Department of State
Protection of Citizens’ Rights Programs

July 1, 1996 to April 30, 1998
Enclosed is our report on the audit of the Department of State, Protection of Citizens’ Rights Programs for the period July 1, 1996 to April 30, 1998.

If you would like a personal briefing, please call me at (609) 292-3700.
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope</td>
<td>1</td>
</tr>
<tr>
<td>Objectives</td>
<td>1</td>
</tr>
<tr>
<td>Methodology</td>
<td>1</td>
</tr>
<tr>
<td>Conclusions</td>
<td>2</td>
</tr>
<tr>
<td>Findings and Recommendations</td>
<td></td>
</tr>
<tr>
<td>Public Defender Client Reimbursements</td>
<td>3</td>
</tr>
<tr>
<td>Expert Witnesses and Other Professional Services</td>
<td>6</td>
</tr>
<tr>
<td>Case Management and Billing Systems</td>
<td>7</td>
</tr>
</tbody>
</table>
Department of State
Protection of Citizens’ Rights Programs

Scope
We have completed an audit of Department of State, Protection of Citizens’ Rights programs for the period July 1, 1996 to April 30, 1998. Organizations included in the scope of our audit include the Office of the Public Defender, Division of Mental Health Advocacy and Office of Dispute Settlement. These organizations are considered in but not of the Department of State. Our audit included financial activities accounted for in the state’s General Fund.

Total annual expenditures of the agency are $60 million. The prime responsibility of Department of State, Protection of Citizens’ Rights programs is to provide for the realization of the constitutional guarantees of counsel in criminal cases for indigent defendants. Revenues of the agency are $2 million annually and the major component of revenue was client reimbursements for services rendered.

Objectives
The objectives of our audit were to determine whether financial transactions were related to the agency's programs, were reasonable and were recorded properly in the accounting systems. We also tested for resolution of significant conditions noted in our prior report.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology
Our audit was conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation, administrative code, circular letters promulgated by the State Comptroller, and policies of the agency. Provisions that we considered significant were documented and compliance with those requirements was verified by interview and observation and through our samples.
of financial transactions. We also read the budget message, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the programs and internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Sample transactions were judgmentally selected.

To ascertain the status of findings included in our prior report, we identified corrective action, if any, taken by the agency and walked through the system to determine if the corrective action was effective.

**Conclusions**

We found that the financial transactions included in our testing were related to the agency's programs, were reasonable and were recorded properly in the accounting systems. In making this determination, we noted certain internal control weaknesses and matters of compliance with laws and regulations meriting management’s attention.

We also found that the agency has resolved the significant issues noted in our prior report except for matters related to the case management information and billing systems. These issues had been updated and restated in our current report.
Public Defender Client Reimbursements

The Office of the Public Defender (OPD) provides for the legal representation of any indigent defendant who is formally charged with an indicable offense. N.J.S.A. 2A:158A-19 requires the Public Defender to do all things necessary and proper to collect all moneys due to the state by way of reimbursement for services pursuant to this act. This includes placing a lien on any and all property to which the defendant shall have or acquire. As of March 31, 1998 outstanding receivables amounted to $122 million and collections amounted to approximately $2 million annually.

Collection efforts by the OPD are severely hampered by the lack of current mailing addresses. Clients who are delinquent for six months have their names submitted to the Department of the Treasury, Division of Revenue for possible collection through the Set-off of Individual Liability (SOIL) program. Under the SOIL program any state income tax refund or homestead rebate would be withheld and remitted to the OPD. Although the Division of Revenue has the most current addresses in their database, due to confidentiality laws the division is not permitted to release this information to the OPD. Department of the Treasury management informed us that this information could be released if the OPD obtained an authorization from the client to permit the division to release this information. In the alternative, the OPD could seek legislation that gives authorization to obtain the Division of Revenue address files.

Although clients are initially billed, it is the OPD’s policy not to bill the client while incarcerated. However, the OPD is not notified when an individual is released. The Department of Corrections, Bureau of Parole should be contacted to obtain current addresses for inmates who were released on parole and owe money to the OPD.

A SOIL recovery is a strong indication that the individual could be presently employed. SOIL collections
amount to $1 million annually. We selected 30 individuals and compared them with the Department of Labor’s wage reporting database to determine if the person was working and the amount of wages earned during 1997. Twenty-eight individuals had earnings averaging $14,400 during the year. Approximately 20,000 clients had their refunds and/or homestead rebates withheld during fiscal year 1998. We estimate that the OPD could increase collections by more than $2 million a year by obtaining nominal wage garnishments against those individuals with sufficient earnings.

The billing notice indicates the client’s current balance, but it does not request any minimum payment. This may explain why some individuals are not remitting any payments. By requiring a minimum payment, the OPD should be able to increase collections between $500,000 to $750,000 a year.

The OPD requires a $50 prepaid administrative fee from all new clients. Our review disclosed that the 22 regional public defender offices responsible for collecting this fee were lax in their collection efforts. Between July 1, 1997 and March 31, 1998 the OPD opened approximately 58,000 new cases. During the same period collections totaled $154,975 or $2.67 per client.

**Recommendation**

We recommend that the OPD seek legislation authorizing addresses be obtained from the Division of Revenue. In the interim, new clients should be required to sign an authorization form permitting the Division of Revenue to release needed information. The Department of Corrections should also be contacted for current addresses for clients released on parole. We also recommend that the OPD provide for garnishment of wages for those individuals identified as working and capable of repaying. Billing notices should be redesigned to include a minimum payment amount and a statement that the client’s wages could be garnished if payment is not received. Furthermore, management should stress the need for regional offices to improve their collections of the administrative fee.
Auditee’s Response

The legal prohibition to obtain correct addresses from the Division of Revenue has been a major impediment to a comprehensive billing of all Public Defender clients. We are in complete agreement with this finding. The Division of Administration has already met with the Division of Revenue to discuss that unit’s involvement in the solution noted, i.e., legislative change to the confidentiality law N.J.S.A. 54:50-8 to provide the latest client’s addresses to the Public Defender. Concurrently, the Office of the Public Defender will revise its reimbursement form to, henceforth, have client authorization for the Public Defender to obtain a correct address from the Division of Revenue.

The Office of the Public Defender will contact the Department of Corrections, Bureau of Parole to establish an automated process to inform the Public Defender of a client’s new address when released or paroled. If the mechanical process is feasible, we agree that this finding will allow the Public Defender to reactivate accounts formally inactivated and not billed.

The Public Defender is not adverse to a wage garnishment with qualifications. First, we must investigate and assure the legal process necessary to obtain a garnishment does not expend resources beyond the value of the receivable. We have been informed that the Division of Revenue is reviewing this very question and will hopefully develop a streamlined methodology for garnishments. Unfortunately, they estimate that this may not be available for 12 to 18 months. Second, the notification to the employer should not designate the Public Defender as the receiver of funds, but rather, the State of New Jersey. Certainly, it should not be our intention to jeopardize a former client’s attempt at gainful employment. Here again, the Division of Revenue could resolve this issue if garnishments were centralized under their jurisdiction.

The Public Defender will institute a minimum payment component to bills issued to clients. Presently, we are establishing a table of minimum payment to
balance policy and procedure. When completed, the programming change to accommodate this action will be instituted.

The disparity in collecting administrative fees result from different arraignment and/or first contact processes in the 21 county court jurisdictions. It is our intention to review the process in counties with successful collection rates and to apply that procedure statewide. Be assured, improvement to this important component of the Public Defender’s collections will be stressed to each Public Defender office.

Expert Witnesses and Other Professional Services

In order to provide a proper defense, the OPD often requires the services and testimonies of expert witnesses and other ancillary service providers (e.g., psychiatrists/psychologists, firearm examiners, identification experts, interpreters, etc.). Written approval by the regional deputy public defender and OPD management is required prior to retaining these services. These services cost $3 million annually.

The OPD utilizes between 30 and 50 experts on a regular basis. Due to the nature and timing of cases processed, the OPD requested and received a waiver of advertising from the Department of the Treasury. Although the OPD has an established fee schedule for selected experts, we found that the rates charged are usually higher. Additionally, approval forms did not always agree with the actual rate(s) charged.

In order to eliminate confusion as to which rate or fee is correct and to encourage competition, we recommend that the OPD require professionals used on a routine basis to periodically submit proposals indicating the nature and type of work they are willing to provide and the associated fees to be charged over a stated period of time. Rates charged by individuals not
routine used should be reviewed and approved on a case by case basis prior to services being rendered.

Auditee’s Response

The Office of the Public Defender agrees with this recommendation and will require periodic proposals from experts and other professionals used on a routine basis. As suggested, these proposals will detail the type, nature, and associated fees for specific time periods. Rates charged will be verified to rates quoted to assure compliance.

Case Management and Billing Systems

Controls over the recording of client charges need to be improved.

The OPD’s case management system includes an accounts receivable component which generates billings to clients for services rendered. In our prior audit, we noted certain conditions which warranted management’s attention. Those conditions have been updated and restated.

The regional public defender offices enter client general background information and charges incurred into the case management system. When the case is classified as closed by the regional office, the charges incurred are retrieved and transmitted to the client billing system. Our review of 21 case files for two regional offices disclosed that in eight cases, attorney hours worked were not recorded and included in the bill. In three other cases, attorney hours recorded on the case time sheet were not entered into the case management system. An additional three cases included investigators’ time which was not supported by the case time sheets. We further noted that ten of the files did not contain a signed reimbursement agreement as required.

Additionally, we randomly selected 34 payments to pool attorneys, experts, and court transcribers and attempted to trace these payments into the case management system. In 11 instances the expenditure was either not entered or incorrectly entered into the system.
causing the bills to be understated.

**Recommendation**

We recommend that the OPD instruct the regional offices to implement procedures to ensure that all costs are accurately entered into the case management system in a timely manner. Additionally, we encourage the OPD to set up a quality control review team to periodically monitor and review case files to ensure that the regional offices are complying with established policies and procedures.

**Auditee’s Response**

The Public Defender will institute procedures to ensure that all documentation applicable to the client agreement for payment and costs generated on behalf of a client are accurately reflected on the clients bill. As recommended, the Public Defender will establish a quality control review process to randomly verify that this directive is adhered to.