

STATE OF CONNECTICUT



***AUDITORS' REPORT
PUBLIC DEFENDER SERVICES COMMISSION
FOR THE FISCAL YEARS ENDED JUNE 30, 2005 and 2006***

AUDITORS OF PUBLIC ACCOUNTS

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February 8, 2008

**AUDITORS' REPORT
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We have made an examination of the financial records of the Public Defender Services Commission for the fiscal years ended June 30, 2005 and 2006. This report on that examination consists of the Comments, Recommendations and Certification that follow.

The financial statement presentation and auditing of the books and accounts of the State are done on a Statewide Single Audit basis to include all State agencies, including the Public Defender Services Commission. This audit examination has been limited to assessing compliance with certain provisions of financial related laws, regulations, contracts and grants, and evaluating internal control 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, 2006, was as follows:

	Term Expires <u>September 30,</u>
Attorney Carl D. Eisenmann, Chairman	2007
Honorable Paul Matasavage	2009
Honorable Susan S. Reynolds	2009
Attorney Vincent E. Roach	2007
Attorney Ramona Mercado-Espinoza	2007
Rev. Monsignor William A. Genuario	2008
Aimee Golbert	2007

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 public defender services throughout the State. Gerard A. Smyth served as Chief Public Defender during the audited period and until his retirement on September 1, 2006, when Susan O. Storey was appointed Chief Public Defender.

Commission on Child Protection:

Pursuant to Public Act 05-03 of the June Special Session of the 2005 General Assembly, effective October 1, 2005, the Commission on Child Protection was created within the Public Defender Services Commission for administrative purposes only. The new Commission is responsible for appointing a Chief Child Protection Attorney. The Chief Child Protection Attorney is responsible for establishing and overseeing a system to provide legal services for indigent respondents in family contempt and paternity matters; and for legal services and court appointed guardians to children and indigent parents in proceedings before the superior court for juvenile matters, other than representation of children in delinquency matters. The Chief Child Protection Attorney may contract such legal services, and is responsible for monitoring such services, including providing initial and in-service training to contractors as well as establishing training, practice and caseload standards.

The Commission consists of 11 members appointed as follows: (1) two superior court judges appointed by the Chief Justice of the Supreme Court, (2) the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the majority leaders of the Senate and the House of Representatives, and the minority leaders of the Senate and the House of Representatives shall each appoint one member, and (3) three members appointed by the Governor one of whom shall serve as chairperson. The Commission on Child Protection began operations on April 1, 2006, when the Commission appointed Carolyn Signorelli as the Chief Child Protection Attorney.

During the 2005-2006 fiscal year, the Commission on Child Protection expended \$63,582 primarily for personal services and computer equipment.

RÉSUMÉ OF OPERATIONS:

Public Act 04-02 of the May Special Session of the 2004 General Assembly authorized the establishment of a new special revenue fund for grant and restricted accounts activity. During the 2003-2004 fiscal year, as a result of the Core-CT State accounting system and Public Act 04-02, the Comptroller established a new special revenue fund entitled "Grants and Restricted Accounts Fund" to account for Federal and other revenues that are restricted from general use and were previously recorded in the General Fund as restricted contributions and accounts.

General Fund:

General Fund receipts totaled \$13,141 and \$14,687 for the fiscal years ended June 30, 2005 and 2006, respectively. These receipts consisted primarily of refunds from prior years expenditures for the return of contractual public defender attorney fees. In addition, the Commission collects a \$25 fee from clients as reimbursement of public defender services unless clients are indigent and cannot pay such a fee. These reimbursement collections are coded directly as reductions to current year expenditures and amounted to \$98,376 and \$98,758 during the respective audited years.

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, 2004, totaled \$32,744,798. A summary of expenditures for the audited fiscal years are shown below:

	<u>Fiscal Year Ended June 30,</u>	
	<u>2005</u>	<u>2006</u>
Budgeted Accounts:		
Personal services	\$27,200,441	\$28,742,610
Contractual services For		
Special Public Defenders	6,097,615	8,272,655
Other expenses	1,273,905	1,408,160
Expert witness fees	1,124,195	1,768,898
Training and education	77,823	80,244
Equipment	<u>1,000</u>	<u>1,000</u>
Total General Fund Expenditures	<u>\$35,774,979</u>	<u>\$40,273,567</u>

General Fund budgeted account expenditures increased by \$3,030,181 and \$4,498,588 during the fiscal years ended June 30, 2005 and 2006, respectively, representing a 23 percent increase over the audited period. Personal services, contractual services for Special Public Defenders, and expert witness fees accounted for the majority of increases in budgeted account expenditures during the audited period.

Increases in personal services costs were primarily attributable to filling full-time positions vacant after the 2002-2003 fiscal year early retirement program, as well as for retroactive payments on union contract settlements, and annual salary increases. Contractual services for Special Public Defenders increases were primarily due to increases in contracted rates and increases in overall caseloads including capital defense and appeal cases. Increases in expert witness fees expenditures were due to medical and investigative services for forensic testing and evaluations needed due to increases in capital defense cases.

Special Revenue Fund – Federal and Other Restricted Accounts:

As previously explained, restricted accounts that had previously been reported in the General Fund are now recorded by the Comptroller in a newly established special revenue fund. The Commission’s Federal and Other Restricted Accounts receipts totaled \$1,485,102 and \$1,612,367 for the fiscal years ended June 30, 2005 and 2006, respectively. For comparative purposes, Federal and other restricted receipts for the fiscal year ended June 30, 2004, totaled \$1,797,857. The following is a comparison of receipts for the fiscal years audited:

	<u>Fiscal Year Ended June 30,</u>	
	<u>2005</u>	<u>2006</u>
Federal restricted accounts	\$ 1,280,235	\$ 1,394,967
Other-than-Federal restricted accounts	<u>204,867</u>	<u>217,400</u>
Total Federal and Other Restricted Accounts Receipts	<u>\$ 1,485,102</u>	<u>\$ 1,612,367</u>

Federal and Other Restricted Accounts receipts of the Commission consisted primarily of Federal aid and State matching contributions. Receipts decreased \$312,755 (17 percent) and increased by \$127,265 (nine percent) during the fiscal years ended June 30, 2005 and 2006, respectively, and were primarily due to changes in Federal grant funding levels. Federal receipts during the audited period are shown below:

	<u>Fiscal Year Ended June 30,</u>	
	<u>2005</u>	<u>2006</u>
Drug Control and System Improvement – Formula Grant	\$ 281,782	\$ 280,807
Juvenile Justice and Delinquency Prevention Act	<u>998,453</u>	<u>1,114,160</u>
Total Federal Receipts	<u>\$ 1,280,235</u>	<u>\$ 1,394,967</u>

The Drug Control and System Improvement – Formula Grant is a pass-through grant administered by the State Office of Policy and Management and received from the U.S. Department of Justice. These grant funds were used primarily for attorneys and social workers who specialize in drug-related cases and drug-dependent clients. The Juvenile Justice grant funds were used for the expansion of juvenile public defender offices, including the hiring of additional attorneys and social workers associated with the increases in juvenile cases.

Federal and Other Restricted Accounts expenditures totaled \$1,466,805 and \$1,592,105 for the fiscal years ended June 30, 2005 and 2006, respectively. Expenditures primarily consisted of personal services, related fringe benefits, and miscellaneous costs for the various Federal and State programs.

Capital Equipment Purchases Fund:

Capital Equipment Purchases Fund expenditures totaled \$213,672 and \$357,683 during the respective audited years. These purchases were primarily made for motor vehicles, computers, and office equipment.

CONDITION OF RECORDS

Our review of the Public Defender Services Commission's records revealed the following areas that require improvement.

Payroll/Personnel:

Criteria: The Commission's policies and procedures require employees to sign timesheets for hours worked.

Condition: In our review of employee time records for 20 employees, we noted that five (5) timesheets (25 percent) lacked employee signatures. In all cases, timesheets were approved by supervisors even though some lacked employee signatures.

Effect: Without proper oversight of time and attendance reporting, the Commission lessens the assurance that employees are properly paid for time worked.

Cause: Inadequate supervisory oversight in obtaining employee signatures for the processing of timesheets occurred.

Recommendation: The Public Defender Services Commission should improve controls over payroll by requiring employees to sign timesheets. (See Recommendation 1.)

Agency Response: "Attendance Records – Current agency policy requires that at the end of each attendance period ... each of our 53 attendance reporting units are to submit a report for all 390 included employees We essentially have three business days to obtain all 53 reports and complete data input

The 53 reporting units are dispersed throughout the State. Current practice requires the reporting unit to submit a copy of the attendance report, signed by the unit supervisor. The unit supervisor is required by his/her signature to indicate the report is accurate to the best of their knowledge.

The local reporting office is required to transmit this attendance sheet to the Human Resource unit as soon as it is signed by the supervisor. A copy of the attendance report is kept in the local reporting unit and each employee is required to initial their entries ensuring their accuracy. This copy is retained by the reporting unit. If an error is found, the signature of the unit supervisor is required to change the attendance entry in the Human Resource unit.

A reminder of this policy was emailed to all supervisors as recently as January 18, 2007. The importance of this record keeping procedure will

be reinforced by subsequent emails and directly in regional office supervisory meetings. The Director of Human Resources, the Chief Public Defender, and Deputy Chief Public Defender will also “spot check” these office records for the requisite signature and accuracy when field office visits are made throughout the Division.

In the meantime, the attorney or administrator in charge of each reporting unit understands clearly that their signature attests to the accuracy of the report received at the Human Resource unit.

The current policy will also be reviewed to determine if changes may be indicated or necessary.”

Property Control and Reporting:

Criteria: The State of Connecticut’s *Property Control Manual* and good business practice require that the annual inventory report be accurate and a complete physical inventory of all property be taken annually to verify the existence of assets.

Condition: Our review of the annual inventory report (Form CO-59) disclosed several exceptions including inaccurate calculations, omission of Furnishings and Equipment deletions, incorrect inventory balances carried forward on inventory reports, and an incomplete master inventory list to support equipment balances. Additionally, no physical inventory of equipment was conducted during the audited period.

Effect: There was a lack of compliance with the State Comptroller’s guidelines to ensure the proper recording, safeguarding and reporting of the State’s assets.

Cause: With staffing efforts shifted to implement the new Core-CT accounting system, accurate reporting and a complete physical inventory for equipment became a low priority.

Recommendation: The Public Defender Services Commission should comply with the State of Connecticut’s *Property Control Manual* by maintaining accurate annual inventory reports and conducting a physical inventory of equipment on an annual basis. (See Recommendation 2.)

Agency Response: “Inventory Control – An inadvertent error was made with a calculation of the CO-59 and was carried over. The CO-59 has been corrected. In the future, the purchasing assistant will also assist in reviewing all calculations for accuracy. The Agency’s master list of assets was provided with the assistance from the supervisor of the Core-CT Asset Management Module. It became evident that the list provided by Core-CT was incomplete and, as a result, we were unable to complete the required physical inventory due to our inability to draw reports on assets

based on location. We are presently working through these programmatic problems with Core-CT in order to develop reports that are accurate and complete to meet the Agency's requirements. A physical inventory is currently underway in each of our offices and is expected to be completed by October 1, 2007."

Policy and Procedures for Receipts:

Criteria: The Commission's policy and procedures for receipts states, in part, that the receipt of funds by employees from clients or former clients is strictly forbidden except for reimbursement for public defender services rendered or costs and expenses incurred in the defense of an accused.

Condition: During the course of our audit, management brought to our attention that a public defender had handled restitution monies received from clients to be forwarded to victims against Commission policy.

Subsequent to this incident in December 2006, the Agency developed detailed procedures to account for the collection of other funds, i.e. restitution monies, from clients.

Effect: The public defender who handled restitution monies violated the Commission's procedures and increased the risk of funds being unaccounted for.

Cause: Prior to December 2006, procedures were not in place to address the handling of restitution funds by public defenders, who on occasion would handle such funds.

Recommendation: The Public Defender Services Commission should remind public defenders to comply with their new policy and procedures for restitution monies collected. (See Recommendation 3.)

Agency Response: "Client Funds – The policy that public defender staff cannot accept money, except in very limited circumstances, is outlined in the Agency's Administrative Manual. In the specific incident mentioned above, it came to the attention of the Office of Chief Public Defender that a public defender had allegedly accepted funds from clients for the purpose of restitution to victims and that those funds were not forwarded to probation or the victims. This appears to have been a discrete incident and not an agency wide problem. This Office took immediate steps to protect the interests of clients and victims in this isolated case. However, to make sure that this would not happen in the future, specific policy procedures were issued to all public defender staff on December 21, 2006, and January 12, 2007, regarding the proper handling of client funds for purposes of restitution. The Chief and Deputy Chief Public Defender also met personally with all field office supervisors to discuss this matter and emphasize the importance of compliance with this policy. All public

defender staff are now on notice that disciplinary action may be taken against them for any violations of this policy.”

RECOMMENDATIONS

Our prior report on the Public Defender Services Commission contained one recommendation for which corrective action has been taken. Three new recommendations are being presented as a result of our current examination.

Status of Prior Audit Recommendation:

- *The Chief Public Defender and the Commission should comply with the reporting dates established by the Statutes for submitting its annual report.* The Chief Public Defender and the Commission received statutory approval to change the filing due date from October 15th to February 1st of each year for its annual report to appropriate officials and the 2006 annual report was filed on time. As a result, this recommendation is not being repeated.

Current Audit Recommendations:

- 1. The Public Defender Services Commission should improve controls over payroll by requiring employees to sign timesheets.**

Comment:

We noted that some timesheets with supervisory approval lacked employee signatures.

- 2. The Public Defender Services Commission should comply with the State of Connecticut's *Property Control Manual* by maintaining accurate annual inventory reports and conducting a physical inventory of equipment on an annual basis.**

Comment:

We noted that the annual inventory reports were inaccurate and no physical inventory of equipment was done during the audited period.

- 3. The Public Defender Services Commission should remind public defenders to comply with their new policy and procedures for restitution monies collected.**

Comment:

We noted in one case that a public defender had handled restitution monies contrary to operating procedures.

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, 2005 and 2006. 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, contracts, and grants 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, 2005 and 2006, 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 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, contracts, and grants 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, contracts, and grants, 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, 2005 and 2006, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grants. 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 under *Government Auditing Standards*. However, we noted certain immaterial or less than significant instances of noncompliance that are described in the accompanying "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, contracts, and grants applicable to 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, contracts, and grants, 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, contracts, and grants. We believe the following findings represent reportable conditions: (1) inadequate payroll controls, and (2) weaknesses in property control and reporting.

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, contracts and grants 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 do not believe that the reportable conditions described above are material or significant weaknesses.

We also noted other matters involving internal control over the Agency's financial operations and over compliance which are described in the accompanying "Condition of Records" and "Recommendations" sections of this report.

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.

William T. Zinn
Associate Auditor

Approved:

Kevin P. Johnston
Auditor of Public Accounts

Robert G. Jaekle
Auditor of Public Accounts