

STATE OF CONNECTICUT



*AUDITORS' REPORT
PUBLIC DEFENDER SERVICES COMMISSION
FISCAL YEARS ENDED JUNE 30, 2014 AND 2015*

AUDITORS OF PUBLIC ACCOUNTS
JOHN C. GERAGOSIAN ❖ ROBERT M. WARD

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July 27, 2016

AUDITORS' REPORT PUBLIC DEFENDER SERVICES COMMISSION FOR THE FISCAL YEARS ENDED JUNE 30, 2014 AND 2015

We have audited certain operations of the Public Defender Services Commission in fulfillment of our duties under Section 2-90 of the Connecticut General Statutes. The scope of our audit included, but was not necessarily limited to, the years ended June 30, 2014 and 2015. The objectives of our audit were to:

1. Evaluate the commission's internal controls over significant management and financial functions;
2. Evaluate the commission's compliance with policies and procedures internal to the department or promulgated by other state agencies, as well as certain legal provisions; and
3. Evaluate the economy and efficiency of certain management practices and operations, including certain financial transactions.

Our methodology included reviewing written policies and procedures, financial records, minutes of meetings, and other pertinent documents; interviewing various personnel of the commission; and testing selected transactions. We obtained an understanding of internal controls that we deemed significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We tested certain of those controls to obtain evidence regarding the effectiveness of their design and operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contracts, grant agreements, or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our 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 such a basis.

The accompanying *Résumé* of Operations is presented for informational purposes. This information was obtained from the commission's management and was not subjected to the procedures applied in our audit of the office. For the areas audited, we identified

1. Deficiencies in internal controls;
2. Apparent noncompliance with legal provisions; and
3. Need for improvement in management practices and procedures that we deemed to be reportable.

The State Auditors' Findings and Recommendations in the accompanying report presents any findings arising from our audit of the Public Defender Services Commission.

COMMENTS

FOREWARD

The Public Defender Services Commission operates under the provisions of Title 51, Chapter 887 of the 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 commission is within the Judicial Department for fiscal and budgetary purposes only, maintaining its own business office for administrative purposes.

Established by statute, the agency is made up of three separate components: a commission, which is responsible for policymaking, appointments of all personnel, and compensation matters; an Office of Chief Public Defender, charged with statewide administration of the public defender system and the provision of specialized legal representation; and the individual public defender offices.

Commission members serve without compensation but are reimbursed for actual expenses incurred while engaged in the duties of the commission.

Commission members as of June 30, 2015, were as follows:

Attorney Thomas J. Rechen, Chairman	Aimee Golbert, LCSW
Attorney G. Kenneth Bernhard	Attorney Ramona Mercado-Espinoza
Honorable Julia DiCocco Dewey	Honorable Elpedio N. Vitale

Attorney Carl D. Eisenmann and Monsignor William A. Genuario also served on the commission during the audited period.

Section 51-290 of the General Statutes provides for the appointment of a chief public defender by the commission. The duties of the 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. Susan O. Storey served as chief public defender during the audited period.

RÉSUMÉ OF OPERATIONS

General Fund

Revenues:

General fund revenues totaled \$33,259, \$8,288, and \$23,292 for the 2012-2013, 2013-2014, and 2014-2015 fiscal years, respectively. General Fund revenues consisted primarily of refunds of expenditures. The decrease in refunds of expenditures from the 2012-2013 fiscal year to the 2013-2014 fiscal year was due to a decrease in reimbursements from the Division of Criminal Justice for court reporter services.

Clients who are able to pay towards the cost of representation are assessed fees in accordance with a schedule of reasonable charges. Clients of geographical area offices, except those that are incarcerated, are billed a flat \$25 fee unless they demonstrate the ability to pay additional amounts. Agency receipts do not include the fees collected as reimbursement of public defender services. Fees are accounted for as a reduction in personal services expenditures, and not as revenue to the General Fund. For the 2013-2014 and 2014-2015 fiscal years, \$103,000 and \$86,124 were collected in client reimbursements, respectively.

Expenditures:

A comparison of the agency's expenditures for the fiscal years under audit and the preceding year follows:

	2012-2013	2013-2014	2014-2015
Personal Services and Employee Benefits	\$37,662,966	\$39,629,909	\$41,819,431
Attorney Fees	12,401,561	16,891,566	20,216,124
Contract Attorneys	6,203,350	7,512,339	2,460,155
Expert Witnesses	1,628,066	1,869,131	2,022,815
Automated Legal Research	274,048	274,196	281,095
Premises and Property Expenses	276,193	287,150	263,294
Information Technology	35,621	63,413	106,656
GAAP Expenditure Adjustments	-	(973,018)	832,279
All Other	1,097,611	1,171,740	1,163,275
Total Expenditures	<u>\$59,579,416</u>	<u>\$66,726,426</u>	<u>\$69,165,124</u>

The \$7,814,563 increase in expenditures for attorney fees from the 2012-2013 fiscal year to the 2014-2015 fiscal year is primarily the result of Public Act 12-115, *An Act Concerning*

Habeas Corpus Reform, which reduced the length of time in which a habeas petition can be filed. This has resulted in an influx of habeas petitions received by the agency. The \$5,052,184 decrease in contract attorney expenditures from the 2013-2014 fiscal year to the 2014-2015 fiscal year was due to the agency providing more in-house services for child protection family contempt cases and contracting less with private attorneys. Expenditures for expert witnesses fluctuate with the number of cases that warrant such services from year to year. Information technology expenditures increased by \$71,035 from the 2012-2013 fiscal year to the 2014-2015 fiscal year. The increase was due to the implementation of an Assigned Counsel case management system used for tracking case assignments and compensation. Additionally, the agency created new data centers, leased a high speed fiber line for added synchronization between the data centers, and increased fiber bandwidth for three specialized field offices.

Special Revenue Fund

Special revenue fund revenues totaled \$1,045,870, \$439,360, and \$535,136 for the 2012-2013, 2013-2014, and 2014-2015 fiscal years, respectively. Special revenue fund expenditures totaled \$1,370,494, \$327,370, and \$89,537 for the 2012-2013, 2013-2014, and 2014-2015 fiscal years, respectively. The overall decrease in special revenue fund revenues and expenditures during the audited period was the result of three federal grants ending. The Post-Conviction DNA Testing Assistance Program funded by the Office of Justice Programs ended on September 30, 2014. In this program, the agency worked collaboratively with the Division of Criminal Justice and the Department of Emergency Services and Public Protection (Connecticut Forensic Science Laboratory) to identify cases in which incarcerated individuals were wrongfully convicted. The Public Defender Social Workers and Connecticut Domestic Violence Dockets grant passed through from the Office of Policy and Protection ended on June 30, 2013. This program linked social workers with domestic violence defendants to coordinate and monitor plans to improve a defendant's ability to participate and complete the court ordered domestic violence programming successfully. The Development of a Juvenile Case Management Database grant passed through from the Office of Policy and Management ended on March 31, 2014. This funding was used to develop a case management system for the juvenile public defender office in order to provide better services to clients and criminal justice partners within the state and the community.

Capital Equipment Purchase Fund

Expenditures from the capital equipment purchase fund totaled \$261,370, \$155,070, and \$505,164 for the 2012-2013, 2013-2014, and 2014-2015 fiscal years, respectively. The \$350,094 increase from the 2013-2014 fiscal year to the 2014-2015 fiscal year was attributed to the purchase of furniture and office equipment to accommodate the Appellate Unit's move from Hamden to Waterbury, the purchase of new vehicles, and the purchase of new computer hardware.

Capital Improvements

Capital improvement expenditures totaled \$73,498, \$198,238, and \$278,985 for the 2012-2013, 2013-2014, and 2014-2015 fiscal years, respectively. Capital improvement expenditures increased during the audited period due to the development and implementation of a new case management system.

STATE AUDITORS' FINDINGS AND RECOMMENDATIONS

Our review of the records of the Public Defender Services Commission disclosed certain matters of concern requiring agency attention.

Medical Leave

Criteria: The statewide Family and Medical Leave Policy sets forth procedures for requesting a leave of absence under the Family and Medical Leave Act (FMLA). The policy outlines the forms required and the deadlines for submitting the forms.

According to Chapter 504 of the agency's administrative policies and procedures manual, no sick leave in excess of five days shall be granted to an employee unless supported by a medical certificate.

Title 29 Code of Regulations (CFR) Part 825 Section 300(b) provides that when an employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances.

Condition: Our review of ten medical leaves of absence revealed the following conditions.

1. Required FMLA documentation was not on file for four of the seven employees absent on FMLA leave.
2. Two employees using sick leave in excess of five consecutive working days did not have medical certificates on file.
3. Two employees on sick leave for FMLA-qualifying purposes did not receive notice of FMLA eligibility from the agency.

Effect: Medical leave was not processed in accordance with agency policies or FMLA requirements.

Cause: The noncompliance and unsupported absences appear to be the result of management oversight.

Recommendation: The Public Defender Services Commission should strengthen internal controls to ensure medical leave is taken in accordance with agency policies and procedures and state and federal family and medical leave requirements. (See Recommendation 1.)

Agency Response: “The agency has strengthened internal controls and will be conducting training for supervisors in the areas of the policies and procedures involved with FMLA. Clarifications concerning FMLA will also be added to the administrative manual.”

Performance Evaluations

Criteria: According to collective bargaining agreements and the agency’s administrative policies and procedures manual, performance evaluations are to be completed on an annual basis and filed between two and three months prior to an employee’s annual increase date.

Condition: Our review of performance evaluations covering the audited period for ten employees revealed the following conditions.

1. Performance evaluations were not completed in a timely manner for four of the ten employees reviewed, yet the four employees were awarded annual increases prior to having the proper documentation in place.
2. Performance evaluations for one or more of the periods were missing for eight of the 10 employees reviewed, yet seven of those employees were awarded annual increases without documentation certifying satisfactory performance.

Effect: Annual performance evaluations were not completed in accordance with collective bargaining agreements and administrative policies and procedures. We could not verify that employee performance was satisfactory prior to the granting of annual increases.

Cause: There appears to be a lack of management oversight regarding the completion of performance evaluations and awarding of annual increases.

Recommendation: The Public Defender Services Commission should ensure annual performance evaluations are completed in accordance with collective bargaining agreements and agency policies. (See Recommendation 2.)

Agency Response: “A process has been established to monitor the completion of performance ratings in a timely manner. Policies and procedures involving performance ratings as well as supervisor training will be evaluated and expanded.”

Untimely Billings and Payments

Criteria: Sound internal controls dictate that vendor invoices be obtained and reviewed in a timely manner to ensure that errors are promptly noted and corrected and to ensure that goods and services are properly received.

Section 4a-71 of the General Statutes stipulates that payment shall be timely if made within 45 days of receipt of a properly completed claim or receipt of goods and services, whichever is later.

Condition: Our review of 20 expenditure transactions, totaling \$211,272, revealed the following conditions.

1. Invoices for six transactions, totaling \$23,165, were submitted to the agency in an untimely manner; invoices were submitted 128, 131, 168, 266, 628, and 880 days after services were rendered, respectively.
2. Payment for four transactions, totaling \$101,751, was made in an untimely manner; payment was made 78, 87, 183, and 245 days after receipt of invoice, respectively.

Effect: When invoices are submitted in an untimely manner, there is increased risk that errors and fraudulent activities may go undetected by the agency. Untimely payment of obligations could result in the agency incurring additional costs.

Cause: When case-related expenses are incurred by a public defender, invoices are first received by the public defender and then forwarded to the central office for payment. While the agency makes all public defenders aware of the need for invoices to be submitted in a timely manner, the timing is ultimately dependent upon vendors and public defenders. The untimely payments appear to be an oversight by management.

Recommendation: The Public Defender Services Commission should ensure that vendor invoices are received, reviewed, and paid in a timely manner. (See Recommendation 3.)

Agency Response: “The agency has taken steps to reduce the incidence of untimely bill submissions and recently strengthened internal controls by instituting a system for electronic submission which should further reduce the risk of error and fraudulent activity.”

Approval to Incur Case-Related Expenses

- Criteria:* The agency's administrative policies and procedures manual requires attorneys who represent public defender clients to receive prior approval to hire experts and incur case-related expenses. Depending on the estimated cost and type of service requested, prior approval must be obtained from the supervising attorney in charge of an office, the chief or deputy chief public defender, or from the commission.
- Condition:* Of the 11 transactions reviewed, prior approval to incur case-related expenses was not obtained for two transactions totaling \$2,632; approval was obtained 262 and 1,121 days after services were rendered, respectively.
- Effect:* The lack of prior approval increases the risk of improper or unauthorized case-related expenses.
- Cause:* Prior approvals for case-related expenses were not properly obtained due to the occurrence of unexpected events, including overbilling by vendors, delays in invoice submittals, and unforeseen needs of public defenders.
- Recommendation:* The Public Defender Services Commission should ensure requests to incur case-related expenses are submitted in accordance with agency policies and procedures. (See Recommendation 4.)
- Agency Response:* "The agency has taken steps to reduce the risk of improper or unauthorized case-related expenses through the development of an automated system for submission of requests for case related expenses. All requests also receive increased scrutiny by management and, when appropriate, the Public Defender Services Commission. Despite these improvements there may be some emergency requests that are necessary but not properly obtained in advance due to trial or unexpected litigation needs that occur. The agency will continue to refine procedures to avoid unauthorized case related expenses."

Deposits

- Criteria:* Section 4-32 of the General Statutes requires each agency receiving revenue for the state to deposit and account for the funds within 24 hours of receipt if the total received amounts to five hundred dollars or more. Total daily receipts of less than five hundred dollars may be held until the total receipts to date amount

to five hundred dollars, but not for a period of more than seven calendar days.

For every deposit, public defender client reimbursement procedures require field offices to submit copies of the cash receipts journal, money orders, the deposit ticket, and the bank transaction receipt to the central office to support funds received.

Condition: Our review of 20 deposits, totaling \$1,591, revealed the following conditions.

1. Two deposits, totaling \$150, were deposited in an untimely manner; the deposits were made four and eight days late, respectively.
2. Twelve deposits, totaling \$900, were not adequately supported by copies of money orders and/or a bank transaction receipt.

Effect: Funds were not deposited timely in accordance with the General Statutes. Additionally, the agency is not in compliance with policies regarding deposit documentation.

Cause: The untimely deposits and missing documentation appear to be oversights by both the field offices and the central office.

Recommendation: The Public Defender Services Commission should deposit funds in a timely manner in accordance with the General Statutes and maintain adequate supporting documentation. (See Recommendation 5.)

Agency Response: “The agency’s Financial Unit continues to request that all field offices deposit client reimbursement funds in a timely manner and will continue to request compliance. We also ask field offices to make copies of any money orders received from clients and will continue to request compliance.”

Accountability Reports

Background: The agency has a client reimbursement program for which all clients of the 20 geographical area (GA) courts, except those in custody, are asked to reimburse the system \$25 towards the cost of their defense. Although payment is not required, billing notices are issued in an attempt to collect the fee. When payment is made, the GA office issues a pre-numbered receipt and the funds are deposited. Each month, GA offices submit copies of the billing

notices and receipts issued to the Office of the Chief Public Defender.

Criteria: Chapter 2.2 of the receipts section of the State Accounting Manual requires accountability reports to be periodically prepared, when feasible, to compare the monies that were actually recorded with the monies that should have been accounted for.

Condition: The agency did not prepare accountability reports for the client reimbursement program for the fiscal years ended June 30, 2014 and 2015. When comparing the number of receipts issued to the amounts deposited for the fiscal years ended June 30, 2014 and 2015 we noted variances of \$540 and \$896, respectively.

Effect: The lack of accountability reports increases the risk for receipts to be inaccurately accounted for.

Cause: Although the agency continues to improve its recordkeeping of client reimbursement receipts, the agency does not prepare accountability reports to compare the monies deposited to the monies that should have been accounted for.

Recommendation: The Public Defender Services Commission should prepare periodic accountability reports for the client reimbursement program. (See Recommendation 6.)

Agency Response: “The agency continues to compare and reconcile all client reimbursement funds received from the field offices to ensure accountability on a monthly basis. Although not in the specific format recommended by the auditors, the agency’s method of reconciling monthly receipts effectively and reliably produces a less than one percent difference. However, the agency will continue to improve procedures in order to implement periodic client reimbursement accountability reports, which the State Accounting Manual recommends should be implemented ‘where feasible’.”

RECOMMENDATIONS

Our prior report on the fiscal years ended June 30, 2012 and 2013 contained a total of ten recommendations, of which four were resolved and six are being modified and repeated. Expenditure recommendations are now being presented individually rather than in the previous combined format.

Status of Prior Audit Recommendations:

- The Public Defender Services Commission should ensure compensatory time is earned, used, and lapsed in accordance with collective bargaining agreements and agency policies. This recommendation was resolved and will not be repeated.
- The Public Defender Services Commission should ensure annual performance evaluations are completed in accordance with collective bargaining agreements and agency policies. This recommendation will be repeated due to similar issues noted during the current review. (See Recommendation 2.)
- The Public Defender Services Commission should maintain records in accordance with state records retention schedules, or until audited in accordance with Section 2-90(g) of the General Statutes. This recommendation was resolved and will not be repeated.
- The Public Defender Services Commission should strengthen internal controls to ensure medical leave is taken in accordance with statewide and agency policies and procedures. This recommendation will be modified and repeated due to similar issues noted during the current review. (See Recommendation 1.)
- The Public Defender Services Commission should ensure purchases and payments are made in accordance with the General Statutes and agency policies and procedures. Our current review continued to identify expenditure-related issues; therefore, this recommendation will be restated to reflect those issues. (See Recommendations 3 through 4.)
- The Public Defender Services Commission should strengthen internal controls to ensure adequate information is on file to support assigned counsel payments and improve recordkeeping practices so that documentation may be located in a timely manner. This recommendation was resolved and will not be repeated.
- The Public Defender Services Commission should deposit and post funds received in a timely manner in accordance with the General Statutes and State Comptroller guidelines and maintain adequate supporting documentation. This recommendation will be repeated due to similar issues noted during the current review. (See Recommendation 5.)

- The Public Defender Services Commission should prepare monthly accountability reports for the Client Reimbursement Program to ensure all receipts are accounted for. While our current review revealed improvement in the tracking of receipts, the agency did not prepare accountability reports; therefore, the recommendation will be modified and repeated. (See Recommendation 6.)
- The Public Defender Services Commission should update the software inventory to ensure its accuracy, adequately maintain and monitor software, and conduct an annual physical inventory in accordance with State Comptroller requirements. This recommendation was resolved and will not be repeated.
- The Public Defender Services Commission should ensure requests to incur case-related expenses are submitted in accordance with agency policies and procedures. This recommendation will be repeated due to similar issues noted during the current review. (See Recommendation 4.)

Current Audit Recommendations:

- 1. The Public Defender Services Commission should strengthen internal controls to ensure medical leave is taken in accordance with agency policies and procedures and state and federal family and medical leave requirements.**

Comment:

During our review, we noted that required FMLA documentation was not on file for four employees on medical leave and medical certificates were not on file for two employees on medical leave. We also found that two employees on medical leave for FMLA-qualifying purposes did not receive notice of FMLA eligibility from the agency.

- 2. The Public Defender Services Commission should ensure annual performance evaluations are completed in accordance with collective bargaining agreements and agency policies.**

Comment:

During our review, we found numerous instances in which annual performance evaluations were not completed in a timely manner or were missing for one or more of the periods reviewed. We also noted that annual increases were awarded prior to having proper documentation in place.

- 3. The Public Defender Services Commission should ensure that vendor invoices are received, reviewed, and paid in a timely manner.**

Comment:

During our review of 20 expenditure transactions, we found that six vendor invoices were submitted to the agency in an untimely manner and four payments were made in an untimely manner.

- 4. The Public Defender Services Commission should ensure requests to incur case-related expenses are submitted in accordance with agency policies and procedures.**

Comment:

During our review of 11 expenditure transactions for case-related expenses, we found that prior approval to incur such expenses was not obtained for two transactions.

- 5. The Public Defender Services Commission should deposit funds in a timely manner in accordance with the General Statutes and maintain adequate supporting documentation.**

Comment:

During our review, we found that two deposits were made in an untimely manner and 12 deposits were not supported by adequate documentation.

- 6. The Public Defender Services Commission should prepare periodic accountability reports for the client reimbursement program.**

Comment:

During our review, we found that the agency does not prepare periodic accountability reports for the client reimbursement program to compare the number of receipts issued to the amounts collected.

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 during this examination.



Audrey Kelliher
Auditor II

Approved:



John C. Geragosian
Auditor of Public Accounts



Robert M. Ward
Auditor of Public Accounts