

STATE OF CONNECTICUT



**AUDITORS' REPORT
PUBLIC DEFENDER SERVICES COMMISSION
FISCAL YEARS ENDED JUNE 30, 2012 and 2013**

AUDITORS OF PUBLIC ACCOUNTS
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AUDITORS OF PUBLIC ACCOUNTS

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January 14, 2015

AUDITORS' REPORT PUBLIC DEFENDER SERVICES COMMISSION FOR THE FISCAL YEARS ENDED JUNE 30, 2012 and 2013

INTRODUCTION

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, 2012 and 2013. 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 department; 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 commission. For the areas audited, we identified:

1. Deficiencies in internal controls;
2. Apparent noncompliance with legal provisions; and
3. No 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

FOREWORD

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 policy-making, 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, 2013, were as follows:

Attorney Thomas J. Rechen, Chairman	Honorable Julia DiCocco Dewey
Honorable Carl D. Eisenmann	Honorable Elpedio N. Vitale
Attorney Ramona Mercado-Espinoza	Rev. Monsignor William A. Genuario
Attorney Aimee Golbert	

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.

Under Public Act 11-51, the Commission on Child Protection (COCP) was eliminated effective July 1, 2011 with all of its functions, powers and duties transferred to the commission. The act also eliminated the position of chief child protection attorney, and the duties were assumed by the chief public defender.

Other noteworthy legislative action included Public Act 12-5, which repealed the death penalty in Connecticut, prospectively.

RÉSUMÉ OF OPERATIONS

General Fund

General Fund receipts consisted mainly of refunds of expenditures and totaled \$55,653 and \$33,259 for the 2011-2012 and 2012-2013 fiscal years, respectively. 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.

A summary of General Fund expenditures for the audited fiscal years follows:

	<u>2010-2011</u>	<u>2011-2012</u>	<u>2012-2013</u>
Personal Services and Employee Benefits:			
Salaries and Wages	\$36,288,559	\$38,144,532	\$37,115,997
All Other	487,778	585,336	546,969
Total Personal Services and Employee Benefits	<u>36,776,337</u>	<u>38,729,868</u>	<u>37,662,966</u>
Purchases and Contracted Services:			
Attorney Fees	9,037,336	12,950,603	12,401,561
Contract Attorneys (Assigned Counsel)	0	8,131,218	6,203,350
Management Consultant Services	601,476	393,703	318,131
Medical Services – For Profits	945,473	1,085,770	794,675
Automated Legal Research	293,944	274,417	274,048
Investigation Services	405,420	459,794	482,903
Temporary Services	481,374	209,034	129,163
Premises and Property Expenses	273,932	265,712	276,193
All Other	1,038,695	1,189,051	1,036,426
Total Purchases and Contractual Services	<u>13,077,650</u>	<u>24,959,302</u>	<u>21,916,450</u>
Total Expenditures	<u>\$49,853,987</u>	<u>\$63,689,170</u>	<u>\$59,579,416</u>

General Fund expenditures increased by \$13,835,183, and decreased by \$4,109,754 during the 2011-2012 and 2012-2013 fiscal years, respectively. Contract attorney fees for the 2010-2011 fiscal year were previously managed by the former COCP and are therefore not included in the comparison noted above. With the elimination of the COCP, the commission administered a buyout of the hourly child protection cases, which caused a significant increase in expenditures for the 2011-2012 fiscal year. The commission then implemented a flat fee structure, which resulted in reduced expenditures for the 2012-2013 fiscal year.

Variances in other categories above are attributed to the miscellaneous expenses related to expert witnesses, including forensic consulting, paralegal, and jury solution services that fluctuate with the number of cases. Over the audited period, we noted that the public defender caseload, including appellate and habeas corpus cases, increased from 92,989 to 100,945 for the 2011-2012 fiscal year due to the inclusion of the COCP cases and then decreased to 99,354 for the 2012-2013 fiscal year.

Special Revenue Fund – Federal and Other Restricted Accounts

The agency's special revenue fund receipts totaled \$426,082 and \$1,045,870 for the 2011-2012 and 2012-2013 fiscal years, respectively. The receipts consisted of federal aid for the Post-Conviction DNA Testing Assistance Program. In this program, the agency works 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 agency also received a federal Justice Assistance Grant through the Office of Policy and Management. The program links 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.

Special revenue fund expenditures totaled \$251,994 and \$1,370,495 for the 2011-2012 and 2012-2013 fiscal years, respectively. The expenditures consisted primarily of personal services, related fringe benefits, and transfers to other participating state agencies for the programs noted above. Expenditures increased in the 2012-2013 fiscal year because the agency expended grant funds previously received for the development of a juvenile case management database.

Capital Equipment Purchase Fund

Expenditures from the capital equipment purchase fund totaled \$65,232 and \$261,370 for the 2011-2012 and 2012-2013 fiscal years, respectively. The significant increase in the 2012-2013 fiscal year was attributed to the purchase of new laptop and desktop computers for agency personnel.

STATE AUDITORS' FINDINGS AND RECOMMENDATIONS

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

1. Compensatory Time

Criteria: Collective bargaining agreements and agency policies permit employees to earn compensatory time, with prior approval, for actual time worked in excess of their normal work schedule. Employees submit a compensatory time request form that documents the dates and approximate hours requested and the reason for the request.

Employees covered under the Fair Labor Standards Act (FLSA) earn time and-a-half compensatory time for all time worked in excess of 40 hours per work week. Executive, administrative, and professional employees exempt from coverage under FLSA earn compensatory time on an hour for hour rate.

Collective bargaining agreements and agency policies stipulate the length of time employees have to use compensatory time before it lapses. Generally, if continuing job responsibilities preclude the taking of time earned, the restriction may be temporarily waived with proper approval.

Condition: We reviewed compensatory time earned by five employees and noted the following:

1. Prior approval for compensatory time earned was not obtained by four of the five employees tested.
2. One employee received two hours of compensatory time for hours that were not actually worked. This appears to have been a data entry error when the time was entered by human resources.
3. There were no records on file documenting the reason for the time earned for three employees.
4. Four employees exempt from FLSA coverage earned time-and-a-half compensatory time rather than hour for hour. During the two-year audited period, the employees earned a total of 207 hours of time-and-a-half compensatory time, of which they were not entitled to 69 hours.

5. Compensatory time did not lapse in accordance with collective bargaining agreements and agency policies for five employees. As a result, these employees were permitted to use 249 hours that should have lapsed. We note that there were no waivers on file extending the time employees had to use the compensatory time.

Effect: Compensatory time was not earned in compliance with collective bargaining agreements and agency policies. As a result, employees had access to compensatory time they were not entitled to and there was no evidence that compensatory time was approved or justified.

Cause: There appears to be an overall misunderstanding and miscommunication of the agency's compensatory time policies and procedures as well as oversight by management in the application of such policies and procedures.

Recommendation: The Public Defender Services Commission should ensure compensatory time is earned, used, and lapsed in accordance with collective bargaining agreements and agency policies.

Agency Response: "It is our understanding that the three agency employees (mitigation specialists/social workers in the Capital Defense Unit) earned time and a half compensatory time rather than hour per hour due to provisions in the FLSA guidelines. A fourth employee was credited time and a half due to a human resource clerical error. The Chief Public Defender authorized compensatory time in advance for the mitigation specialists and was aware of the necessity for such in that they were working on specific death penalty cases that required out of state and weekend travel. The employee receiving compensatory time for hours not worked received compensatory time due to a human resource clerical error."

Auditor's Concluding Comment: After initially agreeing with the finding, the agency determined that the employees earning time-and-a-half compensatory time were inappropriately coded as exempt from FLSA coverage, when in fact they are non-exempt. That determination is based on the agency's interpretations of FLSA guidelines. Since the explanation provided appears ambiguous, we suggest the agency obtain further clarification of the FLSA guidelines and how they relate to the mitigation specialist job title.

2. 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 increment date.
- Condition:* Of the 20 employees reviewed, we found that 16 employees were missing annual evaluations covering the audited period. In addition, seven of the employees received annual increments without current evaluations on file.
- Effect:* The agency is not in compliance with collective bargaining agreements and agency policies. Without performance evaluations on file, we cannot determine whether annual increases were warranted.
- Cause:* While there is no specific explanation for the lack of performance evaluations, it appears that there may have been a lack of communication between the central office and field offices.
- Recommendation:* The Public Defender Services Commission should ensure annual performance evaluations are completed in accordance with collective bargaining agreements and agency policies.
- Agency Response:* "More oversight and attention will be paid to make sure performance evaluations are performed in a timely manner."

3. Retention of Recruitment Records

- Criteria:* Adequate documentation should be maintained to support that an employee was hired in accordance with the agency's recruitment and hiring procedures and that the agency utilized equal opportunity and affirmative action employment practices.
- Condition:* The agency destroyed the recruitment files for two positions prior to being audited.
- Effect:* We could not determine whether the agency's recruitment and hiring processes were fair and impartial for the two positions filled.
- Cause:* The agency destroyed the recruitment files in accordance with the State Library's records retention schedule, which permits such

records to be destroyed two years from the date the position was filled. This prevents the conformance with Section 2-90(g) of the General Statutes, which requires that all records be available for audit by the Auditors of Public Accounts upon demand.

Recommendation: The Public Defender Services Commission should maintain records until audited in accordance with Section 2-90(g) of the General Statutes.

Agency Response: “In the future, the agency will retain recruitment files electronically for auditing purposes past the two years required by the State Library retention schedule.”

4. Medical Leave

Criteria: According to Section 5-247-11 of the state personnel regulations, a medical certificate is to be submitted to substantiate a period of sick leave consisting of more than five consecutive working days.

Condition: We reviewed ten instances of medical leave and noted the following:

1. There was no medical certificate on file supporting an employee’s nine-day sick leave. We note that the employee was on administrative leave for the ten days immediately preceding the unsupported sick leave.
2. One employee submitted a medical certificate 20 days after the sick leave commenced.
3. One employee began medical leave four calendar days before the leave period approved by the employee’s physician and the agency’s human resources director.
4. One employee’s 18-day leave of absence was recorded as unpaid sick leave when it should have been recorded as unpaid vacation leave.

Effect: Medical leaves of absence were not in accordance with state personnel regulations.

Cause: The noncompliance and unsupported absences appear to be caused by lack of management oversight.

Recommendation: The Public Defender Services Commission should strengthen internal controls to ensure medical leave is taken in accordance with statewide and agency policies and procedures.

Agency Response: “In the past year, the agency experienced a hiatus, and a period of transition in Human Resources due to the resignation of the former director. Such transition may account for lapses in recording. The unit is now at full staff and operating in accordance with state personnel regulations regarding medical leave policies.”

5. Expenditures

- Criteria:*
1. Competitive procurement – Section 4a-57 of the General Statutes states that all purchases of, and contracts for, supplies, materials, equipment, and contractual services shall be based, when possible, on competitive bids or competitive negotiation.
 2. Purchase orders – In accordance with Section 4-98 of the General Statutes, except for emergency purchases, no state agency shall incur any obligation except by the issuance of a purchase order or any other documentation approved by the State Comptroller.
 3. Prior approval – The agency’s administrative policies and procedures manual requires attorneys representing 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 is to be obtained from the supervising attorney in charge of an office, the chief or deputy chief public defender, or from the commission.
 4. Untimely billings – 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.
 5. Untimely payments – 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: From our review of 25 expenditure transactions, we noted the following:

1. Competitive procurement – Four transactions totaling \$4,486 were not competitively procured in accordance with requirements set forth in the General Statutes.
2. Purchase orders – Three transactions were not supported by valid purchase orders. Purchase orders were not issued for two of the transactions and one was issued 33 days after obligations were incurred.
3. Prior approval – Four transactions for case-related expenses totaling \$17,456 were not preapproved; approvals were obtained between two days and three months after obligations were incurred.
4. Untimely billings – Invoices for eight transactions totaling \$38,501 were submitted to the commission in an untimely manner.
5. Untimely payments – We noted the untimely payment of three transactions totaling \$1,302. Two payments were made 49 days and one payment was made 50 days after receipt of invoice.

Effect:

1. Competitive procurement – Without competitive procurement, the agency may not obtain the best prices possible.
2. Purchase orders – When purchase orders are not properly issued, there is decreased assurance that funds will be available for payment.
3. Prior approval – The lack of prior approval increases the risk of improper or unauthorized case-related expenses.
4. Untimely billings – Invoices submitted in an untimely manner increases the risk that errors and fraudulent activities may go undetected by the agency.
5. Untimely payments – Untimely payment of obligations could result in the agency incurring additional costs.

Cause:

1. Competitive procurement – The agency stated that the printing service vendors were selected because of their competitive prices, proximity to the field offices, and their ability to pick up and drop off documents, saving on transportation costs and personnel resources. Going forward, the agency will request quotes and bids from other vendors in order to comply with the competitive procurement regulations. The lack of quotes and bids for the archival services appears to be management oversight.

2. Purchase orders – The lack of proper purchase orders appears to be an oversight by management.

3. Prior approval – 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.

4. Untimely billings – 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.

5. Untimely payments – The untimely payments appear to be an oversight by management.

Recommendation: The Public Defender Services Commission should ensure purchases and payments are made in accordance with General Statutes and agency policies and procedures.

Agency Response: “The agency is in the process of developing electronic billing for experts and expenses similar to that program already in use for assigned counsel billing. In addition, the agency has been underfunded by the state in some accounts that can become depleted before the next quarter’s budget allotment is received or a deficiency appropriation is obtained. The depletion unavoidably delays payment to assigned counsel and vendors until additional funding is forthcoming. The Chief Public Defender has apprised the Appropriations Committee and the Office of Policy and Management of this ongoing problem that delays payment to experts, assigned counsel and other vendors.

Additionally, the agency will comply with the competitive bidding process for the printing and copying services.”

6. Assigned Counsel

Background: In cases in which the agency is unable to represent an accused because of a conflict of interest, the court may appoint an assigned counsel whose expenses and compensation are paid from the agency’s budget in accordance with rates of compensation approved by the commission. Assigned counsel are hired to handle

a specified number of cases each year and are prepaid in installments. During the audited period, payments were made using the notice of appointment (NOA) system. Agency policies require field offices to submit an NOA to the Assigned Counsel Unit of the Office of the Chief Public Defender when an assignment is made to an attorney. Once received by the Assigned Counsel Unit, a payment in accordance with contracted compensation rates is processed and supplied to the Financial Unit for final issuance.

Criteria: The agency's policies and procedures manual requires attorneys to submit applications and be approved by the Assigned Counsel Committee before contracts may be awarded. The application requires attorneys to declare whether they have ever been disciplined or cited for breach of ethics. Attorneys must also sign a yearly contract in order to be eligible for assignment of cases.

Condition: Our review of ten assigned counsel attorneys revealed the following:

1. Renewal applications were not on file for three attorneys. There was no documentation on file to support that an application was submitted prior to the contract period.
2. One contract was not signed by the attorney.
3. Payments for assigned cases were not supported by NOAs for all ten attorneys tested. Each attorney reviewed had multiple cases and received payments ranging from \$5,573 to \$79,038.

Effect: The lack of applications hinders the agency's ability to ensure that qualified attorneys are selected to represent defendants in conflict cases, and the lack of signed contracts lessens the assurance that attorneys will fulfill their obligations. Without NOAs, payments may be made to attorneys in error or for invalid cases.

Cause: The lack of applications and a signed contract appears to be due to management oversight. The lack of NOAs appears to be due to insufficient recordkeeping practices.

Recommendation: The Public Defender Services Commission should strengthen internal controls to ensure adequate documentation is on file to support assigned counsel payments and improve recordkeeping practices so that documentation may be located in a timely manner.

Agency Response: "The agency was unaware of the auditor's time constraints for completing the audit and in the future will make sure that priorities

are identified in order to secure the requested information in a more timely manner. The requested information required an extensive search of individual field office records that had been archived.”

7. Late 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.

Comptroller Memorandum 2011-05 requires each agency to post deposits in Core-CT as soon as the confirmation process is complete or no later than four business days from the accounting date of the deposit.

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

Condition:

Our review of 20 deposits revealed the following conditions:

1. We noted six instances in which adequate documentation was not on file to support funds received. Bank deposit receipts were not on file for three transactions, copies of checks were not available for one transaction, and two transactions were missing both copies of checks and the bank transaction receipts.
2. Four receipts were not deposited or posted in accordance with established guidelines. Two receipts were deposited one day and approximately three months late, respectively. Of the remaining receipts, one was posted in Core-CT one day late and the other two days late.

Effect:

Funds were not deposited or posted timely in accordance with the General Statutes and State Comptroller guidelines. Also, the agency is not in compliance with commission policies regarding deposit documentation.

Cause: The agency's receipt log used by the field offices does not indicate whether the receipt was in the form of cash or money order. Therefore, we were unable to determine whether copies of checks would have been required. The missing bank deposit slips appear to be an oversight by the field offices.

The late deposit and posting of funds received appear to be an oversight by both the field offices and the central office. For a check that was deposited approximately three months late, the client requested that the check be held in escrow until finalizing an agreement with the agency.

Recommendation: 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.

Agency Response: "The agency has instituted new procedures and more direct oversight to notify field office supervisors and their clerical staff when they are not in compliance with client reimbursement deposit and posting requirements."

8. Client Reimbursement Program

Background: A client reimbursement program was implemented by the commission in the 1992-1993 fiscal year. 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, field offices submit copies of the billing notices and receipts issued and a list of over/underpayments to the Office of the Chief Public Defender. The office verifies that all billing notices and receipt numbers are accounted for and a monthly statistical report is prepared. The report summarizes the number of billing notices and receipts issued and the total amount collected by the court.

At year end, the agency writes off the amounts deemed uncollectible. The total reimbursements receivable is determined by multiplying the number of notices issued by the \$25 fee. Total reimbursements collected are determined by multiplying the number of receipts issued by the \$25 fee and adjusting for any over/underpayments, which should correspond to the total deposits

in Core-CT. The remaining amount is deemed uncollectible and is written off by the agency.

Criteria: The State Accounting Manual states that internal control over cash receipts shall be established by each agency to minimize the risk of loss. Also, accountability reports should be prepared when feasible to compare the monies that were actually recorded with the monies that should have been accounted for.

Condition: The agency does not prepare accountability reports for the client reimbursement program. When comparing the number of receipts issued according to the statistical reports to the amounts deposited for the month of June 2012 and 2013, we noted variances of \$1,328 and \$1,233, respectively.

Effect: We were unable to verify that client reimbursement payments received by the agency were properly accounted for.

Cause: Receipts are issued for each payment made, which may not be for the full \$25 fee. If a client returns to pay the remaining balance, another receipt is issued, yet there is nothing identifying it as a partial payment on the agency's statistical report.

Recommendation: The Public Defender Services Commission should prepare monthly accountability reports to ensure all receipts are accurately accounted for.

Agency Response: "The agency will improve documentation requirements to indicate the manner and amount of client reimbursement payments (i.e. check, cash or money order/partial or full payment)."

9. Software Inventory

Criteria: The State Property Control Manual requires agencies to establish a software inventory to track and control software media and licenses and provides guidance on what information should be included in the property control record.

The manual also states that each agency should designate a responsible party to establish and monitor the implementation of a software inventory as well as serve as a library administrator responsible for the physical security and distribution of the software media and manuals. The agency must also conduct an annual physical inventory of the software library and compare the results to the software inventory report.

- Condition:* Our review of the agency’s software inventory revealed the following:
1. The software inventory appeared incomplete and outdated. There were missing serial numbers, costs, license information, and purchase details. The inventory also included expired software that is no longer in use by the agency.
 2. One software purchase in the amount of \$2,200 was not added to the agency’s inventory when purchased.
 3. We noted that the total software inventory did not sum properly. Certain software items were erroneously excluded from the total.
 4. We found that 51 items from the current software inventory could not be traced to the list of software currently installed on computers. We also found that 19 items from the list of software currently installed on computers could not be traced to the current software inventory list.
 5. The agency does not conduct an annual physical inventory of software. A visual audit of the server is performed but a comparison between the inventory and items physically on hand is not performed.
 6. During our review of 10 judgmentally selected software programs, we noted license certificates were missing for three.
- Effect:* The agency is not in compliance with State Comptroller requirements regarding the maintenance and inventory of software.
- Cause:* Many of the issues noted above appear to be due to management oversight and the manner in which the records are maintained.
- Recommendation:* 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.
- Agency Response:* “Obsolete software programs no longer used by the agency are no longer licensed but have not been removed from the “active” inventory. The Chief Public Defender has requested the agency’s IT Director to update and monitor the inventory in accordance with the State Comptroller requirements.”

10. Racial Disparity Case Expenditures

Background: Section 51-293(a) of the General Statutes permits a judge from the Superior Court to appoint an assigned counsel on a contractual basis in cases in which the agency is unable to represent an accused because of a conflict of interest or to maintain caseload goals.

In 2005, five death row inmates, represented by assigned counsel, filed a consolidated habeas corpus appeal claiming there was systemic racial disparity in Connecticut's judicial system. The assigned counsel appointed to represent the inmates employed the expert services of a law professor who conducted a study of all homicides prosecuted in Connecticut between 1973 and 2006. The study concluded and the professor testified in court, that there has been racial bias in the state's judicial system. In October 2013, a judge ruled that there was no proof of systemic racial disparity, denying claims from the inmates who sought to have their sentences overturned.

Criteria: In accordance with the agency's administrative policies and procedures manual, attorneys representing public defender clients must obtain prior approval from the commission to hire experts and incur case-related expenses when cumulative expenses in capital cases are estimated to exceed \$10,000. Approval must again be obtained from the commission to incur further expenses when total expenses incurred have reached \$35,000. Any attorney making such requests to the commission must provide a sufficient written explanation and may be requested to attend a commission meeting to further explain the request.

Condition: While the assigned counsel representing the public defender clients received approval from the commission for a portion of the expenses incurred to employ the expert services, additional approval was not received for the expenses incurred beyond the amount initially approved.

The agency was made aware of the total cost of the expert services when an invoice was received on November 12, 2013, in the amount of \$3,344,591 for services rendered between June 2008 and September 2013.

The agency spent a significant amount of time reviewing the charges and proposed payment in the amount of \$1,750,000. The agency felt this was a fair amount for the expertise required and the

time devoted to the case. An agreement was made between all parties and payment was made on June 18, 2014.

Effect: Assigned counsel did not follow agency procedures for incurring case-related expenses, which may have resulted in the state overpaying for services rendered. It also resulted in additional expended state resources because agency personnel spent significant time reviewing charges and drafting legal documents.

Cause: The assigned counsel did not explain why additional approval was not obtained from the commission.

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

Agency Response: “The Chief Public Defender, the OCPD Financial Unit, and the Public Defender Commission are confident that, despite the fact that assigned counsel did not adhere to commission policy, the payment to the expert in this case was fair in light of the work performed over several years. As noted by the auditors, the agency spent a considerable amount of time and due diligence in reaching this agreement.”

Other Matters

During the 2008-2009 and 2009-2010 fiscal years departmental audit, we reported a potential billing overpayment involving one of the commission's contract attorneys, who also had a contract to provide similar services to another state. Based on a preliminary comparison of records from both states, it appeared that billing irregularities likely occurred. The commission's initial analysis of 30 dates, for which this attorney billed both states, determined that the total number of hours billed ranged from 16 and 25.5 hours a day, an average of about 20 hours per day.

An audit of the attorney's billings conducted by the other state resulted in the attorney receiving a four year-suspension and paying restitution in the amount of \$35,000. Connecticut entered a reciprocal four-year suspension and is currently researching whether there is any claim for overpayment.

Agency Comment: The OCPD Assigned Counsel Unit and OCPD Legal Counsel are in the process of obtaining more information and analysis regarding this potential billing overpayment. The attorney in question contracted with the former Office of the Chief Child Protection Attorney. The attorney in question has been sanctioned in Massachusetts and Connecticut. OCPD will refer the matter to the Office of the Attorney General if such information indicates that recoupment of funds should be made from this attorney.

RECOMMENDATIONS

Our prior report on the Public Defender Services Commission and the Commission on Child Protection contained five recommendations, which are being repeated in revised form. Payroll recommendations are now presented individually rather than the previous combined format. Two new recommendations are being presented as a result of our current examination.

Status of Prior Audit Recommendations:

- The Public Defender Services Commission should improve oversight over the enforcement of certain payroll and personnel procedures and practices and develop formal hiring procedures to ensure the process is conducted in a fair and unbiased manner. During our current review, we continued to note payroll-related issues; therefore, this recommendation will be restated to reflect those issues. (See Recommendations 1 through 4.)
- The Public Defender Services Commission should strengthen internal controls over the purchasing and accounts payable functions. This recommendation will be repeated due to similar issues noted during the current review. (See Recommendation 5.)
- The Public Defender Services Commission should establish formal policies and improve internal controls to ensure adequate documentation is on file to support assigned counsel contracts and payments. Although the agency has revised procedures related to assigned counsel, the recommendation will be repeated to reflect our current findings. (See Recommendation 6.)
- The Public Defender Services Commission should deposit funds on a timely basis in accordance with Section 4-32 of the General Statutes and maintain adequate documentation for receipts. During the current audit, we found instances of late deposits and postings in Core-CT; therefore, this recommendation will be repeated. (See Recommendation 7.)
- The Public Defender Services Commission should improve its compliance with the State Property Control Manual. We noted improvement in the property control area overall, but continued to find issues regarding software inventory. Therefore, this recommendation will be modified and repeated. (See Recommendation 9.)

Current Audit Recommendations:

- 1. The Public Defender Services Commission should ensure compensatory time is earned, used, and lapsed in accordance with collective bargaining agreements and agency policies.**

Comment:

During our current review, we found prior approval to earn compensatory was not obtained, compensatory time was erroneously awarded to an employee who did not work the additional hours, explanations for compensatory time earned were not documented,

ineligible employees earned time-and-a-half compensatory time, and compensatory time was not lapsed in accordance with collective bargaining agreements and agency policies.

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

Comment:

We found that 16 out of 20 employees were missing annual evaluations for the audited period. Also, seven employees received annual increments without current evaluations on file.

- 3. 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.**

Comment:

We found that the agency destroys recruitment files in accordance with records retention schedules but prior to being audited. Therefore, documentation was not available for two positions recently filled.

- 4. The Public Defender Services Commission should strengthen internal controls to ensure medical leave is taken in accordance with statewide and agency policies and procedures.**

Comment:

During our review, we noted that a medical certificate was not on file to support an employee's sick leave and a medical certificate was submitted 20 days after an employee's sick leave had commenced. We also found that one employee began medical leave earlier than the period approved and one employee's leave was miscoded as unpaid sick leave when it should have been unpaid vacation leave.

- 5. The Public Defender Services Commission should ensure purchases and payments are made in accordance with the General Statutes and agency policies and procedures.**

Comment:

We noted that transactions were not procured competitively in accordance with the General Statutes and transactions were processed without valid purchase orders and prior approvals. We also noted the untimely submission of vendor invoices for payment and the untimely payments of vendor invoices.

- 6. 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.**

Comment:

In our review of assigned counsel expenditures, we noted that renewal applications were not on file for three attorneys; one attorney did not sign the contract on file; and payments for assigned cases were not supported by the agency's notice of appointment form for all ten attorneys tested.

7. **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.**

Comment:

During our current review, we noted that funds were not deposited or posted to Core-CT timely and were not adequately supported.

8. **The Public Defender Services Commission should prepare monthly accountability reports for the Client Reimbursement Program to ensure all receipts are accounted for.**

Comment:

We noted that the agency does not perform a monthly accountability report for the Client Reimbursement Program to reconcile the number of receipts issued to the amount deposited.

9. **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.**

Comment:

During the current review, we noted that the software inventory appeared incomplete and outdated. We also found that one software purchase was not added to the current inventory, an annual physical inventory of software was not conducted, and items from the software inventory could not be traced to the list of software installed on computers. Additionally, items from the list of software installed on computers could not be traced to the software inventory.

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

Comment:

We noted that assigned counsel did not request further approval to incur additional expenses related to the racial disparity case.

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.



Rebecca Balkun
Principal Auditor

Approved:



John C. Geragosian
Auditor of Public Accounts



Robert M. Ward
Auditor of Public Accounts