
January 11, 2018

Performance Audit
Recommendations and
Corrective Actions for Audit:
16-01

PUBLIC DEFENDER FEES

Judiciary's Efforts Yielded
Collections of Less Than One-
Third of Amounts Owed

Dated: January 22, 2016

Overview

The SAO makes recommendations designed to improve the operations of state government. For our work to produce benefits, auditees or the General Assembly must implement these recommendations, although we cannot require them to do so. Nevertheless, a measure of the quality and persuasiveness of our performance audits is the extent to which these recommendations are accepted and acted upon. The greater the number of recommendations that are implemented, the more benefit will be derived from our audit work.

In 2010, the SAO began to follow-up on the recommendations issued in our performance audits. Experience has shown that it takes time for some recommendations to be implemented. For this reason, we perform our follow-up activities one and three years after the calendar year in which the audit report is issued. Our annual performance reports summarize whether we are meeting our recommendation implementation targets.

<http://auditor.vermont.gov/about-us/strategic-plans-and-performance-reports>

This report addresses the requirements of Act 155 (2012) to post the results of our recommendation follow-up work on our website. The report does not include follow-up on recommendations issued as part of the state's financial statement audit and the federally mandated Single Audit, which are performed by a contractor. However, our current contract for this work requires the contractor to provide the results of its recommendation follow-up.

Audit Number & Name	Rec #	Recommendation	Follow-Up Date	Status	Review Comments
16-1 Public Defender Fees: - Judiciary's Efforts Yielded Collections of Less Than One-Third of Amounts Owed	1	Modify the Judiciary's internal procedures on the assignment of public defenders to emphasize the need to collect up-front payments at the time of arraignment whenever possible.	2017	Partially Implemented	The Judiciary reported that a new updated public defender application and memo went out to all Court Operations managers to review with their staff at in-service training. If the applicant's income is under 125 percent of the federal poverty guidelines, the applicant is ordered to pay the minimum payment of \$50 within 60 days unless the fee is waived by the Court. For applicant's with annual household income above 125 percent of the federal poverty guidelines, the applicant shall pay an amount (i.e., a co-payment) determined by the Court. Regardless, an applicant should always be asked what amount they can pay immediately on the day of arraignment. We also noted that legislation (Act 133) effective 5/25/16, removed the requirement that the assignment of counsel shall be contingent on prior payment of the co-payment.
			2019		The two-year recommendation follow-up for this audit will be conducted in 2019.
	2	Actively engage in efforts to collect accounts that are past due, such as: <ul style="list-style-type: none"> • Sending out a bill to overdue accounts, • Using a collection agency, • Assessing an additional fee in accordance with the procedures outlined in 13 V.S.A. §7180, and • Reporting overdue debt to a credit bureau. 	2017	Implemented	The Judiciary's Trial Court Operations Division reported that it worked with the Vermont Department of Taxes (VDT) and implemented a process whereby the Judiciary will send reports to VDT who will bill Vermonters for debts owed for public defender services. In August, 200 taxpayers with the largest Defender General debt that also have tax debt were sent a bill utilizing VDT's new collections software. These billings will continue with the addition of 200 accounts in September and each month thereafter. Semi-annual billings will be sent out in 11/1/17, 5/1/18, 11/1/18, and etc. The Judiciary updated their procedures on their internal website to reflect these new procedures which include a five-year lookback for reporting bad debts to VDT.
			No further follow-up is required because the recommendation was implemented.		
	3	Modify the public defender order to include language that there will be additional fees assessed for additional collection actions, such as referring to VDT for tax refund offset.	2017	Implemented	The Judiciary reported that the Order on Assignment of Counsel form was revised in July 2017 and now includes language that additional collection fees will be charged for any past due public defender fees that are sent to VDT's tax refund offset program or to collection agencies.
			No further follow-up is required because the recommendation was implemented.		
	4	Consider implementing additional procedures to ensure that social security numbers are obtained from defendants and validated.	2017	Implemented	The Judiciary reported that it has discussed the need for obtaining social security numbers on the Public Defender's application numerous times with staff. It has included a reminder in a written memo that was sent to all staff regarding the updated Public Defender's application. The need to review for missing social security numbers is also included in the updated written procedures for the transmittal of records to VDT.
			No further follow-up is required because the recommendation was implemented.		

Audit Number & Name	Rec #	Recommendation	Follow-Up Date	Status	Review Comments
16-1 Public Defender Fees: - Judiciary's Efforts Yielded Collections of Less Than One-Third of Amounts Owed	5	Update the instructions provided to Superior Court staff to ensure that the annual transmittal of records to VDT includes previous periods.	2017	Implemented	The Judiciary reported they updated their internal procedures which now includes a five-year lookback for the transmittal of records to VDT.
	No further follow-up is required because the recommendation was implemented.				
	6	Cease the process of removing public defender debt from the court's records once it has been referred to VDT for tax refund offset and continue to attempt to collect these debts.	2017	Implemented	VDT is reporting the defender general debts as accounts receivable in the State's financial statements. In addition, responsibility for collection has been transferred to VDT. We believe this meets the intent of our recommendation.
	No further follow-up is required because the recommendation was implemented.				
	7	Ensure that all outstanding public defender fees are included as accounts receivable in the State's financial system.	2017	Implemented	The Judiciary reported that it has not implemented our recommendation. Rather, it relies on VDT to post the debts collected and the receivables to VDT's revenue accounts. Although the Judiciary is not recording these receivables, VDT confirmed that they are recording the receivables for financial reporting purposes, sending out bills to taxpayers, and utilizing outside collection agencies.
	No further follow-up is required because the recommendation was implemented.				