

STATE OF CONNECTICUT



*AUDITORS' REPORT
DIVISION OF PUBLIC DEFENDER SERVICES
FISCAL YEARS ENDED JUNE 30, 2016 AND 2017*

AUDITORS OF PUBLIC ACCOUNTS
JOHN C. GERAGOSIAN ❖ ROBERT J. KANE

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EXECUTIVE SUMMARY

In accordance with the provisions of Section 2-90 of the Connecticut General Statutes, we have audited certain operations of the Division of Public Defender Services. The objectives of this review were to evaluate the division’s internal controls, compliance with policies and procedures, as well as certain legal provisions, and management practices and operations for the fiscal years ended June 30, 2016 and 2017.

The findings are presented below:

Page 6	Our audit found 7 instances of double billing by a firm and the use of the incorrect hourly rate for habeas corpus assignments resulting in overpayments of \$7,047. The division told us that its billing system malfunctioned and was unable to detect double billings for a few months during the audited period. The Division of the Public Defenders Services should review payments to all contractors during the period when its billing system malfunctioned. The division should correct any errors and recover any overpayments. (Recommendation 1.)
Page 7	The division’s current application process does not include a sufficient level of review and investigation to provide reasonable assurance that only eligible applicants are provided with public defender services. Most of the applications for public defender services were unsigned or did not provide all of the information necessary to support applicant eligibility. The Division of Public Defender Services should develop clear written guidelines for determining whether defendants are eligible for public defender services. The division should ensure that public defender service applications are completed under oath and disclose all of the necessary information required by law. (Recommendation 2.)
Page 9	The Division of Public Defender Services did not submit annual reports to the governor as required by Section 4-60 of the General Statutes. The Division of the Public Defender Services should prepare and submit an administrative report to the Governor in accordance with Section 4-60 of the General Statutes. (Recommendation 3.)

STATE OF CONNECTICUT



AUDITORS OF PUBLIC ACCOUNTS

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July 17, 2019

AUDITORS' REPORT DIVISION OF PUBLIC DEFENDER SERVICES FOR THE FISCAL YEARS ENDED JUNE 30, 2016 AND 2017

We have audited certain operations of the Division of Public Defender Services 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, 2016 and 2017. The objectives of our audit were to:

1. Evaluate the division's internal controls over significant management and financial functions;
2. Evaluate the division's compliance with policies and procedures internal to the division or promulgated by other state agencies, as well as certain legal provisions; and
3. Evaluate the effectiveness, 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 division; 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 various available sources including, but not limited to, the division's management and the state's information systems, and was not subjected to the procedures applied in our audit of the division. For the areas audited, we identified:

1. Deficiencies in internal controls;
2. Apparent noncompliance with policies and procedures or 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 Division of Public Defender Services.

COMMENTS

FOREWORD

The Division of Public Defender Services operates, generally, under the provisions of Title 51, Chapter 887 of the General Statutes. The division provides legal representation to indigent clients in adult and juvenile misdemeanor and felony cases, including appeals and other post-conviction matters, as well as child protection. The division is an autonomous body within the Judicial Department for fiscal and budgetary purposes only, maintaining its own business office for administrative purposes.

Established by statute, the division is made up of 3 separate components: a 7-member commission responsible for policy-making, appointment of all personnel, and compensation matters; an Office of the 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 providing legal services throughout the state to indigent persons accused of crimes as required by both the United States and Connecticut Constitutions.

Commission members as of June 30, 2017, were as follows:

Attorney Thomas J. Rechen; Chairman
Honorable William R. Dyson
Aimee Golbert, Licensed Clinical Social Worker
Honorable Julia DiCocco Dewey
Attorney Ramona Mercado-Espinoza
Attorney G. Kenneth Bernhard
Honorable Elpedio N. Vitale

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 \$23,292, \$34,213, and \$22,143 for the fiscal years ended June 30, 2015, 2016 and 2017, respectively. They primarily consisted of refunds of prior year expenditures. The fluctuation in revenues among these periods was mostly due to changes in collection of fees for legal services.

The division assesses fees to clients who are financially able to pay towards the cost of representation in accordance with a schedule of reasonable charges. In addition, the division established a partial reimbursement program for all clients, under which, it bills clients of geographical area offices a flat \$25 fee unless they demonstrate the ability to pay more.

Agency revenues do not include the fees collected as reimbursement of public defender services. Fees are accounted for as a reduction in personal services expenditures. A total of \$94,796 and \$91,211 in reimbursements of current year expenditures was collected during the fiscal years ended June 30, 2016 and 2017, respectively.

Expenditures:

A summary of General Fund expenditures for the division during the audited period and the preceding fiscal year follows:

Expenditure Description	Fiscal Year Ended June 30,		
	2015	2016	2017
Wages, Salaries and Employee Expenses	\$41,819,431	\$43,187,748	\$40,166,276
Professional Services	24,071,950	25,735,902	24,112,441
Other Services	1,695,435	1,911,396	1,816,884
Premises and Property Expenses	263,294	178,637	167,797
Purchased Commodities	218,579	128,301	114,353
Information Technology	106,656	159,923	411,433
Communications	83,399	48,338	39,296
Rental and Maintenance - Equipment	41,144	37,977	35,314

Motor Vehicle Costs	32,958	27,060	23,655
OSC Adjusting Entries	832,279	-	-
Capital Outlays	-	-	262
Total Expenditures	\$69,165,125	\$71,415,282	\$66,887,711

The increase in wages and salaries from the fiscal year ended June 30, 2015 to the fiscal year ended June 30, 2016 was primarily due to a cost of living adjustment. The decrease in wages and salaries from the fiscal year ended June 30, 2016 to the fiscal year ended June 30, 2017 reflected a reduction in the number of employees due to the retirements. The fluctuations in expenditures for professional services among the years presented were primarily attributable to changes in attorney fees and expert witness expenditures. These expenditures fluctuate depending on the number and nature of cases handled from year to year.

Federal and Other Restricted Accounts Fund

Federal and Other Restricted Accounts Fund revenues totaled \$535,136 and \$23,614 for the fiscal years ended June 30, 2015 and 2017, respectively, and consisted of federal grant program activity. The division did not record any revenue in this fund for the fiscal year ended June 30, 2016. The \$535,136 recorded for the fiscal year ended June 30, 2015 included \$465,135 under the Forensic DNA Backlog Reduction program. That amount consisted of \$162,274 received from the federal government to reimburse the division for expenditures of the quarters June 30, 2014 and September 30, 2014 and \$302,861 transferred from other state agencies. These transfers represented the return of unspent program funds that the division distributed to those agencies during the fiscal year ended June 30, 2013.

Federal and Other Restricted Accounts Fund expenditures totaled \$89,536, \$7,695 and \$30,763 for the fiscal years ended June 30, 2015, 2016, and 2017, respectively. Expenditures decreased during the audited period as the division's participation in 2 of 3 federal programs ended during the fiscal year ended June 30, 2015. The State Court Improvement Program was the only federal program the division participated in during the audited period. This program funded improvements that provided for the safety, well-being, and permanency of children subject to child protection cases.

Capital Equipment Purchase Fund

Capital Equipment Purchase Fund expenditures totaled \$505,164, \$179,417 and \$265,038 for the fiscal years ended June 30, 2015, 2016, and 2017, respectively. The fluctuation in expenditures among the periods presented was primarily attributable to purchases of new motor vehicles, capital equipment, and information technology hardware.

Capital Improvements and Other Purposes Funds

Capital improvement expenditures totaled \$278,985, \$744,424, and \$399,746 for the fiscal years ended June 30, 2015, 2016, and 2017, respectively. The increase in expenditures from the

fiscal year ended June 30, 2015 to the fiscal year ended June 30, 2016 was primarily due to the development and implementation of an internal case management system.

STATE AUDITORS' FINDINGS AND RECOMMENDATIONS

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

Overpayments for Assigned Counsel Services

Criteria: The American Bar Association (ABA) prohibits double billing. Specifically, ABA Model Rules of Professional Conduct Rule 1.5 states that legal fees must be reasonable. The ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 93-379 regarding double billing. It stated that the practice of billing several clients for the same time results in the earning of an unreasonable fee, and, therefore is contrary to the mandate of the Model Rules.

Although work performed by legal counsel during a billing interval may benefit multiple clients, under the standard contracts between the Division of Public Defender Services (DPDS) and assigned counsel, the contractor may only bill at the appropriate rate for work performed for a single client during such periods.

Section 3-117 of the General Statutes requires the agencies to certify that the services have been received or performed.

The contract establishes the hourly rate for habeas corpus assignments as \$75 for some firms and \$65 for others.

Condition: During our test of expenditures, we noted instances in which the division paid some firms an hourly rate of \$75 for habeas corpus assignments rather than the \$65 hourly rate specified in the contract. We expanded our review to cover all payments for habeas corpus assignments during the audited period and noted overpayments totaling \$6,011 as a result of the incorrect use of the higher rate.

Additionally, we noted an instance of double billing. We expanded our review to cover all of the particular firm's billings during the audited period and identified another 6 instances. The division overpaid the firm by \$1,036 as a result of the double billings.

Effect: The use of the incorrect rate for habeas corpus assignments and double billings by a firm resulted in overpayments of \$7,047.

Cause: The Division of Public Defender Services told us that its billing system malfunctioned and was unable to detect double billings for a few months during the audited period. This breakdown might also have affected the rate used for habeas corpus assignments.

- Prior Audit Finding:* This finding has not been previously reported.
- Recommendation:* The Division of the Public Defenders Services should review payments to all contractors during the period when its billing system malfunctioned. The division should correct any errors and recover any overpayments.
- Agency Response:* “The overpayments included \$1,036 in double billing by one firm and \$6,011 of overbilling from several firms at an incorrect hourly rate for a total of \$7,047. The incorrect payments are likely due to a malfunction in our Filemaker billing system. Payments made during that time period will be reviewed and efforts will be made to recover any amounts due. Modifications have been made in the Agency’s Filemaker billing system to ensure that double billing is caught and cannot occur in the future. The modifications will also ensure that firms with multiple practice areas bill at the appropriate rate.”

Evaluating Defendants’ Eligibility for Public Defenders

- Criteria:* Section 51-289 (g) of the General Statutes states that the Public Defender Services Commission must adopt rules relating to the operations of a Division of Public Defender Services (DPDS) including, but not limited to, Income and Eligibility Guidelines for the representation of indigent individuals.
- Section 51-297 (a) of the General Statutes states that a public defender shall require the defendant to complete a written statement under oath or affirmation setting forth the individual’s liabilities and assets, income and sources thereof, and such other information which the commission shall designate and require on forms furnished for such purpose.
- Section 51-297 (e) of the General Statutes provides DPDS with the authority to require a defendant to execute and deliver such written authorizations as may be necessary for the investigation into the financial status of each defendant at such times, as the circumstances shall warrant. It also authorizes DPDS to obtain information from any office of the state or any subdivision or agency thereof on request and without payment of any fees.
- Condition:* The Division of the Public Defenders Services does not have clear written guidelines for determining whether defendants are eligible for the services of public defenders.

We selected 25 applications from the Hartford GA 14 and Enfield GA 13 courts, which were approved from July 1, 2016 to June 30, 2017. Our review disclosed the following:

- Three applications were missing.
- Both courts used their own templates for the applications and not the standard DPDS application form.
- Out of the 22 applications provided, 18 did not have the applicant's signature affirming to the truth and accuracy of the information contained within the public defender application as required by Section 51-297 (a) of the general statutes. Furthermore, 11 of those applications did not even include a place for the applicant's signature and the date of the sworn written statement.
- Five applications did not disclose income information.
- Four applications did not disclose asset information.
- One application did not disclose information regarding marital status, spousal income, and the number of dependents.

Although none of the reviewed applicants disclosed information that disqualified them for public defender services, it is unlikely that the reviewers of the applications would have been able to properly determine the applicants' eligibility for a public defender without critical information. The current process does not include a sufficient level of review and investigation to provide reasonable assurance that only eligible applicants are provided with public defender services.

Effect: There is an increased risk that individuals that can afford a private attorney could take advantage of the DPDS services.

Cause: The Division of Public Defender Services informed us that the administrative manual that provided guidance regarding the designation of a public defender is outdated and is not followed by the staff. The division also informed us that it is developing new guidelines.

Prior Audit Finding: This finding has not been previously reported.

Recommendation: The Division of Public Defender Services should develop clear written guidelines for determining whether defendants are eligible for public defender services. The division should ensure that public defender services applications are completed under oath and disclose all of the necessary information required by law. The division should also

consider requesting access to personal information readily available at other state agencies (e.g., Department of Social Services, Department of Revenue Services) and utilizing such information during application review.

Agency Response: “Updates to Section 6 of the Public Defender Services Administrative Manual, Financial Eligibility for Public Defender Services were adopted by the Public Defender Services Commission in October, 2018. These updates, which have been reviewed with supervisors and distributed to all staff include a requirement that a standard application form be used, that all required information is filled in and that all applications be signed under oath. A new standard form is being developed and will be rolled out shortly. In addition, DPDS requested a budget allocation to purchase tablets to be used to electronically take applications. This would allow us to program the system to ensure all information is obtained and to automatically save the application in our electronic case management system. When appropriate, DPDS staff is able to access publically available information on income from other state agencies and seeks releases from applicants when necessary.”

Administrative Report to the Governor

Criteria: Section 4-60 of the General Statutes requires that the executive head of each budgeted agency shall, on or before September 1st, annually, deliver to the Governor a report of the activities of such agency during the fiscal year ended the preceding June 30th. The agency reports are published in the Digest of Administrative Reports issued by the Department of Administrative Services.

Condition: The Division of Public Defender Services did not file reports in accordance with Section 4-60 of the General Statutes.

Effect: Reports not being prepared in accordance with the General Statutes may prevent the distribution of information needed for informed decision-making by management and the legislature.

Cause: The Division of the Public Defender Services felt that it satisfied the reporting requirement by submitting monthly budget reports to the Office of Policy and Management and the legislature’s Office of Fiscal Analysis. In addition, the division believes its annual report required by subsection (2) of Section 51-291 addressed its reporting requirement.

Prior Audit Finding: This finding has not been previously reported.

Recommendation: The Division of the Public Defender Services should prepare and submit an administrative report to the Governor in accordance with Section 4-60 of the General Statutes.

Agency Response: “The Division of Public Defender Services submits monthly budget reports to the Office of Policy and Management and files an annual report pursuant to subsection (2) of Section 51-291 of the general statutes, which the agency believed satisfied the requirements of Section 4-60 of the General Statutes. In light of the findings, DPDS will file an administrative report to the Governor on or before September 1, 2019”

RECOMMENDATIONS

Our prior audit report on the Division of Public Defender Services contained 6 recommendations. All 6 have been implemented or otherwise resolved. The following is a summary of the action taken on the prior recommendations.

Status of Prior Audit Recommendations

- 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. **We did not find exceptions in this area during our current audit. This recommendation is not being repeated.**
- The Public Defender Services Commission should ensure annual performance evaluations are completed in accordance with bargaining agreements and agency policies. **The division has improved controls addressing the completion of annual performance evaluations. This recommendation is not being repeated.**
- The Public Defender Services Commission should ensure that vendor invoices are received, reviewed, and paid in a timely manner. **The division has improved its processes for the receipt, review, and payment of invoices. This recommendation is not being repeated.**
- The Public Defender Services Commission should ensure requests to incur case-related expenses are submitted in accordance with agency policies and procedures. **We did not find exceptions in this area during our current audit. This recommendation is not being repeated.**
- The Public Defender Services Commission should deposit funds in a timely manner in accordance with the General Statutes and maintain adequate supporting documentation. **We did not find exceptions in this area during our current audit. This recommendation is not being repeated.**
- The Public Defender Services Commission should prepare periodic accountability reports for the client reimbursement program. **The division prepared periodic accountability reports during the current audited period. This recommendation is not being repeated.**

Current Audit Recommendations

- 1. The Division of the Public Defenders Services should review payments to all contractors during the period when its billing system malfunctioned. The division should correct any errors and recover any overpayments.**

Comment:

The incorrect use of the higher rate for habeas corpus assignments resulted in overpayments totaling \$6,011. Additionally, we noted 7 instances of double billing noted by a firm resulted in overpayments, totaling \$1,036. The division told us that its billing system malfunctioned and was unable to detect double billing for a few months during our audited period. This breakdown might also have caused the incorrect habeas corpus rates.

- 2. The Division of Public Defender Services should develop clear written guidelines for determining whether defendants are eligible for public defender services. The division should ensure that public defender services applications are completed under oath and disclose all of the necessary information required by law. The division should also consider requesting access to personal information readily available at other state agencies (e.g., Department of Social Services, Department of Revenue Services) and utilizing such information during application review.**

Comment:

The Division of Public Defender Services does not have clear written guidelines for determining whether defendants are eligible for the services of public defenders. Our review of public defender services applications identified various exceptions. The current process does not include a sufficient level of review and investigation to provide reasonable assurance that only eligible applicants are provided with public defender services.

- 3. The Division of the Public Defender Services should prepare and submit an administrative report to the Governor in accordance with Section 4-60 of the General Statutes.**

Comment:

The Division of Public Defender Services did not file reports in accordance with Section 4-60 of the General Statutes.

ACKNOWLEDGMENTS

The Auditors of Public Accounts would like to recognize the auditors who contributed to this report:

James Carroll
Jacob Rocco
Tatsiana Sidarau

CONCLUSION

In conclusion, we wish to express our appreciation for the courtesies and cooperation extended to our representatives by the personnel of the Division of Public Defender Services during the course of our examination.



Tatsiana Sidarau
Auditor II

Approved:



John C. Geragosian
State Auditor



Robert J. Kane
State Auditor