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Audit Report

BAIL FORFEITURES

As of September 30, 2011

**Office of the Controller
County of Northampton
Pennsylvania**



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February 27, 2012

Members of the Northampton County Council
John Stoffa, County Executive
County of Northampton, Pennsylvania

We have completed an audit of Bail Forfeitures as of September 30, 2011.

The Executive Summary on page 1 summarizes the audit results and identifies opportunities for improvement, while the Audit Results section provides a detailed explanation.

We acknowledge the cooperation and assistance we received from the Criminal Division and Solicitor's Office. Their help was essential to the performance of this audit.

Our report was discussed with management at our exit conference on January 27, 2012. Management's response is included in the Audit Results section of the report.

Very truly yours,

Stephen J. Barron, Jr., CFE
County Controller

Paul L. Albert, CIA
Lead Auditor

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EXECUTIVE SUMMARY - OPPORTUNITIES FOR IMPROVEMENT

The following is a summary of the content of the enclosed report. See report references noted below for full detail.

Section A – Economy and Efficiency

1. Since 2005 approximately \$1,500,000 is owed from sureties for delinquent bail forfeitures. Management should explore additional methods of collection in addition to payment plans. (Section A-1, pg. 5)
2. Disbursing posted bail forfeiture funds to the County more timely will allow the County to recognize that revenue. Tracking the balances owed to the County by sureties will make any future collection processes easier to enact. (Section A-2, pg. 7)

Section B – Internal Controls

1. Eliminating the Solicitor's Office from accepting payments will improve the controls over cash and other payments, resulting in payments being posted immediately to Criminal's computer system (CPCMS) and the funds being deposited daily. (Section B-1, pg. 9)
2. Maintaining better records of payment plans and the payments associated with them will allow enforcement of the agreements for sureties that don't comply with the terms of the payment plans. (Section B-2, pg. 11)
3. Better communication and coordination between the Criminal Division and the Solicitor's Office will help to avoid confusion like there was when the Solicitor's Office stopped sending letters to sureties demanding payment of forfeited bail. (Section B-3, pg. 13)
4. Establishing a record of forfeiture paperwork coming into the Solicitor's Office, tracking the status of the forfeiture cases and maintaining case documentation will provide more complete information to monitor forfeiture cases. (Section B-4, pg. 14)

Section C – Policies and Procedures

1. Establishing written policies and procedures for bail forfeitures in both the Criminal Division and the Solicitor's Office will result in an invaluable training tool, will allow all employees to know what's expected of them and how to accomplish it, and will provide an objective means for both offices to measure compliance and improve the bail forfeiture process. (Section C-1, pg. 15)

INTRODUCTION

When a Magisterial District Judge (MDJ) or Judge of the Court of Common Pleas (Judge) orders that bail be forfeited because a defendant fails to appear for a scheduled hearing, the bail forfeiture process begins. A record of the forfeiture is recorded on a spreadsheet in the Criminal Division, and letters are sent by both regular and certified mail to the defendant and surety (person who posted the bail) notifying them of the forfeiture and that a bench warrant was issued for the defendant's arrest. At least 20 days after the letters are sent, the Clerk of Courts – Criminal Division (Clerk of Courts) signs the order of court, executing the forfeiture. Copies of the paperwork are forwarded to the Solicitor's Office who is charged with the collection of the forfeiture. Any time during the process, a defendant could present evidence to the Judge arguing why the bail should not have been forfeited. The Judge has the authority to vacate the forfeiture order and reinstate bail. In that case the bail forfeiture case is closed. See page 3 of the report for a table that illustrates the number of forfeiture cases that were vacated.

When the Solicitor's Office receives the forfeiture paperwork, they send a letter to the surety by regular mail reminding them of the forfeiture and demanding payment within 15 days. The surety is afforded the option of coming in to the office and establishing a payment plan to make regular, scheduled payments to pay off the forfeiture.

The most common type of bail is 10% bail, where a surety is allowed to post 10% of the total bail amount. At the time bail is posted, the surety, who could also be the defendant, signs a bail payment statement that they are liable for the full amount of the bail if the defendant fails to appear or comply. Other common types of bail are cash bail and a bail bond posted by a Bail Bondsman. The posted bail is accounted for in the Criminal Division's computer system (CPCMS) and the funds are maintained in a bank account until final disposition of the case or when the bail is forfeited. When the forfeiture order is executed, the posted bail may be disbursed to the County or State. If the arrest that brought about the bail was made by a state trooper as a result of a motor vehicle violation, the forfeited bail is disbursed to the State. In all other cases, the County receives the forfeited bail. Before posted bail is disbursed, a bail fee or poundage is deducted. With 10% bail types the poundage is 20% of the posted bail. With cash bail the poundage is 4.5% of the first \$1,000 and 1.5% of the amount above \$1,000. Bail fees and forfeited bail are revenue to the County. Any future forfeiture payments are not subject to the bail fee.

Bail bond companies wanting to do business in Northampton County must first deposit \$25,000 with the Clerk of Courts. That money is placed in a bank account, in escrow, in the event there is a forfeiture involving a defendant who used the bondsman to post bail. When a forfeiture occurs, the bail bondsman is notified and the Clerk of Courts withdraws the funds from the escrow account. The bail bond company then has 10 days to replenish the account back to

\$25,000 otherwise the District Attorney's Office is notified and the bail bond company is no longer eligible to do business in Northampton County. Often times the bail bond company will go to court in an attempt to have the forfeiture order vacated. At that point it's up to a Judge to determine whether the forfeiture order should stand or be vacated.

The following table illustrates the total number of cases in which bail was forfeited, broken out by the year the forfeiture occurred, and if the forfeiture is still open or if it was vacated. The 2011 data was not used in the table because the period under audit did not contain a full twelve months.

<i>Year Bail Forfeited</i>	<i>Total Cases Forfeited</i>	<i>Number of Open Cases</i>	<i>Number of Vacated Cases</i>	<i>Percent of Open Cases</i>
2005	59	32	27	54%
2006	72	26	46	36%
2007	65	36	29	55%
2008	85	39	46	45%
2009	56	30	26	54%
2010	26	15	12	58%
TOTAL	363	178	186	49%

PURPOSE AND SCOPE

The audit was requested by the Clerk of Courts because of the high dollar amount of outstanding bail forfeitures.

The purpose of the audit was to:

- Determine if the controls over the bail forfeiture process are adequate.
- Determine if the processes are in compliance with laws and regulations.
- Determine if the processes are efficient and effective.
- Determine the extent of unpaid bail forfeitures and methods that could be used for their collection.

Our tests were conducted on bail forfeitures on record as of September 30, 2011.

METHODOLOGY

Our methodology included:

- Interviewing managers and staff in the Criminal Division and the Solicitor's Office.
- Learning the laws and regulations applicable to bail forfeitures in Northampton County.
- Obtaining input from other Pennsylvania Clerk of Courts offices in an effort to obtain best practices.
- Testing the accuracy of the Criminal spreadsheet for bail forfeitures.
- Reviewing documentation in case files and testing the use of payment plans.
- Quantifying the amount of forfeitures outstanding that are listed on Criminal's spreadsheet.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the 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 a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT RESULTS

Section A – Economy and Efficiency

1. Collection of Outstanding Bail Forfeitures

OBSERVATION

Data from a spreadsheet maintained by Criminal shows that since 2005 there is approximately \$1,500,000 owed from individuals for delinquent bail forfeitures. This is money owed from individuals that posted 10% bail for someone, but subsequently that bail was forfeited making them responsible for the remaining 90%. The collection method used by the County (payment plans) has collected some money but has been somewhat ineffective. Input was sought from other counties on methods used by them with one county replying that they file a judgment against the surety. Criminal currently files judgments against defendants that owe more than \$1,000 in costs, fines and restitution, and they've had some success collecting money this way. Criminal has begun entering surety information into CPCMS in the event the County wants to pursue the practice of filing judgments or the use of a collection agency. Through discussion with the Clerk of Courts and Solicitor, it was learned that they are exploring the possibility of using a collection agency to pursue delinquent bail forfeitures. The same collection agency Criminal uses to collect costs/fines would be used to collect bail forfeitures and any fees would be charged to the surety.

The table below breaks out the forfeiture receivable by year:

<i>Year Bail Forfeited</i>	<i>Number of Cases</i>	<i>Amount of Receivable</i>
2005	59	\$188,830
2006	72	114,080
2007	65	217,050
2008	85	359,370
2009	56	192,150
2010	26	205,050
* 2011	18	269,550
TOTAL	381	\$1,546,080

* 2011 receivable is as of 9/30/11

RECOMMENDATION

County management should evaluate the costs/benefits of payment plans, the use of a collection agency and filing judgments against the sureties, and pursue the one(s) that they believe will yield the best results. The results should be reviewed periodically to measure the success of the collection efforts.

MANAGEMENT RESPONSE

Leigh Ann Fisher, Clerk of Courts – Criminal

The Solicitor's Office currently prepares payment agreements for sureties that have outstanding monies to be paid on bails that have been forfeited.

On January 11, 2012, a meeting was held with Harry Albert from Modern Recovery Solutions (the collection agency used by Criminal to collect delinquent costs, fines and restitutions) to discuss the possibility of using them to collect delinquent bail forfeitures. It was also discussed to have judgments filed against the sureties in the amount of bail forfeiture owed. Martricia McLaughlin is going to discuss this with Karl Longenbach and she agreed to have the Solicitor's Office file judgments, if it's possible.

Martricia McLaughlin, Assistant County Solicitor

Agreed. The Solicitor's Office is in communication with Criminal Division and Archie Disidore regarding implementation of the use of Modern Recovery Solutions. Once the legality of such a plan is determined to the satisfaction of the Solicitor's Office, the Recovery Agency is ready to go with a plan that is cost free to taxpayers.

With respect to liens, conversations are ongoing regarding the use of this mechanism for collection as the Surety piece confesses judgment. However, this option would place additional burdens on taxed staff in both Criminal Division and the Solicitor's Office if litigation ensued.

It is agreed that either option is likely to produce more revenue than the payment plan vehicle.

2. Managing Forfeiture Revenue and Tracking Receivables

OBSERVATION

Criminal maintains a spreadsheet that tracks the status of cases in which bail was forfeited. The spreadsheet documents the amount and type of bail, when paperwork is sent to the Solicitor, when the forfeited bail money is disbursed to the County, when a forfeiture is vacated and if bail is reinstated, etc. Some observations about the spreadsheet include:

- Approximately 50% of bail forfeiture orders are later vacated by the courts. See the table on page 3 of the report.
- The amount of forfeiture owed by case is not maintained. The original purpose of the spreadsheet was to record forfeiture cases and document the facts surrounding them. Over time some payments were posted to the spreadsheet but not consistently. During the audit Criminal began to establish miscellaneous cases in CPCMS under the surety's name. With all forfeiture payments recorded in CPCMS, this will allow Criminal to track the balances on an ongoing basis.
- There were 48 bail forfeiture cases listed on the spreadsheet that were sent to the Solicitor's Office between 2005 and 2010 in which posted bail of \$47,450 was not yet disbursed to the County or State. The Clerk of Courts stated that she doesn't disburse posted forfeited bail as soon as she sends the paperwork to the Solicitor's Office because many times the forfeiture order is vacated.

RECOMMENDATION

The Criminal Division should continue the practice of entering bail forfeiture cases in CPCMS. This allows for the posting of forfeiture payments directly to the case so the balance owed could be easily obtained. They should also establish criteria on when to disburse posted forfeited bail and make that part of their policies and procedures manual.

MANAGEMENT RESPONSE

Leigh Ann Fisher, Clerk of Courts – Criminal

The Criminal Division is creating miscellaneous cases "MD" for bail forfeitures in CPCMS which will allow us to track the amount owed by case. There was \$53,000 disbursed to the County in October, November and December 2011 for bail that was forfeited. The Criminal Division will create a policy for this practice and include the criteria for when monies are to be disbursed timely.

Martricia McLaughlin, Assistant County Solicitor

This is essentially a matter for Criminal Division. However, to the extent that such action is not carefully undertaken to ensure the accuracy of the information of record, the Solicitor's Office concurs with the methodology proposed with the provision that the accuracy of the information is crucial. This requires good communication between private sureties and Criminal Division and Pre-Trial Services and possibly the District Attorney's Office.

Section B – Internal Controls

1. Eliminate Solicitor’s Office from Accepting Payments

OBSERVATION

The Solicitor’s Office accepted payments from sureties that have payment plans with the office. The payments were then either taken to Criminal for processing or were sent to Criminal via interoffice mail. When comparing the dates that payments were received in the Solicitor’s Office to the time they were processed through CPCMS in Criminal, there were some instances where there was a significant time lag. For example for one defendant, there were time differences of 13 days, 13 days and 53 days between when the payments were received in the Solicitor’s Office until they were credited in Criminal.

The control environment in the Solicitor’s Office is not adequate for accepting payments. They do not have a cash register, they do not have prenumbered receipts and they only have one individual who is able to process payments.

RECOMMENDATION

Payments should always be receipted properly, processed promptly and deposited within one business day. The Solicitor’s Office should no longer accept payments. Sureties should be instructed to make payments directly to the Criminal Division where they have the proper personnel, equipment and training.

MANAGEMENT RESPONSE

Leigh Ann Fisher, Clerk of Courts – Criminal

The Criminal Division will accept and process payments from the Solicitor’s Office, if they receive them in error, and will provide a receipt to the Solicitor’s Office indicating that a payment for the “bail forfeiture” assessment was applied.

Martricia McLaughlin, Assistant County Solicitor

It has never been a policy of the Solicitor’s Office during the current administration to receive payments without immediately directing in-person payments to Criminal and doing the same for Criminal. It is agreed that the Solicitor’s Office cannot and should not deal with such payments.

To the extent that such payments are incorrectly mailed to the Solicitor despite the directions of the payment plan, it has been agreed that a contact will be made to the payor indicating that future payments should be directed directly to Criminal Division. It has been further agreed that payments incorrectly received

by mail shall be immediately taken to Criminal Division. The coordination of information which is being worked out between Criminal Division and the Solicitor's Office should further assist in preventing this problem from reoccurring.

2. Improve Use of Payment Plans

OBSERVATION

Once bail forfeiture paperwork is sent to the Solicitor's Office, one payment option for the surety is to set up a payment plan. The 3-part form that the surety signs states the balance owed, and the amount of weekly or monthly payments they agree to make. The original form is sent to Criminal, one copy stays in the surety's file in the Solicitor's Office and the final copy is given to the surety. Over the past five years, approximately \$27,000 was collected from payments related to payment plans.

In the 19 cases where payment plans were established:

- Signed payment plans could not be located in six of the Solicitor's files and in eight of Criminal's files.
- In four cases, the Solicitor's worksheets did not reflect all of the payments made in Criminal. Payments sent directly to Criminal are posted to CPCMS; however the Solicitor's Office may not have been notified that the payment was made.
- In three cases, Criminal's records did not reflect all eleven payments recorded on the worksheets in the Solicitor's Office. Eight of the payments submitted to Criminal were credited to costs, fines or restitution owed by the defendant. Two of the payments and dates did not match at all but there were payments of the same amount on CPCMS. One payment of \$200 did not appear at all on CPCMS.
- Of the 19 cases with worksheets set up for payment plans, five of the cases were paid in full, two of the sureties were making consistent, up-to-date payments, and the remaining 12 were making sporadic payments, sometimes making only one or two payments before stopping.

RECOMMENDATION

Although payment plans are not the most effective method of collecting bail forfeiture money from sureties, they do allow smaller, regular payments to be made and some people do comply with the terms of the agreement. However, the process needs improvement. Both offices should meet to discuss:

- How to improve and simplify the sharing of information such as whether paper documents could be shared electronically,
- If common files could be shared using the Allshare drive, and
- If the Solicitor's Office is required to maintain case files for forfeiture cases, etc.

Compliance with the payment plan terms should be monitored by one of the offices.

MANAGEMENT RESPONSE

Leigh Ann Fisher, Clerk of Courts – Criminal

The Criminal Division is willing to meet with the Solicitor's Office to discuss this process. I am not in favor of both offices "sharing" an excel spreadsheet. I believe that if each office maintains their own records, there will be checks and balances.

Martricia McLaughlin, Assistant County Solicitor

Agreed. These recommendations are already being implemented as a shared spreadsheet is being developed to facilitate information sharing. Further, in addition to availability for on-going issues, the Criminal Division's Solicitor is requiring a monthly printout of the spreadsheet so that issues of nonpayment, vacated forfeitures and the like will be monitored on a regular basis. Files will need to be maintained in the Solicitor's Office so that information is available to the Criminal Division Solicitor in the event that litigation of any sort ensues.

3. Improve Communication and Coordination between Offices

OBSERVATION

The Criminal Division and Solicitor's Office work closely together with bail forfeitures. Once the Clerk of Courts signs a court order executing the forfeiture, the paperwork is sent to the Solicitor's Office and they are responsible for collecting the forfeited bail. Paperwork is also passed back and forth so the case files are kept up to date. During interviews and testing, several areas came to our attention where improvements could be made with communication and coordination of paperwork.

- Around May 2011, the Solicitor's Office stopped sending letters to sureties informing them of the amount they owe, demanding payment within fifteen days from the receipt of the notice and giving them the option of establishing a payment plan. The executive secretary was under the impression that Criminal was already using the collection agency and the letters weren't necessary.
- Six of eight case files in the Solicitor's Office did not have a copy of the court order vacating the forfeiture order. Criminal sends the Solicitor's Office copies of court orders vacating bail forfeitures. The court orders are to be placed in the case file effectively closing that bail forfeiture case.
- There were problems with the paperwork and payments related to payment plans, as was noted with Finding B.2 on page 11.

RECOMMENDATION

The Criminal Division and Solicitor's Office should meet to discuss issues and processes that are common to both offices. Collection processes should not be discontinued or changed without acknowledgement from the other office. Both offices should use some type of checklist to indicate when paperwork is sent to the other office and when it's received. Once there's agreement on the new procedures, they should be documented in written policies and procedures in each office.

MANAGEMENT RESPONSE

Leigh Ann Fisher, Clerk of Courts – Criminal

The Criminal Division is willing to meet with the Solicitor's Office to discuss this process. Criminal Division will include this process in the policy.

Martricia McLaughlin, Assistant County Solicitor

Agreed. See previous answers pertaining to cooperation between Criminal Division and the Solicitor's Office.

4. Improve Maintenance of Case Files

OBSERVATION

Case management and filing in the Solicitor's Office needs improvement. At the time of the audit there was no record maintained of:

- Forfeiture cases received in their office from the Criminal Division,
- Events associated with the cases such as when letters were sent, when payment plans were established, notes of discussions with sureties, when court orders vacating forfeitures were received, etc.

At one time there was a record maintained of forfeiture cases received but as there was turnover in staff, some of the procedures changed or were discontinued. Also during testing, 6 of 44 case files in the Solicitor's Office could not be located.

RECOMMENDATION

The Solicitor's Office should develop a spreadsheet or database to track forfeiture cases and the activity related to them. They should also develop a better method of filing paperwork for forfeiture cases along with a retention policy for open cases, cases paid in full and cases where the forfeiture order was vacated. Any policies or procedures should be put in writing.

MANAGEMENT RESPONSE

Leigh Ann Fisher, Clerk of Courts – Criminal

This observation does not apply to Criminal Division.

Martricia McLaughlin, Assistant County Solicitor

Agreed. These measures are already being developed.

Section C - Policies and Procedures

1. Establish Written Policies and Procedures

OBSERVATION

Neither the Criminal Division nor the Solicitor's Office has current written policies and procedures that address bail forfeitures. The Criminal Division has an extensive manual for other processes in the office but the policies for bail forfeitures and the procedures to carry out those policies were never made part of the manual. The Solicitor's Office has written instructions but they don't reflect current practices and are not complete.

The purpose of policies is to outline in writing the requirements that management wants followed. Some may exist to comply with laws and regulations; others are present to maintain adequate internal controls. The procedures are simply the steps to follow when processing transactions so that they comply with the policies. A bail forfeitures manual is especially important in the Solicitor's Office because of the turnover in Solicitor's staff. In 2011 there was a change in the executive secretary position. The responsibilities that her replacement had to learn regarding bail forfeitures would have been much easier to pick up and require less training from the prior executive secretary if the policies and procedures were in writing.

RECOMMENDATION

The management of both offices should develop and implement written policies and procedures which encompass the requirements of processing bail forfeiture transactions and the methods they want used to accomplish those requirements. The manuals should be updated regularly to reflect current practices. The Controller's Office is available to assist division management upon request.

MANAGEMENT RESPONSE

Leigh Ann Fisher, Clerk of Courts – Criminal

The Criminal Division will develop a written policy and include it in the manual. This policy will be drafted before the follow-up on this audit.

Martricia McLaughlin, Assistant County Solicitor

Agreed. These measures have already been undertaken. In addition coordination with Pre-trial Services is also ongoing as policies and practices develop.

Best Practices

1. Compliance with Laws and Regulations

Testing was performed to determine if the Criminal Division complied with the Pa. Rules of Criminal Procedure and the Northampton County Rules of Court as they relate to bail forfeitures. We found that the Criminal Division was in compliance with both sets of regulations.