth's laws and regulations and the court had procedures in place to process forfeited bail, staffing constraints, which the WDC attributed to budgeting shortfalls, resulted in individual bails not receiving appropriate attention. Additionally, the bookkeeper was not always notified when a bail was released, which necessitated the bookkeeper taking time to periodically review the lengthy trial balance to determine the status of bails accounts on hand.

Recommendation

The Court should perform periodic reviews of bail records to ensure future compliance with the state law and AOTC regulations governing bail. At a minimum, the court should notate on its

bail trial balance the applicable dates for transmittal to the Commonwealth. This may enable the court to better comply with the provisions of the General Laws and AOTC.

Auditee's Response

The First Justice and Clerk-Magistrate provided the following response:

In the future, we will review bail accounts more timely and take action on identified accounts.

6. IMPROVEMENTS NEEDED OVER THE PROCESS OF DETERMINING THE AMOUNT OF PROBATION SUPERVISION REQUIRED AND ASSESSING MONTHLY PROBATION FEES

WDC places certain individuals on administrative probation and also imposes additional requirements not traditionally required of individuals placed on administrative probation. The additional requirements imposed results in more involvement with a probation officer, which would be more consistent with placing the person on the higher-level category of supervised probation. Additionally, people placed on administrative probation pay a lesser monthly probation fee than those placed on supervised probation. As a result, the Commonwealth may not be receiving all the funds to which it is entitled and probation officers are performing additional work, which may be misleading to oversight agencies monitoring Probation Office workload statistical information. Provisions of the General Laws require that persons placed on probation pay the appropriate monthly probation fee.

Persons convicted before a court who are sentenced to a fine or imprisonment often times have their sentence suspended and the individual is placed on probation for a specific period of time so long as the individual adheres to the conditions of probation. Individuals are either placed on supervised probation or administrative supervised probation (administrative probation). Supervised probation is considered a more intensive form of probation, requiring more supervision and contact with a probation officer when an offender presents a higher risk of harm to the community whereas administrative probation does not require direct supervision since the individual is considered a low risk of harm to the community and is generally on a shorter probation period. Both types of probation require a monthly probation fee of either \$60 for supervised probation or \$20 for administrative probation in addition to a monthly victim services surcharge of either \$5 or \$1, respectively.

Our review of WDC probation cases noted that probation officers were supervising cases that involved regular contact with the individuals that were placed on administrative probation and assessed the lower monthly probation fee. WDC records indicated that as of January 31, 2009, the Probation Office had 1,303 people on supervised probation and 1,180 people on administrative probation. Audit tests of 17 administrative supervised probation cases disclosed seven instances in which WDC assessed a \$21 monthly fee on cases that required Probation Office monitoring of cases that generally required a \$65 monthly fee. Most of these cases required periodic drug testing and a probation period that lasted between one to two years – both conditions more in line with a higher-level supervised probation classification.

As a result of WDC's imposing additional conditions and not assessing the appropriate probation fee, probation officers are required to perform additional work and Commonwealth revenues are not being maximized. These seven instances alone represent a potential loss of revenue of \$3,696 annually. Also, the statistical information provided to oversight agencies monitoring Probation Office workload may be misleading.

WDC officials noted that while the Probation Office assesses the level of risk of each individual and reports that to the court, judges will often times impose additional conditions upon the individual that they deem necessary in the circumstances even if the individual is considered 'low risk' for the sake of determining the monthly fee. With those additional conditions, probation officers are required to have more contact with the individual than would generally be expected.

Subsequent to our audit, the Legislature amended the statute establishing monthly probation assessments and increased the monthly administrative probation fee and victim services surcharge from \$21 to \$50. This change was retroactive to July 1, 2009 and applicable to current and future administrative probation cases.

Recommendation

WDC should review their procedures for determining whether an individual is placed on supervised or administrative probation, taking into account the correlation between the amount of the monthly probation fee being assessed by the court, and the level of supervision ultimately required by the Probation Office. WDC should look to AOTC, DCD and the Office of the Commissioner of Probation for guidance on this matter, if needed.

Auditee's Response

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

We will review this matter and take any corrective action needed.