

# STATE OF CONNECTICUT

**AUDITORS' REPORT  
PUBLIC DEFENDER SERVICES COMMISSION  
FOR THE FISCAL YEARS ENDED JUNE 30, 2001 and 2002**

**AUDITORS OF PUBLIC ACCOUNTS**  
KEVIN P. JOHNSTON ♦ ROBERT G. JAEKLE

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November 3, 2003

**AUDITORS' REPORT  
PUBLIC DEFENDER SERVICES COMMISSION  
FOR THE FISCAL YEARS ENDED JUNE 30, 2001 and 2002**

We have made an examination of the financial records of the Public Defender Services Commission for the fiscal years ended June 30, 2001 and 2002. This report on the examination consists of the Comments, Recommendations and Certification, which follow.

The financial statement presentation and auditing of the books and accounts of the State is done on a Statewide Single Audit basis to include all State agencies. This audit examination has been limited to assessing compliance with certain provisions of financial related laws, regulations, contracts and grants, and evaluating internal control structure policies and procedures established to ensure such compliance.

**COMMENTS**

**FOREWORD:**

The Public Defender Services Commission operates under the provisions of Title 51, Chapter 887 of the Connecticut General Statutes. This Chapter authorizes the Commission to provide for the legal representation of indigent defendants in the State's criminal courts and of indigent minors in delinquency cases heard in the State's juvenile courts. The Agency is within the Judicial Department for administrative purposes only. It maintains its own business office for fiscal purposes.

Membership of the Commission at June 30, 2002, was as follows:

	<b>Term Expires <u>September 30,</u></b>
Attorney Carl D. Eisenmann, Chairman	2004
Honorable E. Curtissa Cofield	2003
Honorable John F. Kavanewsky	2003
Attorney Vincent Roach	2004
Attorney Ramona Mercado-Espinoza	2004
Rev. Monsignor William A. Genuario	2005
Diane E. Randall	2004

In addition to the members listed above, Attorney John Gawrych also served on the Commission until September 30, 2001.

Section 51-290 of the General Statutes provides for the appointment of a Chief Public Defender by the Commission. The duties of a Chief Public Defender include the supervision of all State Public Defenders, as well as, the administration, coordination and control of the operation of defender services throughout the State. Gerard A. Smyth continued to serve as Chief Public Defender during the audited period.

**RÉSUMÉ OF OPERATIONS:**

**General Fund Receipts:**

General Fund receipts totaled \$2,045,309 and \$1,853,578 for the fiscal years ended June 30, 2001 and 2002, respectively. For comparative purposes, General Fund receipts for the fiscal year ended June 30, 2000 totaled \$1,523,354. A comparison of receipts for the two fiscal years audited is summarized below:

	<b><u>Fiscal Year Ended June 30,</u></b>	
	<b><u>2001</u></b>	<b><u>2002</u></b>
Restricted contributions, Federal	\$ 1,551,132	\$ 1,359,688
Restricted contributions, Other than Federal	370,475	333,755
Refunds of current year expenditures	106,063	128,311
All other receipts	<u>17,639</u>	<u>31,824</u>
<b>Total General Fund Receipts</b>	<b><u>\$ 2,045,309</u></b>	<b><u>\$ 1,853,578</u></b>

General Fund receipts of the Commission consisted primarily of Federal aid, State matching contributions and refunds of expenditures. General Fund receipts increased \$521,055 (34 percent) and decreased \$150,948 (seven percent) for the fiscal years ended June 30, 2001 and 2002, respectively. The increase was due primarily to increases in Federal grant funding. Federal restricted contributions consisted primarily of a pass-through grant, administered by the State Office of Policy and Management from the U.S. Department of Justice. Grant funds include part of the Drug Control and System Improvement- Formula Grant and are primarily used for the personal services and fringe benefits of additional attorneys and social workers that specialize in cases involving drug related crimes or drug-dependent clients. Additional grant funds were received as

part of the Juvenile Justice and Delinquency Prevention Act for the expansion of juvenile public defender offices, including personal services and employee fringe benefits for additional attorneys and social workers associated with the increases in juvenile cases.

The refunds of current year expenditures primarily represent the collection of a \$25 fee from clients once a case is accepted by the Public Defender's Office. The fee is considered to be a reimbursement of public defender services and is not required in order for indigent clients to obtain services. Reimbursement collections amounted to \$78,545 and \$90,408 during the respective audited years.

**General Fund Expenditures:**

Expenditures of the Public Defender Services Commission are paid through General Fund appropriations. For comparative purposes, General Fund expenditures for the fiscal year ended June 30, 2000 totaled \$30,825,493. A summary of expenditures for the audited fiscal years is presented as follows:

	<u>Fiscal Year Ended June 30,</u>	
	<u>2001</u>	<u>2002</u>
Budgeted Accounts:		
Personal services	\$23,420,333	\$25,341,699
Contractual services	7,075,907	7,088,794
Commodities	276,609	293,277
Equipment	<u>131,064</u>	<u>114,231</u>
Total Budgeted Accounts	<u>30,903,913</u>	<u>32,838,001</u>
Restricted Accounts:		
Federal accounts	1,486,909	1,426,497
Other than Federal Accounts	<u>350,286</u>	<u>354,747</u>
Total Restricted Accounts	<u>1,837,195</u>	<u>1,781,244</u>
<b>Total General Fund Expenditures</b>	<b><u>\$32,741,108</u></b>	<b><u>\$34,619,245</u></b>

Total expenditures increased \$1,915,615 (six percent) and \$1,878,137 (six percent) for the fiscal years ended June 30, 2001 and 2002, respectively. The increases were primarily due to increases in personal service costs. The agency increased its staff by 27 authorized positions by the end of fiscal year 2000-2001. The majority of new positions represented the addition of new attorneys and support staff. Positions were filled as part of the 1999 settlement agreement in *Rivera v. Rowland, et al*, which was a class action suit brought to provide better services to indigent clients by reducing caseloads, providing training and increasing special public defender rates. The increases in personal service costs in the 2001-2002 fiscal year reflect a full year of expenditure costs related to these new positions.

In addition to General Fund expenditures, the agency purchased equipment through the Capital Equipment Purchases (1872) Fund totaling \$255,920 and \$277,799 for the fiscal years ended June 30, 2001 and 2002, respectively. The funds were used primarily to purchase new computers and software to continue access to an enhanced case tracking system and other automated resources.

**PROGRAM EVALUATION:**

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Section 2-90 of the General Statutes authorizes the Auditors of Public Accounts to conduct a program evaluation as part of our audits of public and quasi-public agencies. The mission of the Public Defender Services Commission is to provide legal representation to any person charged with the commission of a crime in Connecticut who does not have the financial ability to hire an attorney. As part of that mission, the Public Defender Services Commission should provide quality representation to indigent clients. We have selected to review what steps the Agency has taken to provide quality representation to indigents.

The Connecticut Public Defender Services Commission adopted and published ‘Guidelines on Indigent Defense: guidelines relating to the representation of indigent defendants accused of a criminal offense’. The guidelines cover the following areas: the role of the defense counsel; training; lawyer-client relationship; conflicts of interest; pretrial release; pretrial preparation including investigation; plea negotiations; trial; sentencing; and post-conviction including appeal. The guidelines are directed towards the agency’s public defenders, contracted, and non-contracted special public defenders. Agency public defenders are permanent staff, while special public defenders are contracted private attorneys who provide representation in cases where conflicts of interest preclude representation by permanent public defender staff. The guidelines are reviewed and updated as necessary. Public defenders are not limited by the guidelines but are expected to use their professional judgment in representing clients.

The guidelines address the role of an indigent client’s counsel and requires that they be proficient in applicable laws; have appropriate experience; devote adequate time and resources; establish trust and open communication with the client; keep the client informed throughout the process; and adhere to the Rules of Professional Conduct. Public defenders and special public defenders should protect a client’s confidentiality and conduct a client interview as soon as practicable including obtaining and conveying pertinent information from and to the client. Also, clients are to be advised of their rights pertaining to decisions concerning their defense. Newly appointed public defenders are required to participate in the Division of Public Defender Services’ New Attorney Training Program, a Trial Advocacy Program, and a Mentor Program.

The Commission has established duties, responsibilities, and qualifications for the various types of special public defenders in addition to the guidelines. Prior to receiving an appointment, new special public defenders are required to participate in a Special Public Defender Basic Orientation course that includes basic criminal practice and procedure issues and a review of the Commission’s ‘Guidelines on Indigent Defense’. Special public defender contracts contain a provision that requires the attorney to be familiar with the Guidelines. The Commission established, within the Office of Chief Public Defender, the position of Director of Special Public Defenders. In order to insure that individual special public defenders are providing adequate and quality representation to indigent clients, the Director of Special Public Defenders monitors the performance of special public defenders on an ongoing basis. The methods used to monitor include periodic visits to courts to observe performance; annually surveying supervising attorneys of Public Defender offices as to the performance and reliability of individual special public defenders; evaluation of trial skills by observation, review of transcripts and/or discussions with trial judges; review of grievances filed against a special public defender in which probable cause has been found; and recommendations for the removal of attorneys from the approved list of contractors as a result of unsatisfactory performance.

Additionally, the Commission has added positions, adopted caseload goals, increased

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compensation rates for special public defenders, expanded training programs and increased computer resources within the Division. It also established a separate Habeas Corpus Unit and Psychiatric Defense Unit in the past five years.

Our review indicates that the Public Defender Services Commission has taken positive steps in establishing guidelines and standards for the handling of an indigent client's defense and for providing professional and quality public defender services.

## CONDITION OF RECORDS

Our review of the records of the Public Defender Services Commission revealed several areas requiring improvement or further comment as discussed below:

### **Late Deposits:**

*Criteria:* Section 4-32 of the General Statutes requires that receipts of \$500 or more be deposited and accounted for within 24 hours. If the total daily receipts are less than \$500, the receipts can be held until the total receipts to date equal \$500. However, in no case should receipts be held longer than seven calendar days. Receipts are received at the Agency's individual field offices located throughout the State. Deposits are prepared by each office and are usually made using armored car services. Deposit documentation is faxed to the Office of the Chief Public Defender (OCPD) where an electronic CO-39 deposit slip document is compiled from the various offices and transmitted to the Office of the State Treasurer. The OCPD has an approved two-business-day waiver that extends complying with the 24 hours requirement.

*Condition:* Our test of deposits for compliance with Section 4-32 for the fiscal year ended June 30, 2002 disclosed both late deposits and late reporting of deposits. The 24 deposits tested included 272 individual cash receipts totaling \$9,075.50. We found that 23 of 272 (eight percent) of the sampled receipts totaling \$2,050 were deposited between one and fourteen calendar days beyond the approved two-business-day waiver.

In addition, 17 of 24 (70 percent) related electronic CO-39 deposit slip documents tested included a portion of individual field office deposits being reported to the State Treasurer between 1 to 12 business days after the deposit had actually been made.

*Effect:* Receipts that are not deposited and recorded in a timely manner are subject to potential loss and do not comply with laws and regulations.

*Cause:* The cause was not determined.

*Recommendation:* Receipts should be deposited and reported in a timely manner to ensure compliance with Section 4-32 of the General Statutes. (Recommendation 1)

*Agency Response:* "Late reporting can be attributed to delays in receiving bank deposit receipts from the bank, as bank bags containing such receipts may have been delivered to the wrong location by the armored car service or bank deposit receipts may be missing from such bags. In many court locations there is one central mail location for armored car deliveries where receipts can inadvertently be picked up by the wrong office. These delays

in trying to locate our agency bank deposit receipts have caused late reporting of deposits.

Corrective measures to avoid the recurrence of such incidents have been taken. Agency procedures require field offices to observe the 24-hour requirement for deposits of \$500, or up to 7 calendar days for receipts totaling \$500. We have again reiterated the agency's policy and procedures to all field offices and stressed the importance of strict adherence to these procedures to enable this agency to be in compliance with the state rules and regulations and audit reviews. These measures should enable this agency to be in full compliance with CGS 4-32."

**Expenditure Payments:**

*Criteria:* The State Accounting Manual establishes guidelines for processing vendor payments. The guidelines include criteria for determining the correct receipt and document dates to be used on State invoices. Invoices with receipt dates from different fiscal years must not be combined on a single CO-17 expenditure document.

The agency has established procedures for the payment of invoices that include date-stamping invoices when actually received at each field office location. Special public defender invoices are based on established rates and are submitted for payment to the applicable public defender's office location. Invoices are reviewed, signed-off by the supervising public defender, and sent to the business office at the Office of Chief Public Defender (OCPD) for processing. The business office prepares the official State invoice (CO-17) for payment.

*Condition:* We noted that 10 of 25 CO-17 invoices (40 percent) tested had incorrect receipt dates. Nine of the 25 invoices (36 percent) tested had incorrect document dates. Two expenditure documents combined special public defender services with receipt dates that included several previous fiscal years. Many of the agency's field locations do not date-stamp vendor invoices; consequently actual receipt dates could not be determined.

A test of equipment purchases indicated that 9 of 10 invoices (90 percent) used the vendor's invoice date as the receipt date. The actual receipt date that the OCPD or field location received the equipment could not always be determined.

*Effect:* Incorrect receipt dates could result in the improper reporting of year-end vendor payables and a lack of compliance with Generally Accepted Accounting Principles. The agency cannot budget effectively and the risk of duplicate payments is increased if services by special public defenders are not billed for in a timely manner.

*Cause:* Since field offices do not always date-stamp invoices, the OCPD business

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office uses the date it receives the documents from field office as the receipt date. The OCPD allows special public defenders to submit bills or corrections to bills several years after the actual services have been rendered. Additional causes were not determined.

*Recommendation:* Improvements need to be made to the Agency's expenditure payment process to comply with established guidelines and regulations. (Recommendation 2)

*Agency Response:* "The agency has established procedures for the payment of invoices that include using the correct document date on invoices by date stamping invoices upon receipt in field offices. Receipt dates on invoices are determined by the last date of service or the date goods are received in each office. We will reiterate on a more frequent basis the importance of date stamping invoices in field offices and using the correct receipt date in order to insure accurate receipt and document dates.

Special Public Defender billing procedures established by the agency require that special public defenders bill on a monthly basis for ongoing cases and that a separate invoice be prepared for each fiscal year in which services are performed. However, in some instances, special public defenders will wait until the case is closed before submitting an invoice. To address this issue, the Director of Special Public Defenders will send out a notice to all special public defenders, reminding them that agency procedures require that billing be submitted on a monthly basis and that they should bill on an ongoing basis as required by the agency, rather than wait until the case is disposed. Compliance will be monitored and any non-compliance will be addressed directly with the individuals in question to enable the agency to comply with Generally Accepted Accounting Principles."

### **Software Inventory/Library:**

*Criteria:* The State of Connecticut Property Control Manual requires that all agencies track and control all software media, licenses, license agreements, etc., and keep a central inventory covering all software components. The agency's responsibilities include producing a software inventory report on an annual basis, and taking a physical inventory of the software library and comparing it to the annual software inventory report.

*Condition:* The agency does not prepare an annual software inventory report. A physical inventory of its software has not been taken and compared with the software listed on its inventory database.

Licensed software is stored in the agency's Systems Department in a lockbox. All other software is filed in a filing cabinet by purchase order

number. Licenses and certificates are filed in a filing cabinet in the systems manager's office. Software has not been assigned a specific identification number.

Software installed on each computer is listed on the agency's inventory database; however, it is not readily traceable to a specific purchase or license. The agency has a list of the software titles and versions on the database, however it does not include the information required by the State, such as acquisition details.

*Cause:* The causes were not determined.

*Effect:* Inadequate software inventory records and the lack of physical inventories weaken the agency's controls and accountability of its software and could result its misuse or violations of copyright and software laws and regulations.

*Recommendation:* The Agency should comply with software inventory and reporting requirements. (Recommendation 3)

*Agency Response:* "Although the Systems Department has not prepared an annual software inventory report and conducted an annual physical inventory of software, the inventory database has a list of all software purchased and software is stored in a lockbox in the department's computer room. In the future an annual software inventory report will be prepared. Software will be assigned an identification number and the software inventory will reflect the identification number of the specific software installed for each individual user. A list of software in the software lock box will also be posted and a software checkout sheet will be created and maintained."

### **Late Report Filing:**

*Criteria:* Section 51-291, subsection (2), requires that the Chief Public Defender submit to the Commission a report that includes pertinent operating data including costs, projected needs and recommendations for statutory changes between August fifteenth and September fifteenth of each year. Prior to October 15th, the Commission shall submit the report with other pertinent information to the Chief Justice, the Governor and members of the Judiciary Committee of the General Assembly.

*Condition:* Our review noted that this annual report is not given to the Commission until December following the end of the fiscal year. The formal reports including costs, resources, caseloads and statistics for the fiscal years ended June 30, 2000 and 2001 were issued by the Commission and dated January 1, 2001 and 2002, respectively. A separate summary of legislative proposals for statutory changes for each new calendar year is included with the report issued in January.

- Effect:* The reports are filed late and do not meet the timeframe required by the statute.
- Cause:* The report and legislative proposals appears to have met the needs of its users and not affected the effectiveness of the information when issued in January.
- Recommendation:* The Chief Public Defender and the Commission should comply with the reporting dates established by the Statutes for submitting its annual report. (Recommendation 4)
- Agency Response:* “The statutory dates for submission of a report annually by the Chief Public Defender to the Public Defender Services Commission and by the Commission to the Governor, Chief Justice and Judiciary Committee of the General Assembly were established by statute in 1974 at the time of the creation of the Division of Public Defender Services. Since that time experience has revealed that the information required for preparation of the report, including caseload data for the previous fiscal year and budgetary information for the prior and current year, is not complete and available in sufficient time to prepare the report in accordance with the statutory timetable. Accordingly, it has been the practice to submit the report at a later date when a useful and effective report can be provided. This is done annually prior to the start of each legislative session. Since compliance with the statutory dates would result in an incomplete and less meaningful report, the agency will request the General Assembly in 2004 to amend the statutory dates in accordance with the schedule that is used in actual practice.”

## RECOMMENDATIONS

Our prior report on the Public Defender Services Commission contained three recommendations. The Agency has taken action to resolve two of the recommendations and the other one will be repeated as the result of our current examination. The status of the prior recommendations is presented below:

### *Status of Prior Audit Recommendations:*

- Receipts should be deposited and recorded in a timely manner in compliance with Section 4-32 of the General Statutes. There continued to be evidence of late depositing of receipts and reporting of deposits to the State Treasurer. This recommendation will be repeated. (See Recommendation 1.)
- The Department should strengthen its controls over equipment inventory to safeguard assets, provide accurate information and comply with laws and regulations. Equipment inventory tagging and recording were improved during the period. This recommendation will not be repeated. However, a new recommendation will be included to address just the software inventory issues.
- The Agency should strengthen the monitoring of services provided by contractual attorneys. The agency implemented additional monitoring reports to ensure better controls for the payments made to contractual attorneys. This recommendation will not be repeated.

### *Current Audit Recommendations:*

1. **Receipts should be deposited and reported in a timely manner to ensure compliance with Section 4-32 of the General Statutes.**

Comment:

Our test of deposits noted instances of receipts not being deposited or reported within the time period given to the Agency by the State Treasurer's Office. These late deposits and reporting indicated that the Agency was not in compliance with Section 4-32 of the General Statutes.

2. **Improvements need to be made to the Agency's expenditure payment process to comply with established guidelines and regulations.**

Comment:

Many of the expenditure documents tested included incorrect receipt and document dates. In many cases actual receipt dates could not be determined. There were instances where special public defenders submitted invoices for payment several years after the services had been rendered.

**3. The Agency should comply with software inventory and reporting requirements.**

Comment:

A complete software inventory/library is not maintained as required. There are no annual physical inventories of software and licenses or inventory reports prepared. Specific identification numbers are not assigned to software or media products.

**4. The Chief Public Defender and the Commission should comply with the reporting dates established by the Statutes for submitting its annual report.**

Comment:

Statutes require that pertinent information be submitted by the Chief Public Defender to the Public Defender Services Commission by September 15th and the Commission should issue its annual report prior to October 15th. The annual reports are not issued until January 1st.

## INDEPENDENT AUDITORS' CERTIFICATION

As required by Section 2-90 of the General Statutes we have audited the books and accounts of the Public Defender Services Commission for the fiscal years ended June 30, 2001 and 2002. This audit was primarily limited to performing tests of the Agency's compliance with certain provisions of laws, regulations and contracts, and to understanding and evaluating the effectiveness of the Agency's internal control policies and procedures for ensuring that (1) the provisions of certain laws, regulations and contracts applicable to the Agency are complied with, (2) the financial transactions of the Agency are properly recorded, processed, summarized and reported on consistent with management's authorization, and (3) the assets of the Agency are safeguarded against loss or unauthorized use. The financial statement audits of the Public Defender Services Commission for the fiscal years ended June 30, 2001 and 2002, are included as part of our Statewide Single Audits of the State of Connecticut for those fiscal years.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial-related audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Public Defender Services Commission complied in all material or significant respects with the provisions of certain laws, regulations and contracts and to obtain a sufficient understanding of the internal control to plan the audit and determine the nature, timing and extent of tests to be performed during the conduct of the audit.

### **Compliance:**

Compliance with the requirements of laws, regulations and contracts applicable to the Public Defender Services Commission is the responsibility of the Public Defender Services Commission's management.

As part of obtaining reasonable assurance about whether the Agency complied with laws, regulations, and contracts, noncompliance with which could result in significant unauthorized, illegal, irregular or unsafe transactions or could have a direct and material effect on the results of the Agency's financial operations for the fiscal years ended June 30, 2001 and 2002, we performed tests of its compliance with certain provisions of laws, regulations, and contracts. However, providing an opinion on compliance with these provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance that are required to be reported herein under auditing standards generally accepted in the United States of America.

We did, however, note certain immaterial or less than significant instances of noncompliance that we have disclosed in the "Condition of Records" and "Recommendations" sections of this report.

**Internal Control over Financial Operations, Safeguarding of Assets and Compliance:**

The management of the Public Defender Services Commission is responsible for establishing and maintaining effective internal control over its financial operations, safeguarding of assets, and compliance with the requirements of laws, regulations and contracts applicable of the Agency. In planning and performing our audit, we considered the Agency's internal control over its financial operations, safeguarding of assets, and compliance with requirements that could have a material or significant effect on the Agency's financial operations in order to determine our auditing procedures for the purpose of evaluating the Public Defender Services Commission's financial operations, safeguarding of assets, and compliance with certain provisions of laws, regulations and contracts, and not to provide assurance on the internal control over those control objectives.

However, we noted certain matters involving the internal control over the Agency's financial operations, safeguarding of assets, and/or compliance that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of internal control over the Agency's financial operations, safeguarding of assets, and/or compliance that, in our judgment, could adversely affect the Agency's ability to properly record, process, summarize and report financial data consistent with management's authorization, safeguard assets, and/or comply with certain provisions of laws, regulations and contracts. We believe the following findings represent reportable conditions:

- The lack of timely deposits.
- The inaccurate receipt and document dates on State invoices.
- Lack of adequate software library and inventory reports.

A material or significant weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that noncompliance with certain provisions of laws, regulations and contracts or the requirements to safeguard assets that would be material in relation to the Agency's financial operations or noncompliance which could result in significant unauthorized, illegal, irregular or unsafe transactions to the Agency being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over the Agency's financial operations and over compliance would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material or significant weaknesses. However, we believe that the reportable conditions described above are not material or significant weaknesses.

This report is intended for the information of the Governor, the State Comptroller, the Appropriations Committee of the General Assembly and the Legislative Committee on Program Review and Investigations. However, this report is a matter of public record and its distribution is not limited.

**CONCLUSION**

We wish to express our appreciation for the cooperation and courtesies extended to our representatives by the officials and staff of the Public Defender Services Commission and the Office of Chief Public Defender during this examination.

Virginia A. Spencer  
Principal Auditor

Approved

Kevin P. Johnston  
Auditor of Public Accounts

Robert G. Jaekle  
Auditor of Public Accounts