



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

Making government work better

Official Audit Report – Issued November 18, 2011

Attleboro District Court

For the period July 1, 2009 through October 31, 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 Attleboro Division of the District Court Department (ADC) presides over civil and criminal matters falling within its territorial jurisdiction. Of the 62 district courts throughout the Commonwealth, ADC is one that we selected for further review of the above fees. The purpose of our audit was to review ADC's internal controls and compliance with state laws and regulations regarding certain fees and bail funds for the period July 1, 2009 through October 31, 2010.

AUDIT RESULTS 7**1. ESTABLISHMENT OF AN ACCOUNTS RECEIVABLE SYSTEM** 7

We noted that although ADC has a system in place for collecting, disbursing, and accounting for partial payments of court-ordered assessments, its current financial recordkeeping system is lacking an accounts receivable component which would provide better accountability of revenues received and owed to the court. Without an accounts receivable system, courts lack control over a significant source of revenue and cannot readily identify the total amount to be collected, although detailed information is kept to identify what individuals owe. Of the total revenues of approximately \$78 million collected by all district courts during fiscal year 2010, over \$35 million of 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.

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

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Although ADC 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 ADC to apply any payments made by persons to the Victim Witness fee assessment before any other criminal assessments are satisfied. As a result, collection of Victim Witness fee assessments is delayed.

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

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ADC 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 Massachusetts General Laws allow courthouses to have a single cash collection and disbursement point for both offices. In the past, the AODC consolidated cash receipts and disbursements into one location, but has held off changing any more courts to the consolidated system until the new accounting system, MassCourts with a financial module, completes testing and is ready for implementation.

4. INTERNAL CONTROL IMPROVEMENTS NEEDED OVER THE PROCESSING OF UNCLAIMED AND ABANDONED BAIL AND BAIL ASSOCIATED WITH CRIMINAL CASES IN DEFAULT

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Our audit found that ADC needs to improve its internal controls to comply with state law and Trial Court rules and regulations regarding the processing of abandoned bail and bail applying to criminal cases in default status. ADC did not notify rightful owners or transmit unclaimed bails released over three years ago to the Office of the State Treasurer as abandoned property and did not order bails forfeited when defendants failed to appear for their scheduled court date. Additionally, ADC did not always order bails forfeited when defendants failed to appear for their scheduled court date. As a result, the Commonwealth has been denied timely access and use of these funds and defendants or sureties that posted bail may not know it is available to be released.

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.

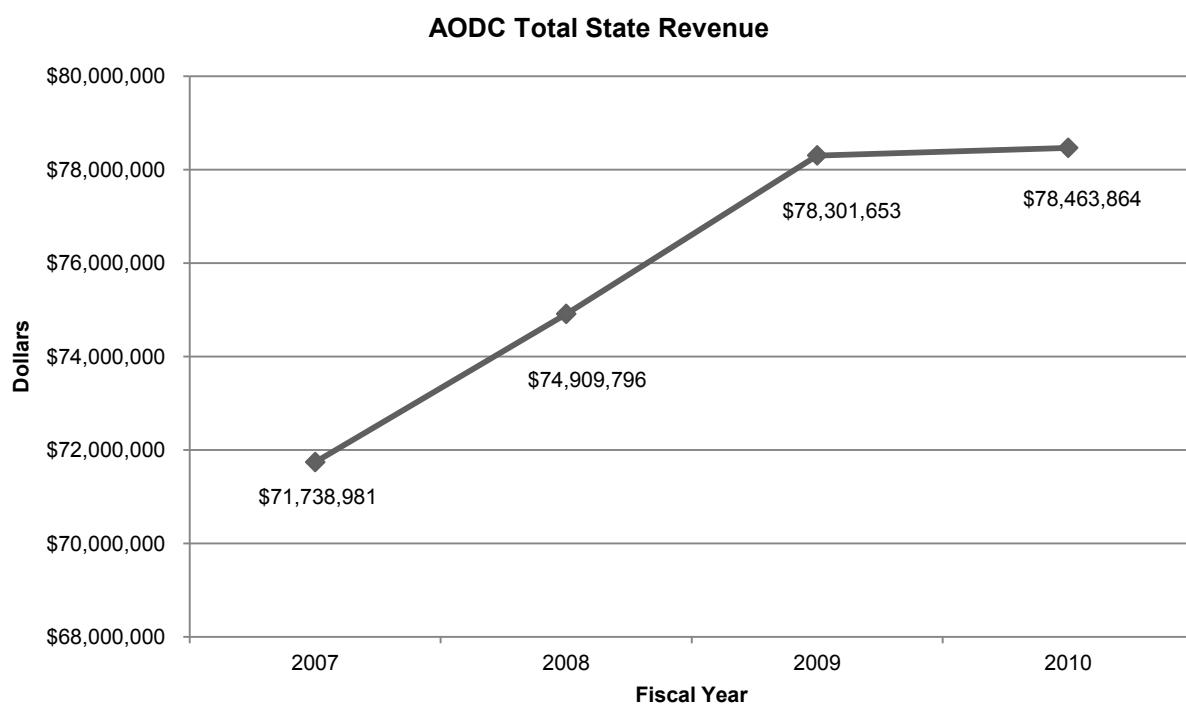
Current law provides for the AOTC to retain a portion of the revenues. One section of the annual appropriations act allows the AOTC Chief Justice for Administration and Management to spend up to \$27¹ million from certain named fees² collected by the courts, provided that the first \$53 million of revenue 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.

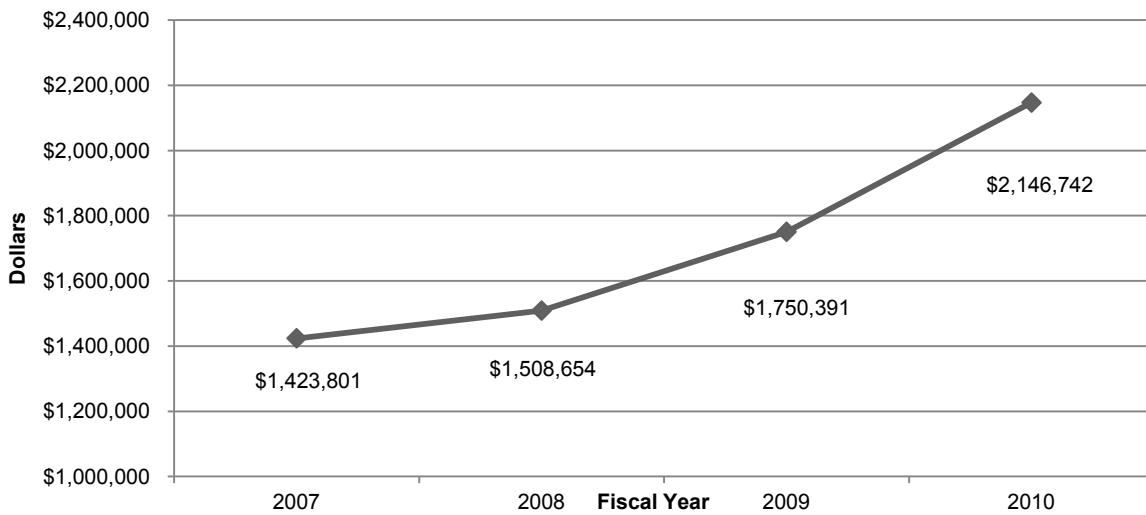
The fees we selected for further examination (Probation, Indigent Counsel, and Victim Witness) are established by various statutes and can have various fee amounts depending on the circumstances. An explanation of the fees follows.

- 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 Attleboro Division of the District Court Department (ADC) generated revenues that increased from \$1,423,801 in fiscal year 2007 to \$2,146,742 in fiscal year 2010, as shown in the following chart.



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

Revenue Source	2007	2008	2009	2010
Probation Fees	\$463,665	\$472,258	\$498,894	\$620,099
Indigent Counsel Fees	154,240	175,400	197,240	168,135
Victim Witness Fees	<u>73,957</u>	<u>65,200</u>	<u>72,515</u>	<u>77,812</u>
Total	<u>\$691,862</u>	<u>\$712,858</u>	<u>\$768,649</u>	<u>\$866,046</u>

In addition to the above cash collections at ADC, 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 14% 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 ADC. The scope of our audit included an examination of ADC's controls over administrative and operational activities, including certain fees and bail funds for the period July 1, 2009 through October 31, 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 ADC's internal controls over the assessment, collection, accounting, waiver, and community service in lieu of payment of certain fees and ADC's internal controls over bail funds and (2) determine the extent of controls for measuring, reporting,

and monitoring effectiveness and efficiency regarding ADC'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 ADC'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 ADC'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 as a limitation of our audit scope. Our assessment of internal controls over financial and management activities at ADC was based on those interviews and the review of documents.

Our recommendations are intended to assist ADC in developing, implementing, or improving its internal controls and overall financial and administrative operations to ensure that ADC'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 October 31, 2010, ADC (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. ESTABLISHMENT OF AN ACCOUNTS RECEIVABLE SYSTEM

We noted that although the Attleboro Division of the District Court Department (ADC) has a system in place for collecting, disbursing, and accounting for partial payments of court-ordered assessments, its current financial recordkeeping system is lacking an accounts receivable component which would provide better accountability of revenues received and owed to the court. In order to improve upon this accounting system, the Administrative Office of the Trial Court (AOTC) and the Administrative Office of the District Court Department (AODC) started to implement the financial module of its automated case management system, MassCourts⁴ (known as full MassCourts) at all district court locations. The new system should provide more accountability and have an accounts receivable system to track collections. Without an accounts receivable system, courts lack control over a significant source of revenue. Of the total revenues of approximately \$78 million collected by all district courts during fiscal year 2010, 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 currently used by some Massachusetts courts is a cash-based system. There are two variations of the system used to collect probationers' money that are found depending on the specific court location: the Probation Receipt Account (PRA) system utilized by the ADC 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

⁴ MassCourts is a comprehensive, web-based, case management and docketing system that enables data collection and information sharing needed to track case progress and timeliness. It will eventually replace approximately 14 different case management systems with a uniform, integrated system.

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 AODC 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.

Recommendation

The AOTC and the AODC should continue implementing full MassCourts at district court locations and make any needed modifications to its financial module to ensure that full MassCourts will adequately track court collections.

Auditee's Response

The First Justice provided the following response:

During the July 1, 2009 through October 31, 2010 audit period addressed in the audit report, ADC generally followed accepted Trial Court fiscal procedures for the acceptance and

disbursement of funds. Such procedures and policies did not require a court to maintain an accounts receivable component as part of its financial record keeping.

However, ADC converted to the upgraded version of the MassCourts Case Management System on June 6, 2011. This enhanced version of MassCourts established a full case management system for all civil case types and implemented a financial case management system for both civil and criminal cases. Presently, personnel are becoming more experienced in their use of the MassCourts application for these purposes and for improving the collection procedures at ADC.

Auditor's Reply

ADC should continue its efforts in training personnel in the use of the newly implemented MassCourts system, which should provide more accountability through an accounts receivable system to track collections.

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

Although ADC 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 ADC to apply any payments made by persons 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 was for a 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, did away with the separate fund and made these funds General Fund revenue. 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 ADC would not always apply an individual's partial payments first to Victim Witness fees. Rather, ADC 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 ADC personnel were made aware of this statutory requirement, they immediately began prioritizing the application of payments to unpaid Victim Witness assessments.

Recommendation

ADC 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 First Justice provided the following response:

In the interest of keeping a defendant current on probation supervision payments and avoiding probation violation proceedings, the ADC in the past would, on occasion, apply a partial payment to a probation supervision fee in arrears, before full payment of the victim witness assessment. Since the conversion to the civil-financial version of MassCourts, the collection of the Victim Witness Assessment is designated as the initial account to be paid when a defendant tenders any partial payment. All cashiering staff have been duly trained in this protocol and supervisory staff monitor the proper allocation of such payments.

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

ADC 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 fiscal year 2010, the Clerk-Magistrate's Office collected and transmitted revenues of \$2,146,742 to the Commonwealth and \$244,862 to municipalities within ADC's jurisdiction. Much of these funds were first received 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 AOTC 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 AOTC should continue testing the MassCourts financial module, whose implementation should help streamline receipt and disbursement activity at ADC.

Auditee's Response

The First Justice provided the following response:

Although ADC had two cash collection points during the audit period, implementation of the MassCourts system, effective as of June 6, 2011, is expected to streamline cashiering by eliminating the redundancy of the prior dual cashiering systems.

4. INTERNAL CONTROL IMPROVEMENTS NEEDED OVER THE PROCESSING OF UNCLAIMED AND ABANDONED BAIL AND BAIL ASSOCIATED WITH CRIMINAL CASES IN DEFAULT

Our audit found that ADC needs to improve its internal controls to comply with state law and AOTC rules and regulations regarding the processing of abandoned bail and bail applying to criminal cases in default status. Specifically, ADC did not notify rightful owners of bails available for release or transmit unclaimed bails released over three years ago to the Office of the State Treasurer (OST) as abandoned property and did not order bails forfeited when defendants

failed to appear for their scheduled court date. As a result, the Commonwealth has been denied timely access and use of bails.

AOTC's Fiscal Systems Manual, Section 9.2, defines abandoned bail as follows:

Abandoned Property—bail (or other held monies) unclaimed after three years, despite written attempts to contact the surety in accordance with Massachusetts General Law, Chapter 200A, Section 6.

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

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 cannot 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.

Under Chapter 276, Section 80, of the Massachusetts General Laws, the court 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.

ADC's detailed bail trial balance reported that there were 748 cash bails totaling \$912,583 on hand as of October 31, 2010. Our preliminary review of the detailed trial balance identified potential problems in this area. Specifically, we found a number of old bails that could be treated as abandoned property as well as bails in default that could be forfeited and transmitted to the OST. We discussed our initial concerns over the detailed bail trial balance with court personnel and further reviewed 98 bails totaling \$44,965 received by the court more than three years ago. Our review identified that 23 bails totaling \$14,080 could have been forfeited and transmitted to OST because the defendants defaulted on their court appearance; 11 bails totaling \$3,935 should have been transmitted to the OST as abandoned property; and 26 bails totaling \$7,480 where the court did not send required notices to the rightful owners in an effort to return bail.

ADC personnel indicated that, although they were aware of the Commonwealth's laws and regulations, staffing constraints resulted in individual bails not receiving appropriate attention.

When ADC staff was made aware of these issues, bails were promptly reviewed. Appropriate corrective action was taken in that some bail accounts were transmitted to the OST as abandoned property and other bails where defendants were in default were forfeited and transmitted to the OST. Additionally, a number of bails that were available for release were returned to the sureties who posted the bail after the court sent letters notifying the rightful owners.

Recommendation

ADC should continue to perform periodic reviews of bail records to ensure future compliance with the state law and AOTC regulations governing bail. This may enable the court to better comply with the provisions of the General Laws and AOTC requirements, and transmit those bails as either abandoned or forfeited.

Auditee's Response

The First Justice provided the following response:

Although it is recognized that staff shortages, as well as the transition to the new version of MassCourts, may have resulted in certain bail accounts not being timely addressed, I believe such oversight was minimal and want to emphasize that the staff have been directed to be continually vigilant in monitoring bail accounts. I believe it is also important to recognize that ADC has an established internal control policy for identifying bail accounts subject to abandonment and forfeiture.