



***METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
OFFICE OF INTERNAL AUDIT***

Professional Audit and Advisory Service

PUBLIC FINAL REPORT

**Audit of the State Trial Courts
of the 20th Judicial District of Tennessee**

Date Issued: July 29, 2011

Office Location and Phone Number

222 3rd Avenue North, Suite 401
Nashville, Tennessee 37201
615-862-6110

*The Office of Internal Audit is an independent audit agency reporting directly to the
Metropolitan Audit Committee*

EXECUTIVE SUMMARY

July 29, 2011

Background

The State Trial Courts consist of Circuit Courts, Criminal Courts, and Chancery Court. The structure of the courts is governed by Tennessee Law. Funding for the court functions is primarily provided by Metro Nashville. Additionally, Some functions and programs are funded through numerous federal and state grants that are accepted by Metro Nashville Council. The total combined budget for fiscal years 2008, 2009, and 2010 was \$11.3 million, \$13.8 million and \$11.1 million. The State Trial Courts have 150 Metro employees and 18 Judges who are State of Tennessee employees.

The Office of Internal Audit engaged the National Center for State Courts (NCSC) to conduct a performance audit of the functions of the State Trial Courts including the Criminal, Circuit and Chancery Courts; Community Corrections; Drug Court and administrative functions. The results of the performance audit may be seen in Appendix A.

At the same time as the performance audit was being conducted, the Office of Internal Audit conducted a limited compliance audit of the business functions of the State Trial Courts. The results of the review may be seen in Appendix B.

National Center for State Courts Performance Audit Key Observations

- Investigate the feasibility of hiring an additional master to be shared between Circuit Court Divisions four and eight to hear child support, paternity and other family cases.
- Consider converting to a one-step petit jury summoning process to reduce the manual procedures, printing and postage costs.
- To the extent Metro Nashville funds are used develop new scheduling practices and policies to reduce the time spent in court by the case/probation officers.
- To the extent Metro Nashville funds are used evaluate options for reallocating the duties of Court Officers for Criminal Courts (such as pooling arrangements or transferring certain duties such as transporting prisoners from the basement to the courtroom level to the Sheriff) that would enable the court to effectively use all its resources while safely and efficiently performing its responsibilities.
- To the extent Metro Nashville funds are used document and formalize the financial/operational relationship between the Drug Court and the Nashville Drug Court Support Foundation.
- Work with the Criminal Court Clerk to arrange for that office to collect all community corrections-related fines and fees for the Davidson County Community Correction Program.
- Centralize grant management functional responsibilities to more effectively manage and oversee all public and private grants for the State Trial Courts, Drug Court and Davidson County Community Correction Program.

Compliance Audit Key Observations

- Oversight and management of fiscal resources could be improved.
- Metro procurement procedures are inconsistently applied.

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INTRODUCTION

AUDIT INITIATION

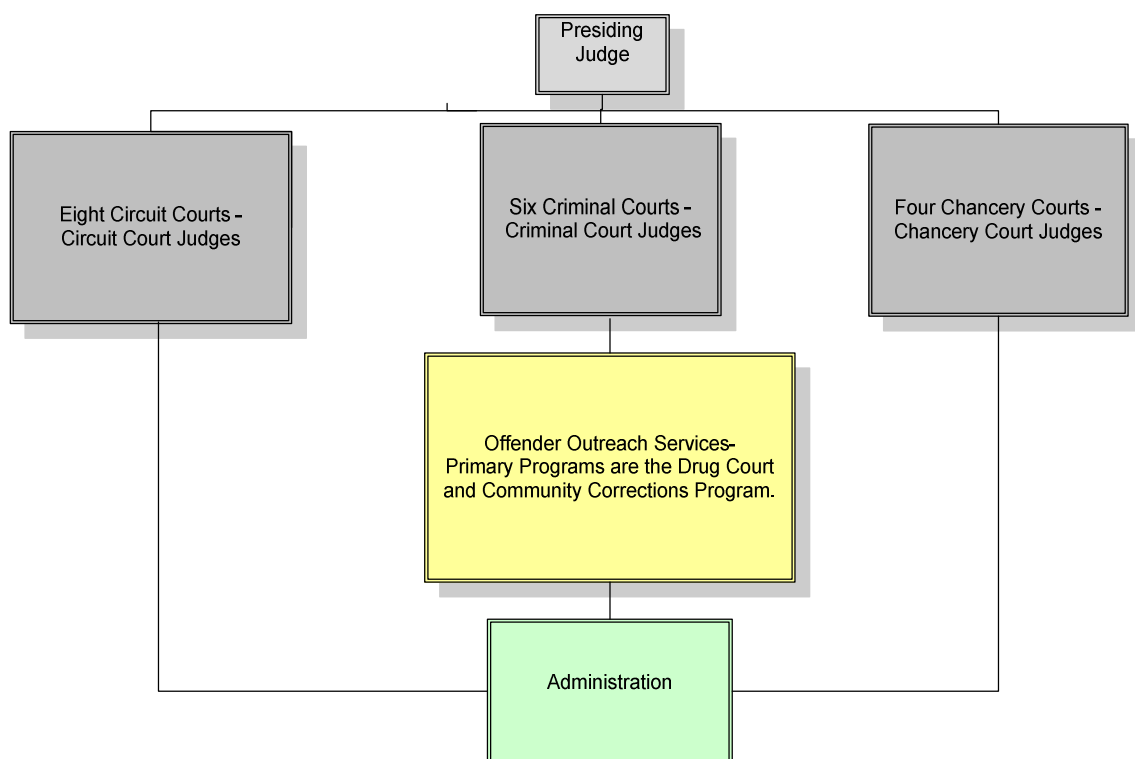
The Office of Internal Audit's calendar year 2009 annual Audit Work Plan included an audit of the State Trial Courts. The audit was not performed in 2009 and was carried over into 2010 where it was subsequently delayed while waiting for an opinion from the Attorney General of Tennessee on whether Metro Nashville could perform an audit of the State Trial Courts. The performance audit portioned was then selected to be outsourced to a contractor with recognized expertise in audit of trial courts. The National Center for State Courts was ultimately selected by the Request for Procurement (RFP) process. Due to the flood in May 2010, the audit did not begin until June 2010, at which time the Office of Internal Audit commenced with a compliance audit of selected functions.

The audit report from the National Center for State Courts begins at Appendix A, page xx. The Metro Nashville Office of Internal Audit compliance with financial and operational policy begins at Appendix B, page xxx.

BACKGROUND

The State Trial Courts organization consist of 18 separate courts and provides administrative services, jury management and courtroom security for the Circuit, Chancery and Criminal Courts and Probation services. Effective November 1996, State trial Courts assumed administrative and fiscal responsibility for the Community Corrections Program. A probation and supervision program for non-violent felons is funded primarily by a grant from the Tennessee Department of Corrections. The State Trial Courts also supports the Davidson County Drug Court with an intensive out-patient Alcohol and Drug program funded primarily by a grant from the U.S. Department of Justice, through the State Office of Justice Programs. Grants from any source are first accepted by the Metropolitan Council, with Metro Nashville having ultimate responsibility for the fiscal resources received.

Exhibit A – State Trial Courts Organizational Chart



STATE TRIAL COURTS FINANCIAL HIGHLIGHTS

The State Trial Courts obtain funding from a variety of sources, including: Metro Nashville appropriations; Federal and State of Tennessee grants accepted through Metro Nashville; and fines, forfeitures and fees, Council. The total appropriations for fiscal years 2008 through 2010 are shown in Exhibit B below while the grants expended during the same period are shown in Exhibit C. The Top Five Vendors/Contractors used for fiscal year 2010 are shown in Exhibit D.

Exhibit B – Metro Nashville Appropriations

Fiscal Year	Metro Appropriation	Additional Appropriation	Total Appropriation
2010	\$ 8,139,300	\$ 60,000	\$ 8,201,310
2009	9,615,600	470,000	10,087,609
2008	8,688,600	-	8,690,608
Totals	\$26,443,500	\$530,000	\$26,979,527

Source: Metro Nashville's Enterprise One Financial System

Exhibit C – Grant Funds and Metro Nashville Supplements

Year	Grant Funding	Metro Match	Additional Metro Funds
2010	\$2,718,155	\$36,655	\$ 143,900
2009	2,621,704	69,988	1,030,300
2008	2,628,642	50,000	

Source: Metro Nashville's Enterprise One Financial System

Exhibit D - Top Four State Trial Court Vendors/Contractors

Vendor/Contractor Name	Amount Paid 2008 - 2010	Purpose
1. Central Parking of TN	\$410,803	Juror Parking
2. St. Charles Catering	383,898	Provides Meals to Drug Court
3. Dr. J.A. Mayer.	201,500	Medical Services Drug Court
4. Nashville Drug Court Support Foundation	183,722	Miscellaneous Items
5. Dr. D.K. Patzer	150,840	Medical Services Drug Court

Source: Metro Nashville's Enterprise One Financial System

GENERAL AUDIT INFORMATION

STATEMENT OF COMPLIANCE WITH GAGAS

We conducted this audit from June 2010 through December 2010 in accordance with generally accepted government auditing. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives.

SCOPE AND METHODOLOGY

The audit period focused primarily on the period January 1, 2008, through December 31, 2010. The methodology employed throughout this audit was one of objectively reviewing and analyzing various forms of documentation, including written policies and procedures, financial information and various forms of data, reports and information maintained by the State Trial Courts.

CRITERIA

In conducting the compliance audit, the existing State Trial Courts operations and processes were evaluated for compliance with:

- Metro Nashville Financial Policies pertaining to Accounting, Budget, and Procurement located at:
http://imtoo.nashville.org/finance/omb/financial_policies.asp
- Committee of Sponsoring Organizations (COSO) Internal Control Integrated Framework.
- State of Tennessee, Division of Municipal Audit Internal Control and Compliance Manual

STAFF ACKNOWLEDGEMENT

Metro Nashville Office of Internal Audit
Carlos L. Holt, CPA, CFF, CIA, CFE, CGAP, Audit Manager
William B. Walker, CPA, In-Charge Auditor
Sharhonda Cole, CFE, Staff Auditor
Qian Yuan, CISA, Staff Auditor

National Center for State Courts
John Doerner, Project Director
Richard Van Duizend, Principal Consultant
Teri Sullivan, Consultant (North Highland Company)

APPENDIX A. PERFORMANCE AUDIT

- National Center for State Courts Report Starts on Next Page –



***DAVIDSON COUNTY TENNESSEE:
STATE TRIAL COURTS
PERFORMANCE AUDIT***

July 29, 2011

PUBLIC FINAL REPORT

Project Staff:

**John Doerner, Project Director
Richard Van Duizend, Principal Consultant
Teri Sullivan, Consultant (North Highland Company)**

**Daniel J. Hall, Vice President
Court Consulting Services
707 Seventeenth Street, Suite 2900
Denver, Colorado 80202-3429**

303-293-3063

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A INTRODUCTION

The Metropolitan Government of Nashville and Davidson County (“Metro”) issued Request for Proposal (RFP) 10-02 on January 21, 2010, soliciting services for a performance audit of the State Trial Courts of the 20th Judicial District of Tennessee (STC).

The STC in Davidson County consists of six (6) criminal courts, eight (8) circuit courts and four (4) chancery courts. The State Comptroller’s Office Judicial Weighted Caseload report can be found on the Comptroller’s website at <http://www.comptroller1.state.tn.us/OREA/>. The report, released in January 2011 indicates that Davidson County has a need for one additional criminal court judge.

The criminal court has jurisdiction for all criminal cases not handled by the General Sessions Court. As a practical matter, this is primarily felony and misdemeanor cases that include charges with a possible prison sentence of one year or more. The criminal court is also responsible for empanelling the quarterly Davidson County Grand Jury, selecting the Grand Jury foreperson, and handling administrative matters associated with the Grand Jury, including arranging visits to public facilities.¹ The criminal court is responsible for post-conviction petitions, habeas corpus petitions, General Sessions Appeals, extradition matters, out of state witness requests, and approves and supervises all matters relating to the Bonding companies in Davidson County. The Circuit Courts hear contract disputes, civil torts, condemnations, worker’s compensation claims, domestic matters and the administration of estates, trusts, conservatorships and guardianships. Chancery Court is a court of equity that hears Tennessee constitutional issues, contract disputes, employment lawsuits, construction cases, real property and commercial litigation, applications for receivership and liquidation of insurance companies, state tax disputes, workers compensation, local governmental actions including appeals from a variety of local boards and commissions, applications for injunctions, writs of certiorari, emancipation of minors, and name changes. In addition, the Davidson County Chancery Court serves as the court of appeals for a number of

¹ The Davidson County Grand Jury meets on a full time basis three days per week. A new Grand Jury is empanelled quarterly with a new Grand Jury foreperson. The criminal courts rotate the supervision of the grand jury so that an individual criminal court supervises the Grand Jury every eighteen (18) months.

administrative agencies, such as the Tennessee Department of TennCare, Tennessee Department of Labor, and the Tennessee Department of Commerce and Insurance, among many others.

In addition, the following functions are part of the Trial Courts: Community Corrections (felony offender diversion program), DUI Probation, Drug Court (outpatient and inpatient treatment), Forensic Drug Testing Unit, Jury Management including certain administrative aspects of the Davidson County Grand Jury and the Parenting Education Program.² Each of the court types, criminal, circuit and chancery, are served by a clerk's office. However, the operations of the respective clerk's offices are not included within the scope of this performance audit.

Subsequent to the issuance of the RFP, the Tennessee Attorney General was asked to provide an opinion regarding Metro's authority to conduct a performance audit of the state trial courts and, if such authority existed, what limitations or restrictions would affect that authority. In Opinion No. 10-35, the Attorney General concluded that "Metro has the authority to conduct an audit of the physical space that Metro provides to the trial courts, programs that Metro funds or partially funds for the trial courts, and the personnel whom Metro funds or partially funds to administer the trial courts and their programs." The Attorney General also concluded that "... Metro lacks authority to conduct an evaluation of the operating effectiveness of the core functions performed by trial court judges, who are elected state officials." This performance audit was conducted in accordance with the guidance provided in Attorney General's Opinion No. 10-35.

² The specific areas and audit issues included in this performance audit are enumerated in Section B. Not all functions in community corrections, i.e. the Parenting Education Program, are included.

B SCOPE & PERFORMANCE AUDIT ISSUES

The project team made an initial survey visit to Davidson County to confer with the Office of Internal Audit and to meet with the judges and staff members of the STC. This initial survey was designed to help the project team: 1) gain better understanding of the STC organization and programmatic operations, 2) identify potential performance audit issues, criteria and information sources, and 3) prioritize the potential performance audit issues. After completion of this visit, the project team prepared a performance audit plan, identifying the audit issues to be addressed. The proposed audit plan was subsequently accepted by both the Office of Internal Audit and the STC with minor revisions.

The performance audit issues agreed upon and included in this report are:

- **Case Management & Scheduling Procedures/Practices**
 1. Circuit Court: *What are the relative benefits of the various case management models in terms of age of cases, amount of staff time/effort required, and court user satisfaction?*
 2. Circuit & Criminal Courts: *Could revisions to various scheduling and case management practices result in fewer jury trials scheduled for non-jury weeks and reduce the overall need for jurors?*
 3. All Courts: *What is the average length of time required for various case types to reach resolution and how well does it compare with STC objectives or national standards? Does the data exist to be able to report appropriate outcome performance by the STC?*
- **Jury Management**
 1. Juror List: *What procedures or data quality/processing improvements could be implemented to improve the quality of data and increase the juror yield?*
 2. Administrative Procedures: *What procedural, technological or policy revisions might reduce the necessary employee time and effort, and other ancillary costs pertaining to jury management and administration?*
- **Community Corrections: Drug Court/DUI Probation/Drug Testing**
 1. Grant Management: *Can a review of grant management procedures provide for improved efficiency of operations and effectiveness of programs?*

2. Fiscal Activities & Internal Controls: *Can a review of the payment receipting and accounting process and related internal controls reduce the inherent fiscal risk associated with these activities?*
 3. Performance Measures: *What is the average length of time required for participants who graduate from the programs? What percentage of participants graduate? What is the long-term recidivism rate? How do these measurements compare with STC objectives or other comparable programmatic results?*
- **Staffing/Job Classifications**
 1. *Are the staffing levels established in a way that provides adequate and appropriate resources and flexibility to ensure efficient operations? Are the resources equitably allocated given the various job duties and responsibilities? How well do the various models ensure that technological and other capabilities are utilized most effectively throughout the STC?*
 2. *Is actual staffing consistent with the calculated need identified through the Tennessee weighted caseload formulas? Is the level of staffing, and the distribution of positions within the organization, comparable to similarly situated court organizations (in Tennessee and nationally)?*
 - **Courthouse Security**
 1. *Does the present model ensure that resources are efficiently and effectively employed?*

C FINDINGS & RECOMMENDATIONS

The following sections correspond to the identified performance audit issues as described above.

1. Case Management & Scheduling Procedures/Practices

The State Trial Courts that serve Nashville/Davidson County handle a high volume of cases and, as far as can be determined from the available data, they appear to be resolving those cases in an efficient manner. In 2009, the Criminal Court disposed of 6,441 cases and received 6,019 cases.³ These figures do not include probation violations, *habeas corpus* and post-conviction petitions, and cases disposed through information agreements. A total of 10,316 cases were filed in the Circuit Court in 2009; the judges of that court were able to dispose of 10,461. A total of 2,472 cases were filed in the third component of the State Trial Courts, the Chancery Court, in 2009. The Chancery Court disposed of a total of 2,692 cases.⁴ This includes all equity cases, civil cases filed by or against the state of Tennessee, appeals from decisions by certain governmental agencies, hundreds of tax enforcement cases and many matters involving constitutional issues.

There are four basic principles of good caseload management.⁵

1. Exercising effective leadership;
2. Developing and meeting appropriate time expectations;
3. Exercising early and continuous court control of case progress; and
4. Providing firm and credible trial dates.

The leadership and judges of all three courts are aware of their responsibility to dispose of cases in both a fair and timely manner. The Circuit Court seeks to dispose of almost all routine civil cases within 12 months from date of filing and most complex civil cases within 24 months from date of filing. This is consistent with the model time standards proposed by the

³ D. B. Jones, *2009 Case Clearance Rate*, Office of Criminal Justice Planning (1/21/2010).

⁴ *Chancery Court Case Management Report—December 2009*.

⁵ D. C. Steelman, *Improving Caseload Management: A Brief Guide 3* (Williamsburg, VA: NCSC, 2008).

American Bar Association.⁶ The Chancery Court seeks to resolve all but its most complex cases within 12 months. Although no specific time standard was identified in discussions with the Criminal Court judges, the data from Metro's Criminal Justice Planning Office (see table 1) show that the Criminal court is conscientious about moving cases in which the defendant is in custody, thus protecting both the defendant's rights and reducing the cost to the public.

Table 1
Criminal Court Dispositions by Custody Status 2008 & 2009⁷

All Defendants Disposed By a Trial, YTD through the 4th Quarter

1	2	3	4	5	6	7	8	9
Year	Disposed Defendants	Average Days from Arrest to Boundover	Average Days from Boundover to Filing	Average Days from Filing to Disposition	Average Days from Arrest to Disposition	Defendants with a Capias	Capias Impact on the Average	Average Days in Jail from Arrest to Disposition
2008	121	40.6	96.5	419.7	534.5	10	7.9	211.6
2009	125	39.1	86.9	456.1	595.1	7	19.2	233.1
Difference	4	-1.4	-9.6	36.4	60.6	-3	11.3	21.6
Percent Change	3.3%	-3.6%	-10.0%	8.7%	11.3%	-30.0%	142.5%	10.2%

All Jail Defendants Disposed YTD through the 4th Quarter

1	2	3	4	5	6	7	8	9
Year	Disposed Defendants	Average Days from Arrest to Boundover	Average Days from Boundover to Filing	Average Days from Filing to Disposition	Average Days from Arrest to Disposition	Defendants with a Capias	Capias Impact on the Average	Average Days in Jail from Arrest to Disposition
2008	2,471	9.7	71.5	94.8	181.4	37	1.2	169.9
2009	2,811	10.1	56.9	103.5	174.5	30	3.1	160.8
Difference	340	0.4	-14.6	8.6	-6.9	-7	1.9	-9.1
Percent Change	13.8%	4.0%	-20.4%	9.1%	-3.8%	-18.9%	150.2%	-5.4%

All Bond Defendants Disposed YTD through the 4th Quarter

1	2	3	4	5	6	7	8	9
Year	Disposed Defendants	Average Days from Arrest to Boundover	Average Days from Boundover to Filing	Average Days from Filing to Disposition	Average Days from Arrest to Disposition	Defendants with a Capias	Capias Impact on the Average	Average Days in Jail from Arrest to Disposition
2008	3,133	73	107.6	165.6	354.7	356	6.7	20.1
2009	3,388	62.4	97.8	175.9	345.4	365	5.1	19.4
Difference	255	-10.6	-9.8	10.3	-9.3	9	-1.5	-0.7
Percent Change	8.1%	-14.5%	-9.1%	6.2%	-2.6%	2.5%	-23.1%	-3.6%

⁶ American Bar Association (ABA), *Standards Relating to Trial Courts*, §2.52 (Chicago, IL: ABA, 1992).

⁷ Jones, *supra*, note 1 at 4.

Indeed, the major delay in the criminal case process is the period between bindover [i.e. the determination by a judge in the General Sessions Court that there is sufficient evidence supporting the charge against the defendant to refer the case for the Criminal Court to hear] and the filing of the indictment [the formal charging document that initiates proceedings in the Criminal Court]. During this period in which the District Attorney's Office is investigating the case, preparing the formal charging documents, and presenting the charges and a summary of the evidence to a grand jury, the case is entirely out of the control of the General Sessions Court while the Criminal Court has jurisdiction over only a limited set of issues such as bail, request for mental health examinations, and dispositions resulting from information agreements.

Despite the complexity of many of its cases, the Chancery Court is able to dispose of the vast majority of cases within two years. According to data prepared by the Office of the Clerk and Master, 86 percent of the pending Chancery Court cases were two years old or less; more than two-thirds had been pending less than one year.

The Circuit Court does not receive age of case at disposition information so it is not possible to document whether it has been disposing of its cases within the informal time goals.

All three courts employ mechanisms to move cases forward after the initial steps in the process have been completed and review the information they are provided. The Circuit Court has developed an effective centralized assignment system, an ethos of cooperation, and an active case management system in order to prevent last minute postponements of jury trials and to ensure that cases do not routinely stall in mid-process. Chancellors conduct status hearings for cases that have been pending more than 8 to 15 months to determine whether the case is close to disposition and, if not, to issue a scheduling order or set a trial date.⁸

Circuit Court judges and Chancery Court Chancellors uniformly indicated that day of trial continuances are rare. Data for the Criminal Court shows that two-thirds of 126 trials conducted in 2009 went forward on the first date set, and approximately 93 percent proceeded

⁸ The exact timing of the status hearing and case management procedure used varies by Chancellor.

by the second trial setting.⁹ The Circuit Court employs an elaborate assignment procedure managed by the centralized special master and the Assignment Judge, along with the Clerk's Office, to ensure that cases allocated to each division are able to be set for trial in a timely fashion once they are ready for trial and that a judge is available to hear those cases. In both the Criminal and Circuit Court, if a judge has two cases ready to proceed on the day set for trial, another judge will usually step in to try the case rather than having it postponed.

Case Management Issue 1: *Circuit Courts* – What are the relative benefits of each of the case management models in terms of age of cases and the amount of staff time/effort required?

The Circuit Court has eight divisions with one judge in each division. Five divisions (Divisions 1,2,3,5, and 6) are assigned civil cases such as contract disputes, personal injury and product liability claims, and medical malpractice cases. Two divisions (Divisions 4 and 8) hear domestic cases and other family matters such as child custody and child support disputes. Division 7 hears primarily probate matters such as administration of estates, guardianships, conservatorships, trusts and civil commitment proceedings. Though there are individual differences among the case management practices of the judges, each division uses a master or chambers staff to monitor cases and shepherd them toward trial or a negotiated settlement. This active case management is intended to move cases along, avoid having cases fall through the cracks, encourage settlements, and preserve the Court's most limited and costly resource – the time of a judge – for those disputes requiring trial or direct judicial intervention to resolve.

The most notable difference of approach occurs among the five divisions hearing civil cases. Three rely on a centralized special master to:

- Conduct case management conferences with the attorneys (15 minutes each) to make certain the cases are proceeding through all the necessary steps;
- Frequent follow-up with attorneys;
- Resolve discovery disputes on occasion (with attorney agreement);
- Refer appropriate cases to mediation;

⁹ D. B. Jones, *Criminal Court Trial Certainty Rate for January through December 2009*, Office of Criminal Justice Planning (2/11/2010).

- Set cases for trial (designating those that should be on individual calendars rather than the master calendar and designating the judge to be assigned);
- Check with the lawyers a week or so before the trial is set to determine if the case will settle so that the calendar can be adjusted.

The other two civil circuit courts use chambers staff to perform these functions, although the centralized special master classifies cases into three tracks (complex, standard, and expedited) for one of these two divisions and occasionally provides case management services for the other. The centralized special master provides case management conferences for 1,200 to 1,500 cases per year, meeting with the attorneys an average of three times per case.¹⁰

From the available clearance rate data (see Table 2), it is not possible to discern whether use of the centralized special master is more effective than using chambers-based staff in disposing of civil cases in a timely manner.

Table 2
2009 Circuit Court Clearance Rate, by Division¹¹
(Jury & Non-jury Cases)

Division	Cases Filed	Cases Disposed	Clearance Rate
CIVIL DIVISIONS			
1	872	895	102.60%
2	498	474	95.20%
3	2221	2227	100.30%
5	618	710	114.10%
6	479	516	107.70%
FAMILY DIVISIONS			
4	3132	3183	101%
8	2493	2449	98.20%
Total	10,313	10,461	Avg. 101.9%

¹⁰ According to data provided by the centralized special master, she conducted a total of 3,374 case management conferences in 2009.

¹¹ Rooker, supra, note 2. Data for Division 7 which handles probate data is maintained separately. Note that the data in Table 2 includes adoptions and settlements which contribute to the higher number of filings and dispositions in Circuits 1 and 3. Also, DUI trials completed by Circuits 1, 2 and 5 are excluded. While Table 2 is not a comprehensive accounting of the workloads in the various Circuits, it demonstrates that the Circuit Courts are effectively clearing their dockets and avoiding the development of a caseload backlog.

The shaded divisions use the centralized special master to manage their cases. Divisions 1 and 3 rely primarily on chambers staff for case management. (Divisions 4 and 8 are assigned family cases.) Overall, the average clearance of over 100 percent means that the Circuit Court is keeping current and is not building a backlog. Those divisions that rely on a centralized special master, have a somewhat higher clearance rate (106.3%) than those who do not (101.5%), but they also include the division with the Court's lowest clearance rate. As discussed in greater detail in section A.3, data on the age of pending Circuit Court cases or the age of Circuit Court cases at disposition is not available. Thus, the impact of the different models on the timeliness of dispositions cannot be determined.

The variation in the number of cases filed and disposed in each division results from specialization among the judges. Division 3 conducts judicial mediation conferences for the other civil case divisions during non-jury trial weeks.

Both models of case management of civil cases used by the Circuit Court appear to be effective in enabling judges to keep up with the Court's caseload. The data are not available to determine whether either approach affects timeliness or the impact on staff utilization. Devoting time to case management necessarily means there is less time to assist the judge in reviewing submissions from counsel, researching legal questions, and drafting decisions. Without a comprehensive staff workload assessment, it is not possible to determine whether using a single master for case management would yield greater efficiency in staff utilization.

Recommendation 1. The Circuit Court should investigate the feasibility of hiring an additional master to be shared between Divisions 4 and 8 to hear child support, paternity and other family cases.

The clearance rate for the family divisions is particularly noteworthy, given the high volume of cases. Although the data available to the NCSC audit team was not specific

Recommendation 2. *The Circuit Court should endeavor to schedule its jury trial weeks from among those set by the Criminal Court.*

Recommendation 3. *When it is necessary for the Circuit Court to schedule a civil trial during a non-Circuit Court jury week, to the extent possible, that trial should be scheduled to coincide with a week in which jurors for the Criminal Court are already being summoned. This should include the Circuit Court DUI “blitz” weeks. This would allow the most efficient use of summoned prospective jurors.*

Overall, the State Trial Courts appear to be managing the need to call jurors effectively. As noted above, few jury trials are postponed because a judge is not available to hear the case and the Circuit Court contacts lawyers the week prior to trial to assess the likelihood of a last minute settlement. While some day-of-trial pleas of guilty and settlements are inevitable, the State Trial Courts have taken seriously the need to limit the number of citizens called for jury service. It must be remembered as well that the overall number of jury trials is quite small as a percentage of caseload in Davidson County and nationally. Data from the Criminal Justice Planning Office and the Circuit Court Clerk indicates that in 2009, there were only 126 jury trials in the Criminal Court (from 3 to 4 per jury week), and 40 jury trials in Circuit Court (about 2 per jury week).

However, greater coordination between the Criminal Court and the Circuit Court in one area could reduce even further the number of weeks in which jurors are summoned. Currently, each Court sets its jury weeks independently. In 2010, about 20 percent of the Circuit Court’s 19 jury weeks are set for weeks in which the Criminal Court is not holding jury trials. (The Criminal Court had 34 jury weeks that year.)¹⁴ If the Circuit Court could select more of its jury weeks to coincide with the Criminal Court designated jury weeks, it would reduce the total number of times for which Davidson County citizens are summoned for jury service. The degree to which it will reduce the total number of people summoned will depend on the extent to which the judges of the Criminal and Circuit Courts are reasonably able to schedule staggered trial start times so that those potential jurors not selected to serve as jurors in one courtroom can be sent as part of a *voir dire* panel to another courtroom. The experience in

¹⁴ The number of criminal and civil jury weeks varies each calendar year.

- Measure 3 – Time to Disposition (*the percentage of cases disposed or otherwise resolved within established time frames*);
- Measure 4 – Age of Active Pending Caseload (*the age of active cases pending before the court, measured as the number of days from filing until the time of measurement*);
- Measure 5 – Trial Date Certainty, (*the number of times cases disposed by trial are scheduled for trial*); and
- Measure 8 – Effective Use of Jurors (*the number of citizens selected for jury duty who are qualified and report to serve as a percentage of the total number called – juror yield, and the rate at which prospective jurors are used at least once in trial or voir dire – juror utilization*).¹⁸

Criminal Court judges receive a quarterly report from the Office of Criminal Justice Planning (OCJP) that provides an array of performance data and trends analyses including:

- Number of new filings
- Number of defendants disposed
- Average elapsed days between key points in the process
- Average days in jail from arrest to disposition
- Method of disposition (trial or without trial).

From these data, the Court can calculate the clearance rate (OCJP periodically provides clearance rate graphs) and time to disposition (although the Court has not formally established a standard against which to compare actual time to disposition). As indicated above, OCJP also provides trial date certainty data. In addition, the Chief Judge also receives monthly reports on DUI dispositions.

Chancery Court Chancellors receive monthly reports from the Clerk and Master that show filings and dispositions for each part and for the Court as a whole. An annual report calculates the clearance rate and the age of pending cases broken down by less than one year, one-to-two years, and older than two years. Individual Chancellors can request more detailed reports for their parts.

Circuit Court Judges and the Chief Judge receive a monthly report from the Circuit Court Clerk showing cases filed, pending, and concluded, broken down into various categories (jury, non-jury, divorces, domestic relations petitions, adoptions and settlements, civil petitions).

¹⁸ *Id.*

Recommendation 4. *The State Trial Courts in Davidson County should:*

b. Work with the Trial Court Administrator, the Criminal Court Clerk, the Metro Office of Criminal Justice Planning, the Circuit Court Clerk, and the Chancery Court Clerk and Master to design a set of clear, consistent reports enabling them to determine performance and manage their caseloads effectively.

It is difficult for any court to effectively manage its caseload, assess its performance, identify problem areas so that they can be addressed, determine its resource needs, and address possible inefficiencies without regular management reports that provide reliable, accurate information keyed to useful measures of performance. Most trial courts have court-based case management systems that collect the required data and produce management reports as well as enabling the court to schedule cases and manage dockets. The State Trial Courts of Davidson County currently must rely on separate systems developed for and by their respective Clerks that collect the needed information but do not produce the requisite reports or offer, in some instances, the additional helpful functions.¹⁹

¹⁹ For example, the centralized special master uses the calendaring functions of MS Outlook[®] to schedule cases.

2. Jury Management

Jury Trials in Davidson County are primarily scheduled and conducted in the Criminal Courts and the Circuits Courts. The courts advise the jury coordinator regarding scheduled trials and particular needs as they relate to jurors. The tasks of qualifying and summoning jurors, as well as paying juror fees and all other administrative aspects of jury service are the responsibility of the Jury Coordinator.²⁰ As noted above, in Section B, Case Management Issue 2, both the Criminal Court and the Circuit Court identify particular weeks at the start of each year, designated as 'Jury Weeks', in which they plan to schedule and conduct jury trials. The jury coordinator uses the plan for designated jury weeks as a guide for summoning and scheduling jurors, although the plan is subject to change as the needs of the courts require.

The jury office consists of two staff members; the jury coordinator and a jury assistant. Until June of 2010, the two staff members were housed separately; one in the Metro Courthouse to handle Circuit Court jurors and the other in the Justice A. A. Birch Building to handle Criminal Court jurors. Due to the damage from the widespread flooding in May 2010, the Juvenile Court occupied portions of the Metro Courthouse and the two separately operating jury offices were consolidated in the Birch Building. Although no testwork was done as a part of this audit to examine the effect of this move on jury operations, it appears that a consolidated office allows for more effective use of summoned jurors and may result in a need to summon fewer individuals. In addition, management of the office functions is made easier for the two staff members who can now depend on having a knowledgeable and supportive back-up person for assistance when necessary. Some discussion was held regarding possible plans, once the Juvenile Court is able to return to its building, to separate the offices in the future. We suggest that this issue be considered carefully in light of the perceived benefits of consolidation. Although Circuit Court judicial staff must escort jurors across James Robertson Parkway to their assigned courtroom, it appears that the operational benefits are likely to surpass this inconvenience.

²⁰ In regards to a Grand jury, the Jury Coordinator only has responsibility for issuing the summons. All other administrative duties are handled by criminal court staff.

AUDITOR NOTE: The State Trial Courts have advised the Metro Internal Audit Office that the judges have voted to implement this suggestion and from this point forward, there will be one jury assembly room and one jury office located in the Birch Building and managed by two staff members consisting of a jury coordinator and a jury assistant. The jury assistant and one other current employee will be cross-trained to perform the jury coordinator and assistant positions.

Jury Management Issue 1 - Juror List: *What procedures or data quality/processing improvements could be implemented to improve the quality of data and increase the juror yield?*

Jury Management Issue 2: Administrative Procedures - *What procedural, technological or policy revisions might reduce the necessary employee time and effort, and other ancillary costs pertaining to jury management and administration?*

During calendar year 2009, the State Trial Courts summoned 21,583 Davidson County residents as prospective jurors. Of this total, 13,914 were summoned for criminal court and 7,669 for circuit court; 5,793 total prospective jurors attended at least one day of jury service.²¹

Table 3
2009 Summary Jury Activity

2009	Prospective Jurors Summoned	Prospective Jurors Attended	Prospective Juror Yield	Trials Conducted	Average Trial Length (Days)	Petit Jurors Served
Circuit Court	7,669	1,731	22.57%	40	4.58	495
Criminal Court	13,914	4,062	29.19%	151	2.36	1,986 ²²
Total	21,583	5,793	26.84%	191	N/A	2,481

²¹ Juror statistics obtained from the Office of the Jury Coordinator, State Trial Courts, Nashville, Davidson County; Jury Summary Report and Pool Analysis Report.

²² Number of petit jurors served in criminal court is an estimate. The Jury Summary Report indicates that 151 criminal jury trials were held however the number of jurors was provided for only 119 of those trials. The average number of jurors in the 119 trials was 13.15 which was multiplied by 151 to estimate the total.

The Jury Coordinator obtains names and addresses for licensed drivers with a Davidson County residence from the Department of Safety to create the jury list, which is the only source of information used. Data in the jury list is refreshed every two years, in accordance with Tennessee Code Annotated §22-2-301 (b). As a routine part of the process to refresh the data, records are compared to the National Change of Address database maintained by the United States Postal Service.

When petit jurors are needed for a particular week, the jury coordinator orders an appropriate number of summonses to be issued to randomly selected names from the jury list. Davidson County uses a '2-step process' requiring the selected individual to complete and return a juror qualification form that is sent out with the summons. This form, which includes a questionnaire to be completed by the prospective juror, is used to determine whether the individual is statutorily qualified to serve and also to request to be excused or postponed to a later date. During 2009, 3,972 prospective jurors (18.4%) were disqualified, 3,469 (16%) were excused or deferred, 3,430 (15.9%) failed to appear (FTA) on the scheduled date after being determined to be qualified, and 3,709 (17.2%) summonses were undeliverable by the postal service. The 5,703 prospective jurors who appeared represent approximately 26.8% of the summonses issued during 2009.

The jury coordinator uses a jury management system developed and maintained by an outside vendor. This system has been in use in Davidson County since at least the mid-1990s with little or no enhancements or improved capabilities. When issuing summonses, the jury coordinator must print the forms on an office printer and then arranges for a vendor to pick up the forms. The vendor retrieves the forms, takes them off-site where they are folded and sealed, and returns them to the jury coordinator. The jury coordinator then sends the summons forms to Metro's mail processing center where postage is affixed and the summons are mailed out. The jury coordinator's office has used this same vendor to provide folding and sealing services for the past seven to eight years. No written agreement or contract has been executed to comply with Metro Procurement Regulations. Once the juror qualification forms

automated means. The jury coordinator may utilize a single source or any combination of sources.” Courts around the country typically supplement the jury list with name and address information from income²⁵ or other tax records, unemployment compensation or public welfare rolls. In some jurisdictions, utility records are also used. The use of additional sources can help to provide a more comprehensive jury list and ensure that the most current and accurate information is included.

[illegible]

Recommendation 8. Review all business arrangements with the outside vendor that performs summons folding and sealing services to ensure that the duties and costs are properly documented in accordance with Metro procurement. This review should also include an assessment of various alternatives to this outside service, such as obtaining equipment for such functions in the jury office or using a Metro internal service agency.

The same vendor has provided the summons folding and sealing services for 7-8 years with apparently no original bidding process and no regular competitive review. In addition, the vendor in question executed a contract with Metro in September 2010 to provide services to the Music City Center. The State Trial Courts can utilize the services provided in this contract. If the types of services needed by the jury coordinator are not listed in the Music City Center contract, the State Trial Courts should contact with the vendor to amend the contract and include the appropriate services.

[illegible]

Recommendation 9. *The Circuit Court should endeavor to select its jury trial weeks from among those set by the Criminal Court.*

To the extent practical, selecting Circuit Court jury weeks that coincide with Criminal Court jury weeks will result in a decreased workload for staff in the jury coordinator's office, reduce the overall number of jurors required to attend and, correspondingly, reduce the total amount of jury fee expenditures.

²⁵ Tennessee has no state income tax.

months) receives an electronic file containing new, updated, and purged records from the source list agencies. This information is used to supplement (in the case of new records), amend (in the case of updated records), and remove (in the case of purged records) records from the master jury list.²⁸

[illegible]

²⁸ Characteristics of an Effective Jury Master List, National Center for State Courts, Center for Jury Studies, 2009; <http://www.jurytoolbox.org/more/Characteristics%20of%20Effective%20MJL.pdf>

3. Community Corrections and Drug Court

In 1985, the State of Tennessee, during a special legislative session, created the Community Corrections Act of 1985.²⁹ The purposes of the act were to:

(1) Establish a policy within the state to punish selected, nonviolent felony offenders in front-end community based alternatives to incarceration, thereby reserving secure confinement facilities for violent felony offenders; and

(2) Establish a mechanism whereby state funds are granted to local governments and qualified private agencies to develop a range of front-end community based punishments and services for eligible offenders under this chapter.

In 1991, the Davidson County Community Corrections Program³⁰ (DCCCP) was created under this act as an alternative/diversion to sentencing. Since 1998, DCCCP has been administered by the State Trial Courts and Metro. The DCCCP adheres to the Tennessee State Board of Probation and Parole (BOPP) Community Corrections Program Standards and undergoes an annual audit conducted by the BOPP to ensure compliance with the standards. The General Assembly established the BOPP in 1999 by merging the Division of Adult Probation from the Department of Corrections with the Board of Paroles. The agency has several functions including conducting hearings, the community supervision of offenders, administration of the Community Corrections Grant Program, and administrative support services.

In addition, as required under Tennessee Code Annotated §40-36-201 of the Community Corrections Act, a local Community Corrections Advisory Board³¹ has been created to oversee and monitor DCCCP program operations³². The DCCCP compiles and submits an annual program statistical report to this board³³.

²⁹ Tennessee Code Annotated §40-36-101, et seq. The full text of the Community Corrections Act of 1985 is provided in the Appendix

³⁰ Davidson County Community Corrections website,
<http://communitycorrections.nashville.gov/portal/page/portal/communityCorrections/home/>

³¹ The current members of the Davidson County Community Corrections Advisory Board can be found at the following website: http://www.nashville.gov/mc/boards/community_corrections.htm

³² The roles and responsibilities of the Davidson County Community Corrections Advisory Board are provided in DCCCP Policy #100.15 in the Appendix

³³ The DCCCP 2009-2010 Annual Report to the Advisory Board is provided in the Appendix.

Profile of the Davidson County Community Corrections Program

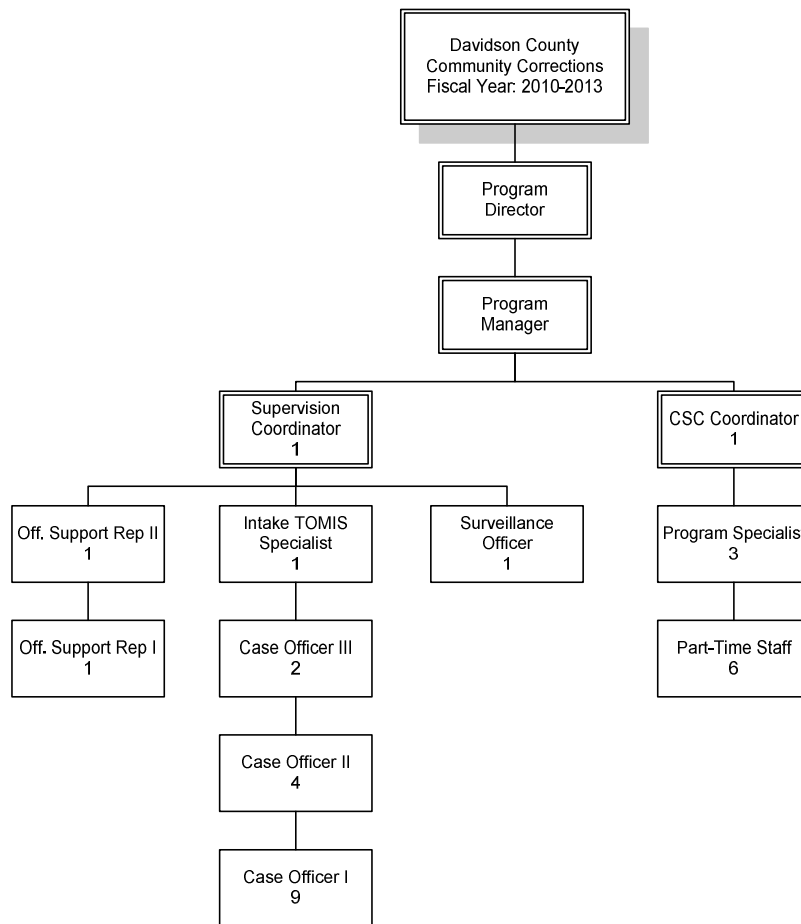
The mission of DCCCP is to *“to divert felony offenders from the Tennessee prison system by providing intensive community based supervision and treatment services necessary to reduce criminal behavior and create a safer community.”*³⁴ DCCCP provides opportunities and incentives for criminal behavior change in order to reduce recidivism. DCCCP provides offenders with counseling services, education, and training to enhance their ability to live in the community as productive, law abiding citizens. Services include assessments for substance abuse and mental health issues (services of a licensed psychologist or licensed psychiatrist will be utilized in appropriate cases); intervention to address substance abuse, educational deficiencies, personality disorders, and/or dual diagnosis either by inpatient or outpatient referral, and other life skills issues.

Organization of the Davidson County Community Correction Program

The Davidson County Community Corrections Program staff currently consists of a Program Manager, who oversees the day-to-day operations of the program; a supervision Coordinator, who reviews all case files and assists with the supervision of staff; a Tennessee Offender Management Information System (TOMIS) Specialist; Surveillance Officer; Office Support staff, and Case/Probation Officers. There are 31 DCCCP employees and all of the DCCCP staff member positions are funded by various grants administered through Metro Davidson County.

³⁴ The complete mission of the DCCCP is provided in DCCCP Policy #100.00 in the Appendix.

DCCCP Organizational Chart



Davidson County Community Corrections Program Services and Programs

Electronic Monitoring - DCCCP is seeking to have every offender placed on Electronic Monitoring for the first 6 months of supervision. This program allows DCCCP to track when an offender enters or leaves his/her place of residence. The program fees, charged to the offender, include a \$25.00 one time set up fee; \$6.00 per day thereafter; and a weekly fee of \$25.00 for each drug screen. The offenders are responsible for maintaining proper condition of all equipment. In addition to the offender being placed on Electronic Monitoring, home visits may be conducted each month.

Secure Continuous Remote Alcohol Monitoring (SCRAM) - The SCRAM unit is mainly used by the DUI Probation staff. This unit continuously monitors the alcohol level in the offender's

blood stream. A modem is placed in the offender's home which downloads every hour and sends a reading/action plan to the probation officer on a daily basis. This reading helps the probation officer determine any tampering with the modem or if the offender has violated his/her conditions of probation. SCRAM Unit fees, charged to the offender, are as follows: a one-time set up fee of \$25.00; \$10.00 per day thereafter, and a cost of \$25.00 fee per drug screen.

Global Positioning System (GPS) – This program allows DCCCP to track offender movements 24/7. All offenders placed on the Global Positioning System (GPS) are held responsible for maintaining proper condition of equipment. Equipment will be set up by a certified staff member in the home of the offender. The fees consist of a \$25.00 one-time set up fee and \$8.00 thereafter per day. The offender will also have to pay for each drug screen ordered by the court in the amount of \$25.00 per sample.

Dual Disorders Services (DDS) - Dual Disorders Services is responsible for attending to offenders who may possess both substance abuse and mental illness. All offenders in this program must comply with the same rules and regulations as Community Corrections with special emphasis on medication compliance and psychiatric treatment. DDS will assess all prospects prior to release. DDS will also arrange housing for the offender based on individual needs, assist in providing medication, and arrange any outside treatment, if necessary.

Drug Lab Unit - The Drug Lab Unit is responsible for ensuring that all drugs screens are properly submitted and tested for both the State Trial Courts and Community Corrections. The lab provides its own equipment for testing purposes and provides training to the staff on how to follow the chain of custody. The Drug Lab Unit also conducts drug testing for other Metro agencies including the Davidson County Mental Health Program and the Davidson County Sheriff's Office and, if requested, for other county and state probation programs as well as private facilities.

Court Services Center - Outpatient treatment or classes are offered through the Court Services Center which operates at the Drug Court residential facility. Group classes are conducted in the evenings Monday – Thursday at the residential facility. Each offender attends treatment class at least one to four times per week. Classes include: Aggression Replacement, Chemical Dependency, Corrective Thinking, Alcohol and Drug Education, Relapse Prevention and Individual Counseling and they are also required to attend some outside Narcotics Anonymous /Alcoholics Anonymous support meetings.

DUI Litter Pickup Fee Collection - Pursuant to a Metro Ordinance No. BL2010-686³⁵, the DCCCP Probation Officers have recently started collecting a DUI Litter Pickup Fee for offenders convicted of DUI in Criminal Court. This money is deposited into the fine/forfeitures account of the State Trial Courts. Tennessee Code Annotated §55-10-403(s) requires certain individuals convicted of driving under the influence to pick up litter as part of their sentence. Tennessee Code Annotated §55-10-403(s)(3) requires that individuals ordered to pick up litter as part of their sentence to reimburse the probation office or the county official that administers the litter pick up program, and requires that the litter pick up fee shall be equivalent to the jailer's fee adopted by the Metropolitan Council. On June 15, 2010, the Metro Council passed Ordinance No. BL2010-686 which:

Establishes a fee for individuals convicted of driving under the influence who are required to pick up litter as part of their sentence. The jailer fee, which was set at \$44.00 per day, is to help cover the cost of incarceration of misdemeanor prisoners. This ordinance formally adopts a litter pick up fee to be paid by the DUI offenders, and provides that the fee is to be divided equally between the fines and forfeitures account of the state trial courts and the sheriff's office.

According to the 2011 Metro budget projections, this ordinance is estimated to generate \$50,000 in increased revenue for the State Trial Courts. The DCCCP began collecting the DUI litter fees in late September 2010 and the total amount of fees collected as of

³⁵ The complete text of Ordinance No. BL2010-686 is provided in the Appendix.

November 30, 2010, is \$3,995.00³⁶, half of which remains with the State Trial Court (\$1,997.50) with the balance being forwarded to the Davidson County Sheriff's Office.

Profile of the Davidson County Drug Court Residential Program

The Davidson County Drug Court Residential Program³⁷ is a long-term residential drug and alcohol treatment facility, which operates under the direct supervision of the Division IV Criminal Court in the 20th Judicial District of Tennessee (Nashville/Davidson County). The Davidson County Drug Court Program is a diversionary program that provides for the supervision of non-violent offenders with substance abuse problems combined with intensive treatment and other integrated services. The key to making this program successful is Developing Character During Confinement (DC4). It appears that the Davidson County Drug Court may be the only self-operated residential drug court program established in this country.

Based on the data contained in the 2008-2009 Tennessee Drug Court Annual Report, since the program was established in 1997, 456 offenders are reported to have successfully completed the program. The recidivism rate for persons successfully completing the program since inception is approximately 21.7%³⁸. The retention rate since program inception is approximately 49.2%³⁹. On average, participants had more than eight prior drug charges, and had been previously incarcerated from two to four years. The Davidson County Drug Court Residential Program currently has the capacity to serve 116 adult, non-violent, felony offenders (76 male and 40 female); the daily average census is 80.

Offenders may be referred to the program by the Public Defender's Office, a private defense attorney, or upon successful completion of an in-jail treatment program. The Drug Court Assessment Team assesses all eligible referrals in order to determine whether or not

³⁶ These numbers were supplied by the DCCCP Program Manager on December 14, 2010.

³⁷ Davidson County Drug Court website, <http://drugcourt.nashville.gov/portal/page/portal/drugCourt/home/>

³⁸ This percentage is calculated as "% of graduates since inception who have at least 1 conviction within 2 years of graduation".

³⁹ This percentage is calculated as "total number of graduates since program's inception + number currently enrolled / total number of admissions to program since programs inception".

placement in the Residential Program or Intensive Outpatient Program is appropriate. If placement is deemed appropriate, a recommendation is made to the court to admit the offender into the appointed program.

All offenders entering the program are supervised by the Davidson County Community Corrections Program (DCCCP), which is administered by the State Trial Courts. Each offender receives a chemical dependency, educational, employment and medical assessment. An individualized treatment plan is developed for each offender based upon the above assessments. The program strives to assist the offender in overcoming his/her addiction, eliminating criminal behavior, developing life skills, obtaining vocational training, completing basic education and attending to other specific needs.

Organization of the Davidson County Drug Court

The Drug Court program currently employs seven full-time counselors to provide individualized treatment to residents. A Clinical Coordinator oversees the counseling staff. Four of the counselors serve residents in Phases I and II, one counselor serves the Phase III residents and there are two aftercare counselors. There are currently 32 Drug Court staff members and three contracted positions, all of which are funded by grants administered through Metro. There are currently 90 residents in the inpatient program (including ten mental health court participants), 22 participants in the aftercare program, and 18 in the out-patient program.⁴⁰

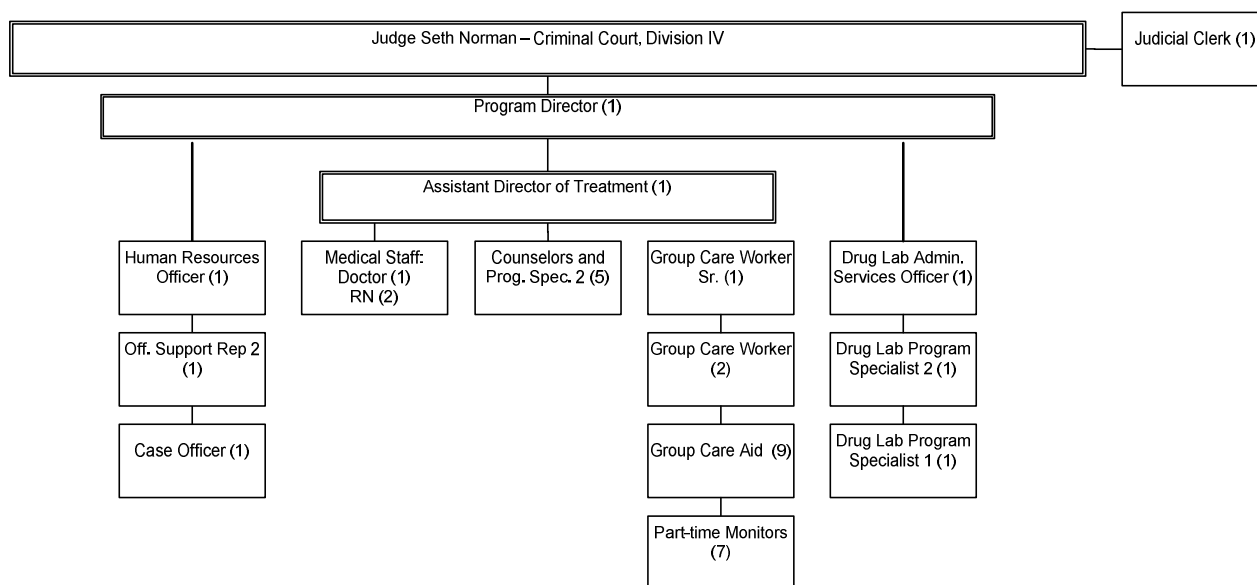
In addition, in 2005 under Tennessee Code Annotated §68-24-103⁴¹ the Meth-Free Tennessee Act was passed and legislatively mandated the development of a Meth Pilot Project. The Davidson County Drug Court was designated as the pilot site and as a part of the fiscal year 2005-2006 State budget, the Drug Court was awarded approximately \$1.7 million for the project. The pilot project was designed to offer drug court clients from all Tennessee counties who were addicted to methamphetamine the opportunity to have their cases temporarily

⁴⁰ These numbers were provided by the Drug Court Program Director on December 6, 2010.

⁴¹ The Meth-Free Tennessee Act has since been transferred to Tennessee Code Annotated §33-10-101 – The Comprehensive Alcohol and Drug Treatment Act of 1973.

transferred to Davidson County for specially designed services and supervision. A Judicial Clerk position was created during the pilot project for security purposes to transport offenders to and from the various counties and to assist with court security at drug court. The original Meth Pilot Project was subsequently subsidized by funding from the American Recovery and Reinvestment Act of 2009 (ARRA) which ended as of June 30, 2010. However, because of the success of the pilot, the Drug Court continues to take in meth-addicted offenders as vacancies occur and has absorbed the costs within existing budgets. The current number of meth offenders in the Drug Court program is 17.⁴² The Drug Court Program Director believes that one of the key reasons that they were able to obtain additional state funding for the current fiscal year is because of the continued assistance with the state-wide meth-addicted population.

Drug Court Organizational Chart



Drug Court treatment services are generally delivered in the following phases:

⁴² This count was provided by the Drug Court Program Director and is current as of 11/30/2010.

Phase descriptions:

Phase I: Assessment and Orientation, is a minimum of four weeks in length. During this phase, the resident completes orientation and any other assessments needed to develop the treatment plan. Residents stay at the residential facility 24 hours, 7 days a week during this phase and are drug tested on a random basis.

Phase II: Stabilization and Rehabilitation, is a minimum of 12 weeks in length. During this phase, residents pursue treatment plans bundled with a wide range of services including individual, group, family, and drama therapy. Services are delivered through didactic approaches such as psycho-education, addictions treatment, medication group, relapse prevention, group therapy and coping strategies. Cognitive therapy and motivational interviewing are integrated with a 12-step based recovery program. This also includes vocational training, educational/GED training, life skills, cognitive behavioral interventions and community service work. Each resident performs a minimum of 200 hours of community service work while in the residential program. During this phase, residents are slowly integrated into the community by attending five outside support meetings of Alcoholics Anonymous/Narcotics Anonymous/Cocaine Anonymous. Residents receive no less than two random drug screens per month during this phase.

Phase III: Re-entry and Employment, is a minimum of 12 weeks in length. During this phase, residents develop an initial aftercare plan with the counselor, begin employment or vocational training and maintain educational pursuits. Pass time is earned to begin the integration process back into the community. A program fee is charged to residents to include them in the financial responsibility to offset the cost of the program. Drug screens during this phase are included for accountability. Residents receive no less than two random drug screens per month during this phase.

Aftercare: Transition, is a minimum of 6 months. Upon successful completion of the three-phase program, residents graduate to aftercare. Graduates are placed in transitional housing

away from the facility and return to Drug Court Residential Program weekly for group therapy, individual therapy and drug testing.

Training Requirements

The agency requires that all employees receive adequate training to perform basic duties of their positions.⁴³ Professional staff members who provide direct services are required to meet state certification and or licensure conditions.

- All new full-time case officers will complete 40 hours of pre-service training. This training will be provided by the State within six months of a new case officer's employment.
- All full-time professional employees will receive a minimum of 40 hours in-service training annually.
- All part time and hourly employees will receive a minimum of 20 hours training annually.

The required 40 hours of training is tracked by the DCCCP Human Resources administrative assistance. This employee provides verification of training hours received from the trainer and/or documentation from Metro's training division. A training log is kept in each employee's personnel file. This training log is reviewed annually by state auditors as part of the annual audit of DCCCP.

In addition, per DCCCP Policy #100.14⁴⁴, all employees are required to enter the required information into the Tennessee Offender Management Information System (TOMIS) for any offender involved in the program. All employees are required to follow the Tennessee Board of Probation and Parole requirements for learning how to use TOMIS.

Funding for the Davidson County Community Corrections Program

The DCCCP is partially funded through a grant received from and administrated by the Tennessee Board of Probation and Parole. The DCCCP grant award for fiscal year 2008 was

⁴³ The personnel training requirements are provided in DCCCP Policy #100.04 in the Appendix.

⁴⁴ The full text of DCCCP Policy # 100.14 is provided in the Appendix.

\$1,329,612 and \$1,345,500 for fiscal year 2009⁴⁵. In addition, based on a recent resolution (RS2010-1490) the grant funding for this program has been increased for fiscal year 2010 through fiscal year 2012 and the amount will now be \$1,415,112 for each year in the grant cycle. The grant process requires DCCCP to reapply for the grant on a 3 year cycle. DCCCP notifies the Metro Office of Grant Management that they are reapplying for the grant when the grant cycle is close to expiring. During the past 2 fiscal years, additional appropriations in the amounts of \$100,900 in fiscal year 2009⁴⁶ and \$143,900 in fiscal year 2010⁴⁷ were provided by the Metro Nashville Council to the DCCCP due to over expenditures charged to this grant. In addition, in 2009, the DCCCP received federal grant funds for co-occurring participants in the dual-diagnosis service **out-patient** program. This grant was in the amount of \$200,000 and is currently in the second year with a remaining balance of approximately \$100,000. This program is scheduled to end in December 2011 and the DCCCP has thus far been unsuccessful in obtaining additional grant funding for the program. There is currently one full-time and one part-time position linked to the grant, and, if no additional funds are attained, these two positions will be unfunded at the end of 2011.

Program Income for Community Corrections

The DCCCP assesses program fees to participants for the following services:

Monthly Supervision Fees: \$45 a month. \$15 of that amount is retained by the DCCCP and the remaining \$30 is sent to the State of Tennessee.

Drug Test: \$25 per test⁴⁸.

Electronic Monitoring: \$25 one-time set up fee and \$6 per day thereafter.

SCRAM: \$25 one-time set up fee and \$10 per day thereafter.

GPS: \$25 one-time set up fee and \$8 per day thereafter.

DUI Supervision: \$35 per month.

⁴⁵ The DCCCP grant amounts were provided by the Metro Office of Internal Audit.

⁴⁶ The full text of Substitute Resolution Number RS2009-807 is provided in the Appendix.

⁴⁷ The full text of Resolution Number RS2010-1183 is provided in the Appendix.

⁴⁸ As previously noted, the Drug Lab Unit conducts drug tests for Metro as well as other entities. The 2010 Drug Testing Revenue Report broken down by organization is provided in the Appendix.

The DUI Supervision fee is based on the following section of the Tennessee Code Annotated⁴⁹:

Tennessee Code Annotated §40-35-303(i)(1) In misdemeanor cases, as a condition precedent, the defendant must pay not less than ten dollars (\$10.00) nor more than forty-five dollars (\$45.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant. **The payment shall be made to the clerk of the court in which proceedings against the defendant were pending, to be sent to the agency, department, program, group or association responsible for the supervision of the defendant, unless the defendant is found to be indigent and without anticipated future funds with which to make the payment.** The clerk of the court collecting the payment is permitted to retain five percent (5%) of the proceeds collected for the handling and receiving of the proceeds. **The court may order the payments to be made directly to the agency, department, program, group or association responsible for the supervision of the defendant in lieu of making the payments to the clerk of the court.** (emphasis added)

In June 2008, Metro passed Ordinance BL2008-176⁵⁰ which established that DUI offenders must pay \$35.00⁵¹ per month DUI Supervision fee for the term of probation, which is routinely set at 11 months and 29 days. This fee was not being collected by either the DCCCP or the Criminal Court Clerk on behalf of DCCCP until April 2010, when the DCCCP Program Manager identified this discrepancy and the DCCCP took over the collection responsibilities. There are 4 DCCCP DUI Probation Officers that collect the DUI supervision fees and there are currently 510⁵² active DUI probation cases. Based on these numbers, it appears that there is a potential for a significant increase in the DCCCP program income, i.e. 510 cases x \$35 x 12 months = \$214,200 annually.

Funding for the Davidson County Drug Court

The Davidson County Drug Court is funded from a variety of sources and grant programs. The following amounts are for the 2011 fiscal year:

⁴⁹ This code section was amended by Public Act 408 in 2003 increasing the fee amount from \$10 - \$35 to \$10 - \$45. The full text of the Public Act 408 is provided in the Appendix.

⁵⁰ The full text of Ordinance BL2008-176 is contained in the Appendix.

⁵¹ The \$35.00 amount was established by Metro to be in alignment with the fee charged by the General Sessions Department of Probation.

⁵² This case load numbers were provided by DCCCP on November 22, 2010.

Table 4
**Funding Sources for the Davidson County
Drug Court**

	<u>Amount</u>
**Tennessee Department of Corrections (TDOC)	982,000.00
Criminal Justice Residential Drug Court	500,000.00
Justice Assistance Grant (JAG) – Byrne	139,300.00
Residential Substance Abuse Treatment (RSAT)	66,667.00
Total	1,687,967.00

Other Funding Sources

In addition to the funding sources identified above, the Drug Court receives either additional *revenues* or derives *benefits* from the following sources:

Nashville Drug Court Support Foundation

In 1996, the Nashville Drug Court Support Foundation (NDCSF)⁵³ was incorporated as a 501(c)(3) organization to help fight the substance abuse problem in the local criminal justice system. The mission of the NDCSF is to solicit support for the Davidson County Drug Court

⁵³ Nashville Drug Court Support Foundation (NDCSF) website, <http://www.supportnashvilledrugcourt.org/>. Being a separate organization from the State Trial Courts, the NDCSF is not subject to this audit.

Residential Program (DC4). The NDCSF relieves program management from the task of having to continually seek funding to support program operations, and in doing so, the program is able to place primary focus on providing effective treatment services for participants. Support for the program includes securing funds needed for general operating costs, requesting monetary and in-kind donations such as, equipment, furnishings, clothing and any other daily needs to operate the residential facility.

There are currently three employees on the NDCSF payroll: a director, administrative assistant, and a data processor. They receive funding for their salary and other expenses from federal appropriations and donations from the Baptist Healing Trust⁵⁴. There does not appear to be a written, formal agreement between the NDCSF and the Drug Court.

The Drug Court does not receive any *direct* monies from the NDCSF; however, the foundation provides assistance by purchasing tools and supplies for the vocational building, pays the part-time security officer and cosmetology instructor, funds other extracurricular activities and outings for the participants, and assists with purchasing Christmas gifts for the residents of the program and their children, etc. The amount of these benefits fluctuates from year to year and is dependent on the amount of donations that are collected by the foundation. The following is the estimated value of the benefits that NDCSF has provided to the Drug Court for 2008 through 2010.

⁵⁴ The Baptist Healing Trust website, <http://www.baptisthealingtrust.org/>

Table 5
Value of Benefits from NDCSF

Appropriation 12-2008/11-2010:

Psychological/Psychiatric Services	\$164,036.06
Clinical Support Materials	\$ 1,572.37
Equipment	\$ 7,058.03
Educational/Vocational Resources	\$ 3,610.06
Resident Incentives	\$ 5,000.00
TOTAL	\$181,276.52

NDCSF Primary Account - 2010

Automotive/Vocational Resources	\$ 4,106.84
Karen Sowell/Beauty Shop	\$ 3,000.00
Al Gray/Security (\$144 a wk X 52 weeks)	\$ 7,488.00
Christmas Expenses for Residents	\$ 4,000.00
Resident Telephones	\$ 3,400.00
TOTAL	\$ 21,994.84

Drug Court Treatment Act of 2003⁵⁵: This legislation was created to facilitate the implementation of new drug court treatment programs and the continuation of existing efforts. It authorizes criminal courts to apply for grant funds to be used for a specified list of expenditures related to drug court treatment programs. The Act directs the clerks of all courts of general sessions, circuit, criminal and municipal courts with general sessions jurisdiction to collect a seventy-five dollar (\$75.00) fee from any person who:

- (1) Enters a plea of guilty;
- (2) Enters a plea of *nolo contendere*;
- (3) Is adjudicated at trial; or
- (4) Enters a plea pursuant to any of the diversionary sentencing statutes to any criminal offense, or for attempt or conspiracy to commit any such offense, or for aiding or abetting, or acting in the capacity of an accessory in the commission of any offense under Tennessee Code Annotated, Title 39, Chapter 17, Part 4, the Tennessee Drug Control Act.

⁵⁵ The complete text of the Drug Court Treatment Act of 2003 is provided in the Appendix.

Tennessee Code Annotated §8-21-401 requires that this assessment shall be in addition to all other taxes, costs and fines. The first five dollars (\$5.00) of each assessment shall be paid to the clerk of court imposing assessment, who shall transfer it to the state treasurer for credit to the general fund. This amount is and earmarked for use by the Department of Finance and Administration, Office of Criminal Justice Programs, for funding drug court treatment program administration and funding such grant awards as are made by the Department of Finance and Administration, Office of Criminal Justice Programs. ***The remainder of the assessments shall be deposited by the clerk of the collecting court into a dedicated county fund.*** The fund shall not revert to the county general fund at the end of the fiscal year, but shall remain for the purposes set out in this section. ***The money shall be used by the county exclusively for the creation and maintenance of state drug court treatment programs as defined in Tennessee Code Annotated §16-22-104.*** In the event no drug court treatment program operates in a county, the remainder of the funds from that county shall be remitted annually in full to the State of Tennessee to be placed in the drug court treatment program resources fund to be administered by the Department of Finance and Administration, Office of Criminal Justice Programs, in accordance with Tennessee Code Annotated §16-22-110. The comptroller's regular audit of a local government shall also include the dedicated county fund established by this section.

Under this Act, the fee amount is collected by the Criminal Court Clerk and placed in the DCCCP Drug Court account. The Criminal Court Clerk sends an annual report to the Drug Court Program Director who then forwards the accounting report to the Tennessee Office of Criminal Justice Programs (OCJP)⁵⁶. Because Davidson County maintains three separate drug courts, the collected monies are shared between the DCCCP, General Sessions, and Juvenile Drug Courts. The amounts received by the DCCCP for the past 3 years are: \$14,901.08 for fiscal year 2008, \$14,219.18 for fiscal year 2009, and \$7,545.18 for fiscal year 2010⁵⁷. The DCCCP Program Director stated that the reduced amounts received in 2010 were a result of the downturn in the economy, i.e. fees were just not being paid as quickly as in prior years.

⁵⁶ The State of Tennessee Office of Criminal Justice Programs website, <http://www.tn.gov/finance/rds/ocjp/>

⁵⁷ These numbers were provided by the DCCCP Program Director on November 22, 2010. The corresponding annual reports are provided in the Appendix.

Davidson County General Sessions Mental Health Court

The Drug Court has partnered with the General Sessions Mental Health Court⁵⁸ and has allotted 10 beds at the Residential Facility for participants with co-occurring disorders as identified by the Mental Health Court. The Mental Health Court applied for and received federal appropriations for this collaborative effort between the two courts. The original grant was scheduled to expire on December 31, 2010; however, a one year extension has been approved. It is projected that the remaining grant funds will be expended by June 30, 2011. The Drug Court does not directly receive any of the grant money; however, this money helps fund a part-time psychiatrist and a full-time psychologist that provide assistance to both court's populations.

⁵⁸ The Davidson County General Sessions Mental Health Court website,
<http://gscourt.nashville.gov/portal/page/portal/generalSessions/mentalHealthCourt/>

Davidson County Community Corrections Program Operations Assessment

This section summarizes the Observations and Recommendations of the performance audit team and is derived from site visits to the Metro Davidson County DCCCP and Drug Court programs, interviews with program staff members, personal observations and research, and review and analysis of relevant background materials.

The following specific issues were established with the Metro Office of Internal Audit and served as the basis of the performance audit in regards to the DCCCP:

Community Corrections Issue 1: Grant Management: The Community Corrections Department, and its subsidiary divisions, relies on grant funding for a significant amount of its operating resources. ***Can a review of grant management procedures provide for improved efficiency of operations and effectiveness of programs?***

Community Corrections Issue 2: Fiscal Activities & Internal Controls: The Community Corrections Department staff collects and accounts for a significant amount of court-ordered payments by clients. ***Can a review of the payment receipting and accounting process and related internal controls reduce the inherent fiscal risk associated with these activities?***

Community Corrections Issue 3: Performance Measures: The Community Corrections Department maintains and reports a variety of information pertaining to the caseload such as participants admitted and terminated, home visits conducted, payments received, etc. (inputs and outputs). Recidivism data, i.e. outcomes, was apparently discontinued a few years ago. ***What is the average length of time required for participants who graduate from the programs? What percentage of participants graduate? What is the long-term recidivism rate? How do these measurements compare with STC objectives or other comparable programmatic results?***

Grant Management

As previously outlined, the Drug Court is funded from a variety of grants and sources. There is a proposal under consideration in which the Drug Court would receive \$982,000 per

This recommendation is based on the fact that both the Metro and State budgets for fiscal year 2011 have already been finalized and approved. The Drug Court is anticipating receiving \$982,000 and may have made financial plans based on the tentative agreement. If the joint plan does not come to fruition, the Drug Court may need to pursue alternative funding sources in order to accommodate any shortfalls. In addition, the formal agreement should be drafted to span multiple years and include minimum guaranteed amounts so that the Drug Court can develop realistic budgetary projections.

AUDITOR NOTE: The Joint Plan between Metro and the Tennessee Department of Corrections was approved and passed by the Metro Council via Resolution RS2010-1491⁵⁹ and enacted on December 22, 2010.

[illegible]

The Drug Court does not receive any direct money from the NDCSF, although it does derive direct benefits from the organization. Since 2008, the Nashville Drug Court Support Foundation has provided the Drug Court with approximately \$186,000 in estimated benefits (average of \$62,000 per year). At the same time, the Drug Court paid over \$112,000, or \$56,000 per year, to the Nashville Drug Court Support Foundation for various services. However, there is no written agreement between Metro Davidson County and the NDCSF.

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operational and reporting relationships between these entities are not clearly articulated.

An overall, detailed organizational chart that accurately depicts the relationships between the State Trial Courts, Drug Court, DCCCP and the Nashville Drug Court Support Foundation should be developed. The organizational chart should clearly depict the organizational, operational and, most importantly, the reporting relationships. Also, although job descriptions appear to exist for most, if not all, of the staff positions, these descriptions should be updated to accurately reflect staff member roles and responsibilities in relation to the each specific entity.

[illegible]

Although both the DCCCP and the Drug Court are funded, for the most part, by grants, there is no single staff member or centralized grant management function. The Drug Court grants are monitored by the Program Director and the Budget Officer while the State BOPP grant is monitored by the DCCCP Program Manager. A DCCCP staff member has been assigned to assist with identifying and monitoring federal grant opportunities.

Recommendation 15. *The State Trial Courts, Drug Court and DCCCP should centralize grant management functional responsibilities to more effectively manage and oversee all public and private grants they receive.*

Effective grant management depends on certain core principles and competencies, e.g. identifying grant opportunities, preparing grant applications, administering active grants, monitoring standards, identifying and managing financial and programmatic risks, staying in grant compliance, etc. Adhering to those principles is especially

important in government grants, where compliance and reporting requirements are usually very rigorous, but would also apply with managing grants from private sources, i.e. foundations or corporations.

Because the DCCCP /Drug Court is funded in part by Federal and/or State grants, a centralized grant management function should be established to oversee and manage the current grants, identify additional funding sources, and pursue potential partnership or collaborative relationships with other Metro or State agencies for joint granting opportunities. Currently, the DCCCP monitors www.grants.gov, the Federal website that offers information on discretionary grants from the 26 federal grant-making agencies. However, the DCCCP may want to expand its efforts in looking for and pursuing additional funding sources (both public and private) and partnering with other agencies, i.e. Metro's Justice Integration Services to seek funding for DCCCP software application.

[illegible]

Fiscal Activities and Internal Controls

An office support staff member is responsible for distributing and tracking the manual receipt books that the officers use to generate receipts for the various fees/fines that they collect, e.g. state, local and restitution, drug tests, DUI, etc. The receipt books are pre-numbered and each receipt has three copies, e.g. one original copy to offender, one copy for case file, and one copy remains in receipt book. Once an officer has used all of the receipts in the current book, he/she requests a new book from the officer support staff member. The office support staff member maintains a manual receipt book log that lists the officer's name and starting receipt number for each book. The books are stored in a box in a room within the DCCCP offices. The receipt books are not distributed in sequential order and there does not appear to be any controls around the management of the books.

In addition, it appears that some of the officers are using the manual receipt books, while others are utilizing the Adult Probation Case Management (ADPB) system to generate receipts. In some cases, officers are using both manual and electronic receipts.

Recommendation 16. *The DCCCP should require that all receipts be generated from the ADPB system rather than utilizing the manual receipt books.*

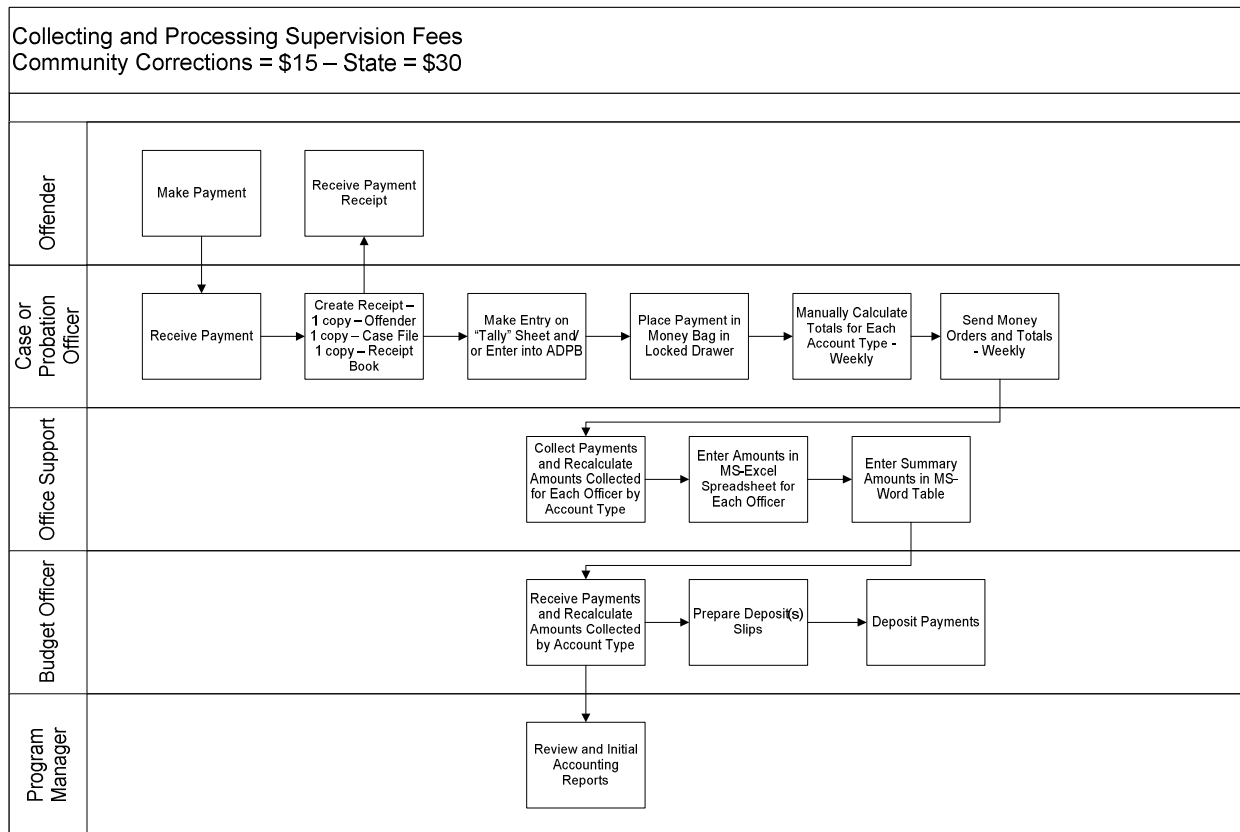
The DCCCP should work with JIS to ensure the ADPB system is properly configured so that all collected monies can be receipted through the system. This would eliminate the need to use manual receipt books and would, in some cases, prevent duplicate efforts, i.e. completing both a manual and electronic receipt. In addition, the ADPB system could produce weekly/monthly/annual accounting reports that would eliminate the need for the officers to manually calculate receipted amounts.

[illegible]

Every week, the case/probation officers manually calculate the monies they have collected using handwritten “tally” sheets and manual receipt books. These totals along with the original money orders⁶⁰ are forwarded to the office support staff member. Currently, the office support staff member receives the fees/tally sheets from 17 to 18 officers on a weekly basis; however, if an officer does not submit any fees, there is no follow-up to determine the reason. The office support staff member verifies that the offender name and the account type matches, then recalculates the totals and enters the amounts into an MS—Excel spreadsheet for each officer. In addition, the totals are entered in an MS-Word summary document which is used as input source for the monthly/annual reports. The office support staff member then forwards the original money orders and calculated totals to the budget officer. The budget

⁶⁰ The DCCCP only collects payments via money orders and do not collect cash, accept personal checks, or process credit card payments.

officer, in turn, manually recalculates the totals and creates the deposit slip(s) for depositing the money into the corresponding accounts (Metro/State). The DCCCP Program Manager then reviews and initials the accounting report. The following process flow depicts the current procedure:



In addition, DCCCP Policy #600.02⁶¹ contains the guidelines for monitoring, collecting and processing offender payments of supervision fees. However, this policy did not appear to be in alignment with the current fee processing practices. Because of the heavily manual

⁶¹ DCCCP Policy #600.02 is provided in the Appendix.

As outlined above, the collected fees totals are manually calculated and/or recalculated several times during the process. Although the time an individual staff member expends to perform these financial/administrative activities may average only one to three hours per week, this represents a significant amount of time when totaled for the multiple individuals involved throughout the office. As outlined in the prior recommendation, the DCCCP should utilize the ADPB system to generate receipts thereby reducing the amount of time spent on the manual processes. Controls should be put in place that requires each officer to report on a weekly basis regardless of whether they have collected fees to ensure that all money that has been collected for the time period has been reported. The DCCCP should work with JIS to generate the corresponding financial tracking reports so that the manual spreadsheets and tables can be eliminated. This would reduce the amount of manual processing and provide a more accurate overall accounting process.

[illegible]

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The probation officer should have a dedicated workspace to collect the fees inside the DCCCP office that would provide a safer environment and eliminate the need to conduct financial transactions in the hallways of the courthouse. In addition, the officer would be able to generate electronic receipts directly from the ADPB and would no longer need to maintain a manual receipt book. An automated listing of receipted money could be generated from the ADPB every week and this would reduce the amount of time the officer spends on manually maintaining and calculating receipted funds.

The Davidson County Criminal Court Clerk's Office⁶² collects many fines, fees, taxes and court costs from convicted defendants. All costs associated with criminal cases are calculated at the conclusion of each case. According to the Criminal Court Clerk's website, they accept checks in person or through the mail as well as credit card payments via phone. The DCCCP and the Criminal Court Clerk's Office are co-located in the Justice A.A. Birch Building.

The Clerk's office utilizes the Criminal Justice Information (CJIS) system as its case management system which tracks all criminal court case information to include post-conviction related activities (including payment of fines/fees/costs, sentencing, probation compliance, etc.) and utilizes the accounting functionality to record and receipt payments. When a

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information, contact log (to record home/office/phone contacts), and conditions/other events (to include drug testing, violations, etc.). In addition, the DCCCP receives an Arrest Listing via e-mail from the CJIS system that reports those offenders who have been rearrested. The case/probation officer can then follow-up to identify the community corrections impacts and determine the next steps.

In the past, DCCCP worked with Justice Integration Services (JIS)⁶⁴ and completed the design to expand the current adult probation module into a more comprehensive system that would address the DCCCP's operational needs. However, due to budget cuts and shortfalls, the project was cancelled before any development work was initiated.

The DCCCP was able to provide all data requested during the performance audit, but this information was in the form of month-by-month detailed listings of offenders with handwritten notes regarding their statuses. Summary "tally" sheets were also provided, but the numbers were manually calculated which was a time-consuming task for the DCCCP staff to produce.

The Drug Court utilizes a different computer system (MIS) to produce a comprehensive annual report as required by the Tennessee Office of Criminal Justice Programs (OCJP)⁶⁵. It provides historical statistics since program inception and includes: admitted/enrolled, graduated/terminated/withdrawals, successful completions, recidivism/retention rates, employment stability, educational gains, community services hours, etc. This application is geared towards and produces the grant-mandated statistics and reports on the performance measures required under the Drug Court grant. DCCCP may be required to start utilizing eTOMIS (state-provided system) to track program information and outcomes. It appears that if this is required, that eTOMIS would replace the current ADPB system and DCCCP's reporting capabilities would be limited to what can be produced from the State system. In addition, DCCCP may be required to start using a paper-based intake assessment "tool" - LSEMI – for the

⁶⁴ The Justice Integration Services website, <http://jis.nashville.gov/portal/page/portal/jis/home/>

⁶⁵ The full text of the Tennessee Office of Criminal Justice Program's (OCJP) *Performance Measures for the Tennessee Drug Courts* is contained in the Appendix.

BOPP Program Standards⁶⁷ address many operational areas including: administration and management, safety, personnel, staff training and development, offender contacts, supervision of case records, intake transfer and termination, violations, and community service. However, the standards and the state audit only address **what** policies and procedures are in place but not **how** they are executed. In short, the BOPP auditors verify the existence of a particular policy or procedure but do not validate whether the policy is being executed as written.

All of the DCCCP written policies are set to expire on a specific date. Upon expiration date, the DCCCP Program Manager advances the expiration date and the updated policies are submitted to the local Community Corrections Advisory Board for approval. However, it appears, the policies are oftentimes not reviewed and revised to reflect the actual practices within the office. For example, it was observed that the steps outlined in Policy #600.02 – Collection of Supervision Fees did not align with the actual process. However, this seems to be more an issue with outdated policies rather than staff performance. In addition, there do not appear to be written policies that address some of the newer activities within the office, i.e. DUI Litter Fee Collection, DUI Supervision Fee Collection, etc.

Recommendation 21. The DCCCP should review and update if appropriate, all written policies and create new policies where applicable, to ensure that the policies accurately reflect the desired processes and practices within the office.

This would ensure that all written policies accurately reflect the desired practices and to verify that they have been consistently implemented across the office. Although there are written policies, it appears that each case/probation officer has a lot of flexibility and autonomy in how he or she maintains their case files, collects and receipts payments, etc. A comprehensive policy analysis would present an opportunity to review the current policies with the staff and provide a forum where they could suggest process improvements. New policies should be created that address any new procedures, for example, DUI fee collection.

⁶⁷ The full text of the Tennessee State Board of Community Corrections Program Standards is provided in the Appendix.

As noted previously, recidivism rates are considered a key performance measure throughout the criminal justice community. Oftentimes, the ability to apply for and receive federal grant money is tied to the ability to track and report on this rate. If the current ADPB system does not provide the mechanism to enter, track and calculate this indicator, the DCCCP should start tracking the recidivism rate through a spreadsheet or table application. Every person who is arrested in Davidson County is assigned a unique fingerprint-based person number (OCA) and this number is tied to that person in all of the criminal justice systems including the ADPB. The DCCCP has access to the Metro Police Department's Advanced Records Management System (ARMS) and CJIS where they could determine if a community corrections offender has been re-arrested and/or re-convicted of a crime while they are in the program and **after** they have completed the community corrections program.

[illegible]

It was observed during the performance audit process that each case officer maintains their own listing of community service agencies where they place offenders. Based on their experiences, the case officers identify the appropriate community service agency that is willing to work with each offender. Criminal history, current offense, and skill set of the offender are considered when placing an offender in any community service program. In addition, each Criminal Court judge may maintain a separate list of preferred agencies when they order community service as a part of the sentence. Each judge can use his or her own discretion and designate a specific program within the court order. It was unclear if there was a centralized community services agency listing maintained within the DCCCP offices. Also, the DCCCP does not have a staff member (either full- or part-time) assigned to evaluate the various community services providers; the overall program operates under the “honor system”. In the past, a staff member was assigned to audit the community service operations, but the position was eliminated due to budget cuts. Currently, the case officers do not regularly follow-up or question the number of hours reported by the agency/offender.

Recommendation 23. *Compile a centralized listing and assign either a full- or part-time staff member to validate and verify that community service agencies are in compliance with reporting standards and that service is occurring as ordered by the court.*

The DCCCP should compile a centralized list of all community services agencies derived from all case officers and criminal court judges. The list should then be reviewed and examined to identify the most viable community service agencies. In addition, the DCCCP should assign a staff member to periodically “spot check” the agency operations to determine if community services hours are being accurately tracked and the work is being completed as reported. Having a DCCCP officer conduct periodic compliance checks and audits may help detect and prevent abuse within the community services system and avoid allegations of fraud like the recently reported Galaxy Star Drug Awareness and Gang Prevention Center indictment.⁷³

[illegible]

There are currently two DCCCP case/probation officers assigned to each of the six Criminal Court divisions. Currently a case officer is in attendance at each court session in which probation violations are expected to be addressed or, one or more defendants might be ordered to participate in the community corrections program as a part of their sentence. The prevailing rationale behind having case officers available for every court session is to ensure that an officer is available to immediately conduct the intake process in the event that community corrections is ordered as part of the sentence. DCCCP legitimately seeks to avoid any possibility that an offender may leave the courthouse before they are “officially” enrolled in the program and have conducted the intake meeting. In addition, case officers need to be

⁷³ Website link to the news article on Galaxy Star Drug Awareness and Gang Prevention Center case – Indictment for Selling Fake Community Service Hours - <http://www.myfoxmemphis.com/dpp/news/local/090810-indictment-says-fake-community-service-hours-sold>

available in court to present any information in relation to any probation violations or to discuss information contained in pre-sentence investigation reports.

These court sessions are usually conducted every Wednesday – Friday of each week, excluding holidays, judicial conferences, etc. The case officers rotate on a bi-weekly basis; therefore, each officer is scheduled to be in court for up to three days every other week.

The following calculation is an estimate of the cumulative amount of time each week that case officers spend in court:

5 hours per day/per court session; 6 case officers; 3 days per week

$5 \times 6 = 30$ hours per day $\times 3$ days = 90 hours per week

The following represents the estimated average amount of time to complete the intake process per week:

- 20 - 30 minutes – average length of time to complete the intake process
- 9.3 – average number of intakes per week⁷⁴

30 minutes $\times 9.3$ average intakes per week = 270 minutes/60 = 4.65 hours per week

Recommendation 24. To the extent that Metropolitan Nashville funds are used, develop new scheduling practices and policies to reduce the time spent in court by the case/probation officers.

As noted above, the case/probation officers spend a significant amount of time in court to handle probation violations and community corrections intake. However, the actual amount of time that is spent on conducting these activities is relatively small in comparison to the total hours expended per week. While there is a legitimate concern that the DCCCP complete the intake process before the defendant has an opportunity to leave the courthouse, the procedures can be modified to make the overall process more

⁷⁴ This number was estimated using the 2009-2010 DCCCP Annual Report intake numbers. The number of intakes was reported at 449. The average number intakes per week is calculated as: $449 / 48$ weeks (accounts for holidays, judicial conferences, etc.) = 9.3.

efficient. Some defendants are “still in custody” when they are sentenced to community corrections. In these instances, the court officers can “hold” the defendant until a case/probation officer can be contacted to complete the intake process. Other defendants may not be in custody when they are sentenced to community corrections. The judge or court officers could instruct the defendant not to leave the courtroom until a case/probation officer has met with them. The court officers have cell phones and could contact the case/probation officer to let them know when they are needed in court. The Criminal Courts and the DCCCP are all located in the Justice A.A. Birch Building.

In addition, the case/probation officers can review the court docket to know when a probation violation is scheduled. DCCCP management and the criminal court judges should discuss scheduling probation violations at a reasonably consistent time. This may not always be possible because the order in which cases are heard is dependent on many factors including attorney and witness availability, priority of other cases, type of cases, etc. However, working with the judges to hear the majority of probation violation cases at a predetermined time will reduce the amount of time the officers spend in court allowing them to dedicate more time to their supervisory responsibilities.

4. Staffing & Job Classifications

Staffing/Job Classifications Issue 1: Are the staffing levels established in a way that provides adequate and appropriate resources and flexibility to ensure efficient operations?

The staffing levels vary among the three trial court types and the corresponding assigned responsibilities differ between staff working for the individual judges and Chancellors. In addressing the issue, the performance audit team requested and obtained employee rosters and job descriptions from each of the Circuit Judges, Criminal Judges and Chancellors. It also should be noted that court employee positions in Davidson County are, by statute, appointed by and serve at the will of the individual judges.

Under Tennessee Code Annotated §8-8-201-(a)(2):

(B) (i) *In any municipality having a metropolitan form of government and a population of over four hundred fifty thousand (450,000) according to the 1990 federal census or any subsequent federal census the trial judges shall, within the annual budget appropriation, appoint persons to serve as court officers for the respective courts, such persons to serve at the will of, and under the direction and supervision of the appointing judge. The officers shall be paid in accordance with the general pay plan of such a municipality;*

(ii) *It is the duty of such court officers to maintain order during sessions of the court, to serve process as ordered and to perform such other duties as may be prescribed by the judge. The court officers shall, while acting in the performance of their duties, possess and exercise police powers to the same extent as that granted to members of the metropolitan police department*

In addition, the Tennessee Attorney General wrote that, “Judges in Davidson County are the only judges [in the state] who have authority to appoint their own court officers.”⁷⁵

Criminal Court judges are allotted six court officer positions by private statute;⁷⁶ Circuit Court judges in Circuits hearing civil cases have three court officer positions; Circuit Court judges hearing domestic relations or probate matters have four court officer positions; and Chancellors have two court officers. The Clerk’s Offices for the Criminal and Chancery Courts normally assign a deputy clerk to each division, or part as well. In addition to the central special

⁷⁵ Office of the Attorney General, Opinion 10-77 (June 1, 2010).

⁷⁶ Chapter 331, Private Acts, 1967, §1 (1968); Chapter 518 Private Acts, 1923, page 1985, set the number of court officers in each criminal court at six (6).

master discussed in Section C, the Circuit Court divisions handling family and probate cases are authorized to hire a master⁷⁷ and Chancellors can designate a qualified member of their staff to serve as a master.

Although specific staff responsibilities differ from one judge or chancellor to another, the functions performed by court officers generally fall into four basic categories. We describe these categories below as judicial assistants, law clerks, bailiffs and masters.

- Judicial Assistants generally perform such duties as:
 - Screening visitors and telephone calls;
 - Typing or producing letters, memoranda, forms, orders, minutes, etc.;
 - Preparing the files and materials for the court docket;
 - Preparing and processing routine orders (e.g., upon a failure to respond);
 - Processing more complex orders, including file-stamping, copying, mailing to attorneys or self-represented litigants, and distribution to the Clerk's Office;
 - Maintaining the judge's calendar;
 - Scheduling interpreters;
 - Ordering supplies;
 - Requesting maintenance services;
 - Serving as a docket clerk (Circuit Court) or substituting for the docket clerk when necessary (Criminal and Chancery Courts);
 - Assist with the Grand Jury (Criminal Court); and
 - Preparing reports.
- Law Clerks duties generally include, but are not limited to:
 - Reviewing and editing legal material generated by the court including orders, memoranda, and draft opinions;
 - Reviewing materials submitted by counsel and self-represented litigants;
 - Drafting various orders and memoranda;
 - Conducting legal research; and
 - Serving as a liaison between the judge and attorneys or self-represented litigants, and;
 - Serving as the docket clerk (Circuit Court).
- Among the responsibilities of bailiffs are:
 - Maintaining security and order in the courtroom including calling for support from the Wackenhut officers when needed;
 - Protecting and overseeing juries;

⁷⁷ Tennessee Code Annotated §17-2-123(b) (2010).

- Giving directions and other information to lawyers, litigants, and the public;
 - Serving subpoenas;
 - Preparing the courtroom for hearings including arranging exhibits and seating;
 - Transferring papers and exhibits in the courtroom;
 - Calling the docket as needed;
 - Operating courtroom electrical equipment;
 - Coordinating transportation of prisoners to the A.A. Birch Courthouse with Sheriff's Department and Tennessee Department of Corrections;
 - Transferring prisoners between the courtroom/courtroom level holding cells and the basement holding cells in the A.A. Birch Courthouse;
 - Guarding prisoners in the courtroom level holding cells;
 - Arranging for attorneys to visit detained clients;
 - Locating attorneys and witnesses; and
 - Serving as the docket clerk (Circuit Court).
- Masters, other than the centralized special master, may handle such matters as:
 - Presiding over hearings at the request of the judge or chancellor and recommending appropriate dispositions;
 - Reviewing and analyzing cases in preparation for trial or hearing;
 - Drafting proposed findings, reports, complex legal orders and memoranda;
 - Monitoring caseload and conducting case management reviews; and
 - Conducting judicial settlement conferences.

The precise duties vary by Court and by judge or chancellor. For example, in the Criminal Court, some bailiffs are also assigned administrative duties, while in Circuit Court and Chancery Court, judicial assistants and law clerks commonly serve as bailiffs as well. In Chancery Court, law clerks may also be designated as special masters. The titles of the persons serving in these positions vary as well, including among others judicial assistant, court officer, law clerk, Chancery attorney, docket clerk/court officer, and administrative assistant. An employee's title may or may not be descriptive of her/his responsibilities.

These employees, as personal employees of the judge or chancellor,⁷⁸ are not covered by the work rules applicable to other Metropolitan Davidson County employees. While benefits may be granted under the appointing judge's discretion, they are not entitled to:

- Lunch breaks
- Other breaks

⁷⁸ Tennessee Code Annotated §8-8-201-(a)(2)(B)(i).

- Accrued annual leave
- Accrued sick leave
- Compensatory time
- Limits on the number of hours worked per day, or
- Limits on the number of days worked per week.⁷⁹

In our interviews with all of the Judges, it was generally estimated that most court officers work about 32-35 hours per week. The Chancellors estimate that their staff works 35-50 hours per week. Standard work schedules are not applied to these staff members (nor would they always be appropriate given the variability in courtroom schedules) and time records are maintained in only one Criminal Court division. The performance audit team reviewed the timesheets completed by related staff for one week per month between March and mid-June, 2010. The four sets of timesheets with surface reliability⁸⁰ indicate that those employees worked an average of 7.3 hours per day, with some days as long 10 hours and others as short as 3.75 hours. These employees are two bailiffs, a judicial assistant and a law clerk. The longest workdays were generally when a jury trial was underway.

Two questions were raised with regard to Staffing/Job Classifications Issue 1:

1. Assuming a judicial assistant and a law clerk for each judge as a basic minimum, are four “bailiffs” in each Criminal Court division more than is required?
2. Given the intensive writing and research workload of the Chancery Court, do Chancellors need another attorney position?

With regard to the first question, it should be noted at the outset that the court officers in the Criminal Court who primarily function as bailiffs, met as a group with the performance audit team. The team also observed operations in the courtrooms. Overall, the court officers appeared knowledgeable about their responsibilities performed competently and appropriately, worked well with each other, and appeared comfortable with their working conditions.

⁷⁹ Summary of Court Hours and Court Requirements for Staff, Criminal Court, Division III. Under 29 U.S. Code §203(e)(2)(C)(ii)(II), court officers are exempted from the provisions of the federal Fair Labor Standards Act as personal staff of an elected official.

⁸⁰ One employee did not fill in the line for hours worked, another simply photocopied the same sheet showing 10 hours and the same activities for each day regardless of differing calendars. A third indicated eight hours worked for some days on which no activity was listed after 11:00 am.

Recommendation 25. Bailiffs should be provided with multiple channel radios so that they are able to summon assistance, when needed, quickly and easily.

During calendar calls one Criminal Court bailiff is responsible for transporting in-custody defendant's from the Sheriff's cellblock in the basement to the courtroom level holding cells, another oversees these defendants in the courtroom level holding cell, a third attends the public entry door, and at least one other is in the well of the courtroom at all times. If a bailiff is ill or additional assistance is needed because of volume or a particular situation, the bailiffs from another division will help their colleagues.

However, the ability to do so quickly is constrained by the fact that the communication radios for each courtroom are on a different frequency. Thus, court officers must rely on texting or leaving their courtroom in order to summon assistance from other court officers or the Wackenhut security service.

[illegible]

It is clear that the current staffing level is designed to meet the needs of the Criminal Court during peak periods. The need for courtroom security is particularly heavy during jury trials when at least one bailiff must attend to the jury, another works in the well of the courtroom to guard the defendant and pass papers or exhibits, and at least one bailiff monitors the public entry door. However, there is an average of only four trials during each of the Criminal Court's jury weeks (34 in 2010, 30 in 2011). There is also a substantial need for courtroom security during calendar calls for arraignments, motions, pleas, sentencings, probation violations, etc, when there may be large numbers of defendants, their families, and supporters in a courtroom. These dockets may involve more than 100 defendants though the more common range is between 20 to 70. According to information provided by the Court following submission of the draft report, four or five bailiffs are involved in these dockets: one monitoring access to the courtroom from the hallway, one or sometimes two preparing court papers and moving defendants in and out of the courtroom, one bringing defendants from the basement holding tank to the courtroom holding cell, and one monitoring the defendants in the holding cells and arranging meetings between attorneys and their incarcerated clients. The

calendar calls are held on Wednesday through Friday in each of the Criminal Court Divisions during jury weeks and occur on Mondays and Tuesdays as well in some courtrooms during non-jury weeks. The number of defendants scheduled for each courtroom varies, and often, though not always, there are one or two Divisions with lighter dockets. Thus, it appears that there may be some excess capacity, particularly during non-jury weeks. The currently accepted best practice is to have two to three officers in the courtroom for all court proceedings with a third court officer added in “high visibility” situations or as needed.⁸¹ Thus, there is a potential that having a pool of court officers trained to work in the courtroom and able to rotate among divisions could accommodate the Criminal Court’s needs.

Recommendation 26. To the extent that Metropolitan Nashville funds are used, the Criminal Court should evaluate appropriate options for reallocating the duties of Court Officers (such as pooling arrangements or transferring certain duties such as transporting prisoners from the basement to the courtroom level to the Sheriff) that would enable the court to effectively use all its resources while safely and efficiently performing its responsibilities.

In order for a pooling arrangement to work effectively, there would need to be some greater consistency in practice and procedure among the Divisions. If Sheriff’s Officers were asked to take over the transport of prisoners to and from the courtroom, specific training would need to be provided, and policies ensuring adequate coverage developed so that the Court could operate efficiently and continuously regardless of shift hours and breaks.⁸² A concern was expressed regarding any removal of courtroom employees

⁸¹ Guidelines for Implementing Best Practices in Court Building Security; State Justice Institute and National Center for State Courts; 2010. <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/facilities&CISOPTR=153>. These guidelines were developed by an NCSC team that has conducted security assessments of court buildings in urban, suburban, and rural jurisdictions throughout the country and reflect the court security guidelines promulgated by the U.S. Marshals Service, the National Sheriffs Association, the International Association of Chiefs of Police, the Transportation Safety Administration, the National Association for Court Management, and the U.S. Department of Homeland Security. The best practices presented therein were reviewed by eight current and former state court security officers.

⁸² All other jurisdictions in Tennessee and many throughout the country use specially trained sheriff’s officers, centrally managed court-security officers, or private security guard services to transport in-custody defendants and provide the in-court and jury security services performed by the judge-supervised court officers in Davidson County. However, given the possible salary differences and exclusion of court officers from standard benefits, i.e. breaks, leave, etc., it is not clear whether Metro’s net personnel costs would be reduced if Sheriff’s deputies assumed some of the duties of court officers and the total number of court officers were reduced.

from direct judicial supervision due to Canons 3.B (4), (5) and (9) and 3.C (2) of the Tennessee Code of Judicial Conduct. For example, Canon 3. B (9) states in pertinent part:

A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control.

Canon 3.B (2) provides that:

A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

This concern relates to the possibility of having court officers who are not subject to discipline or discharge by the judge in whose courtroom they are serving. If such a non-judicially supervised employee made an inappropriate statement to a juror (or member of the public) that prejudiced the fairness of a trial, the judge may be found to have violated her/his ethical responsibilities and be subject to discipline. Until the state's judicial disciplinary body rules on the question, there is no definitive answer. Certainly, any court officer or other public employee having contact with jurors must receive initial and continuing training regarding her/his responsibilities and the consequences to the public, the legal process, and the employee of violating those obligations. Furthermore, the definition of the term "require" contained in the Terminology section of the Code of Judicial Conduct makes clear that a rule of reason is to be applied and that a judge's responsibility is to *"exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control."*

Even if it were concluded that by shifting responsibilities, standardizing procedures, and careful scheduling, the Criminal Court could operate effectively with fewer court officers, Chapter 331 of the 1967 Private Acts and possibly Tennessee Code Annotated §8-8-201(a)(2)(B would have to be amended.

[illegible]

Staffing/Job Classifications Issue 2 - Are the resources equitably allocated given the various job duties and responsibilities?

As indicated earlier, the titles used for staff positions in the State Trial Courts do not necessarily reflect their individually assigned responsibilities. One position in each chamber receives a state salary supplement which varies among divisions, circuits, and parts. Thus, employees performing similar duties who have comparable experience, may not be receiving the same salary. Circuit Court judges and chancellors for whom a long-term staff attorney would be more beneficial than a short-term law clerk, have difficulty retaining or hiring experienced staff because all positions, regardless of title and responsibilities, are classified as court officers.

Recommendation 27. *Separate job classifications should be established for judicial assistants, law clerks, staff attorneys, bailiffs, and masters, with salary ranges set for each classification based on job duties and qualifications. The salary ranges should be consistent with those of Metro employees with similar responsibilities and qualifications.*

[illegible]

Staffing/Job Classifications Issue 3 - Is the level of staffing and the distribution of positions in the State Trial Courts comparable to similarly situated court organizations in Tennessee and elsewhere?

The performance audit team conducted an email survey of comparable jurisdictions in Tennessee and nearby states regarding the level of staffing for each judge and where responsibility for courtroom security is located. The following table presents the results of that survey.

Table 6 - Staffing Levels in Comparable Jurisdictions⁸³

	Metropolitan Nashville, Davidson County, TN	Shelby County, TN;(Memphis)	Jefferson County, KY; (Louisville)	Mecklenburg County, NC; Charlotte)	Oklahoma County, OK; (Oklahoma City)
2009 est. Population	635,710	920,232	721,594	913,639	716,704
2009 felony new filings	10,119	16,646	14,518	10,077	9,498
Staffing per judge	Criminal Court (6 judges) 6 court officers/judge; Circuit Court (8 judges) 2-3 court officers/judge; Chancery Court (4 chancellors) 2 court officers/chancellor	Criminal Court (10 judges) Circuit Court (9 judges) Chancery Court (3 chancellors) 2 Probate Judges	Circuit Court (13 judges) 1 secretary & 1 law clerk per judge	Superior Court (8 judicial officers) 6 judicial support staff 7 court reporters	District Court (34 judicial officers) No dedicated judicial staff; clerical support provided by court administration
Responsibility for courtroom security	Judicial court officers	Sheriff	Sheriff	Sheriff	Marshal

If the number of staff dedicated to courtroom security is subtracted from the total, the State Trial Courts' staffing is comparable to that in the Shelby County, TN and Jefferson County, KY general jurisdiction court and greater than that in the other jurisdictions surveyed. Data on the number of officers and marshals assigned to courtroom security duties in each of the other jurisdictions were not available.

⁸³ The general jurisdiction courts in in Jefferson, Mecklenburg, and Oklahoma Counties are not divided into separate criminal, civil, and chancery courts. A single court hears all the types of cases heard by the three units of the State Trial Courts in Metropolitan Nashville/Davidson County.

5. Courthouse Security NOT FOR PUBLIC RELEASE

CONFIDENTIAL: Not subject to records open to public inspection. Exemption granted by Tennessee Code Annotated § 10-7-504 (i) (1) "Information that would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential."

APPENDIX B. COMPLIANCE AUDIT

- Metro Nashville Office of Internal Audit Report Starts on Next Page –

INTRODUCTION

The Metro Nashville Office of Internal Audit performed audit work to ascertain the Davidson County State Trial Courts compliance with Metro financial and operational policies when applicable. Some business practices were compared to prudent business practices for the area being reviewed.

AUDIT OBJECTIVES AND CONCLUSIONS

Fiscal Management

1. *Were reasonable controls in place to ensure proper management of fiscal resources?*

No. Several issues and control weakness were found that prevented reasonable management of the fiscal resources provided. (See Observation A.)

Payroll and Leave Accounting

2. *Were employee payrolls properly calculated and timely executed?*

Yes. All payroll amounts, including a limited amount of employee overtime, was properly calculated and timely executed.

3. *Did State Trial Courts have a documented Time, Attendance and Leave policy?*

No. The 18 courts use 18 various methods and systems to provide for leave and to document attendance. Most (11) had no formal leave policy documented. The seven courts that had any form of written policy had vastly incongruent amounts of vacation and sick leave that could be taken by employees. (See Observation D.)

Procurement

4. *Are controls in place to ensure that reported expenditures actually exist, are made for legitimate purposes and are in compliance with Metro Nashville's Procurement Code?*

No. Sampled transactions showed that for over half of the transactions required documentation did not exist and charges were applied to the wrong business unit or object account. Required written quotes and purchase orders were not available for six of fifteen purchases, for which either written quotes or contracts were required. One of the fifteen transaction was to a vendor without a contract to whom \$183,000 in purchases have been made during the last three fiscal years and \$438,000 in purchases have been made in the last seven years. See Observation B.

5. *Were credit card expenditures in compliance with Metro Nashville's procurement card use?*

No. Sampled transactions showed that not all required documentation existed to support transactions. One sample transaction was performed as a split purchase (two transactions to make one purchase) in order to exceed purchase limits. (See Observation C.)

Human Resources

6. *Were position vacancies widely advertised in order to ensure larger applicant pools and possibly better available candidates?*

No. Analysis of hiring during the audit scope showed that for 20 of 26 new hire positions, and all ten of the highest paid positions, no "courtesy posting" was placed through Metro Nashville Human Resources to announce the position vacancy. (See Observation E.)

OBSERVATIONS AND RECOMMENDATIONS

A – Management of Fiscal Resources

The State Trial Court's management of fiscal resources requires enhancement. This is demonstrated by the following items.

- a) The two most recently completed fiscal years required supplemental appropriations from the Metropolitan Council at year end in order to prevent negative account balances. For fiscal year 2009 the Metropolitan Council provided the State Trial Courts with an additional \$1.5 million for various grant accounts, interest expense, administration costs, Drug Court costs, and various Community Corrections program items. For fiscal year-end 2010, the Metropolitan Council provided the State Trial Courts with an additional \$203,000 for interest expense and expenditures exceeding revenue in the Fines and Forfeitures fund.
- b) To alleviate a recurring negative balance condition in the Fines and Forfeiture Special Revenue fund (30020), in August 2009 Metro Finance set up a clearing expense account (inside the State Trial Courts general fund) to temporarily post expenditures without available fines and forfeiture revenue. As revenue is received in the Fines and Forfeiture account, expenses are moved to it from the general fund clearing account. As of September 30, 2010, only three months (25%) into fiscal year 2011, 72% of the yearly projected revenue had been expended (\$336k of \$467k). A significant amount of the expenditures resulted from personnel costs being shifted by State Trial Court employees to the expense clearing account immediately after the grant¹ supporting the personnel ended on June 30, 2010. Payroll dollars for 22 employees (15 part-time and 7 full-time) were expensed from the clearing account beginning July 1, 2010. As of Oct 31, all of the personnel and their salaries remained in the clearing account. Although all new hires at Metro must be approved by both Metro Human Resources and the Office of Management and Budget, no approval is required for movement of personnel cost between funds and business units on a pay period basis, as long as the funds and business units are within the same Metro department. Thus, State Trial Court personnel may themselves move payroll cost from grant accounts to any other account it controls, even if the expenditures were unplanned for those particular business units. Of additional importance is the fact that the State Trial Courts utilizes more than one fund type as defined by the Governmental Accounting Standards Board (GASB). Each fund type (general, special revenue, agency, etc.) has specific requirements regarding allowable funding sources, uses and deficit conditions. Unplanned departmental movement of payroll costs between funds could cause fund definition requirement problems.
- c) The State Trial Court Budget Officer (Administrative Services Officer 4) has been in the position since July 2003 and has been provided training on Enterprise One (Metro Nashville's accounting system) on several occasions.

¹ ARRA Drug Court grant of \$675,000

The Office of Internal Audit found it difficult to obtain informative answers to questions concerning account postings from the State Trial Court's Budget Officer or other State Trial Court personnel. A review of the State Trial Court general ledger postings show an unusually high number of reclassifications after initial entry (other than the expense movement mentioned above), indicating that original accounting entries needed to be adjusted. As an example, a review of monthly cell phone charges related to a federal Justice Assistance Grant (JAG), during a seven month period revealed the following: one paid charge was unable to be located or accounted for in the accounting system (and it is unknown where the funds paid originated from), one charge was errantly posted to the Drug Court expense clearing account, one charge was errantly posted to the Fines and Forfeitures special revenue fund, one charge was improperly classified as "rental equipment" rather than cell phones, and one charge was classified as "telephone and telegraph" rather than cell phones. In addition, 8 of 15 sampled purchase transactions (see Observation B) were posted to the wrong business unit or to the wrong object account.

- d) A grant funded employee who was classified as a Judicial Clerk (salary of \$44k) was assigned to an American Recovery and Reinvestment Act grant until it expired June 30, 2010 before being moved to the above described expense clearing account. State Trial Court management stated that during October 2010 and earlier in December 2008 that he was a Court Officer for one of the criminal courts although his salary was being paid from grants and the clearing expense account. Since the particular criminal court had only six court officer positions that were all filled, inquiries were made by the Office of Internal Audit concerning what court officer vacancy the individual was filling. These inquiries generated a response that it was for a vacancy coming up soon due to the pending retirement of a current court officer. Thus, although the State Trial Court was only authorized for six court officers; seven court officers were effectively being paid (one from the clearing expense account). On November 1, 2010 the individual was finally moved from the clearing expense account to the general administration account and into the position of Judicial Assistant (salary of \$52k).

Criteria:

- *The COSO Internal Control- Integrated Framework* establishes a common definition of internal controls, standards, and criteria by which organizations can assess their internal control systems. Ensuring funds are available prior to making expenditures is critical in ensuring a strong internal control framework and is included in the definition of safeguarding of assets.
- *Tennessee Internal Control and Compliance Manual for Municipalities, Title 1, Page 3:* good internal control is essential to providing reasonable assurance of reaching objectives and such objectives include budgetary limitations.

Risk:

- Repeated unbudgeted expenditures above available resource amounts will result in continued necessary fund transfers from other Metro Nashville resources. Unplanned or unbudgeted shifting of expenditures from one

business unit to another increase the likelihood that budget analyses cannot be relied upon for accuracy.

- Visibility of budget execution and current financial condition is lost when revenue and expenditures are not posted correctly or in a timely manner. Monitoring of current year budget execution items is critical, given the over expenditure conditions of the previous two years.
- Grant provisions, including documentation and timely submission, must be strictly adhered to when accepting money from other entities for specific outcomes. Failure to meet requirements may cause reimbursements not to be made for past expenditures.
- Grant expenditures posted to the wrong business unit may not be reimbursed from the grantor since the expenditure may be inappropriately posted. Similarly, expenditures for non-grant related reasons that are charged to grants may result in disqualification for reimbursement and/or questioned costs.

Recommendations:

State Trial Courts management should:

- 1) Closely scrutinize all current expenditures to determine their sustainability until fiscal year end without relying on supplemental Metro Funding.
- 2) Discontinue relying on possible future grant revenues for current expenditures until such grants have been accepted or tentatively accepted by the Metropolitan Council.
- 3) Discontinue the practice of incurring expenditures in excess of predictable fine and forfeiture funding availability, resulting in the constant movement and transfer of payroll expenditures from one business unit to another that are not substantiated by budget availability.
- 4) Ensure grant funded positions are attached to grant funded business units and the budgets for those positions should be allotted in accordance with the terms of the grant award.
- 5) Ensure that, at a minimum, several individuals receive continuing training to use Metro provided resources for accounting and budget transactions.
- 6) Conduct a thorough month-end review of all general ledger entries to ensure accurate postings of expenditures and revenue. Reclassifications should be performed immediately along with a review and analysis of the cause of the inaccurate posting in order to prevent repeated occurrences.

B – Procurement Procedures Inconsistent

Competitive bidding and other recommended procurement practices were not consistently practiced by the State Trial Courts. The Office of Internal Audit

randomly selected 15 (10%) out of 143 transactions exceeding \$4,000 during fiscal years 2008 through 2010. In one of the sample items, no contract existed for purchases of \$183,000 during the past three fiscal years. During the most recent seven year period, \$438,000 had been expended with this vendor. Additionally, one purchase was made using grant funds that had no provision for equipment purchases in the grant. The 15 sampled items are shown below:

Sample of 15 Purchasing Transactions that Exceeded \$4,000

Number	Condition Observed	Percent
8	Approval signature not obtained from delegated purchasing agent	53
8	Charged to wrong business unit or object account	53
6	No evidence of written quotes (on purchases without contracts)	40
1	Repeated purchases without contract (3 years, \$183,000, 7 years \$438,000)	6

Criteria:

- *Metropolitan Code of Laws* § 4.12.020 and *Metro Nashville Finance Policy #20 - Purchasing* states for purchases of \$4,000 or more, the requester should have at least three written price quotations. For purchases of \$10,000 or more, "formal competitive sealed bids or request for proposals" must be utilized and performed. These limits must be observed regardless of the procurement method or contract vehicle.
- Notice of Delegation of Purchasing Agent's Authority letter of December 9, 2009 (and earlier delegation letters): "Departments must house current documentation that is maintained, complete and accessible for three years running".

Risk:

- Continued non-adherence to Metro Nashville procurement requirements could result in unauthorized expenditures that will not be reimbursed by Metro Nashville.
- Claims against Metro Nashville from vendors for not honoring an existing contract or for not providing an opportunity to compete.
- Funds will be utilized for expenditures that are not required or necessary thereby making fewer funds available for requirements.
- Citizens will not be convinced that the State Trial Courts have been a good steward of public funds.

Recommendations:

State Trial Courts management should:

1. Adhere to all Metro procurement requirements including retention and maintenance of required documents.

2. Contact the Metro Finance Department Procurement Division to set up additional procurement training for selected Stated Trial Court personnel.

C – Metro Purchase Card (P-Card) Requirements Inconsistently Implemented

Metro Nashville purchase card (P-Card) requirements were inconsistently implemented. The Metro Nashville Division of Purchasing provided departments the opportunity to use the Metro “P-Card” (purchase card) until September 2009, at which point the Treasury Department rolled out the Metro Credit Card Program, ending the P-Card Program. All the transaction reviewed consisted of items from the P-Card Program. No transactions from the new Metro Credit Card Program were reviewed. The State Trial Courts made 3,193 P-Card transactions totaling \$520,166 during the period of July 1, 2007, through July 1, 2009. Forty-four different persons made credit card transactions during this period.

We randomly selected 50 P-Card transactions for testing to determine if the requirements of the Metro P-Card program and other procurement guidelines were adhered to. We noted the following conditions related to the 50 sampled transactions:

Sample of 50 P-Card Transactions

Number	Condition	Percent of Sample
17	Did not have available receipts	34
14	Purchased from vendors who already have Metro contracts	28
7	Non-travel meal purchases without required documentation	14
5	Travel related purchases without required documentation	10
1	Paid sales taxes in instances where exemption applied	2
1	Split purchase of (\$1,241.44) to enable exceeding \$1,000 limit	2

The above findings are consistent with findings from the fiscal year 2009 Office of Financial Accountability “Comprehensive Monitoring Report of the Metro Procurement Card Program”. The report stated: “Thirty-five percent of sampled transactions were inappropriate and/or unsupported...three *working lunches* were purchased (\$903, \$137, and \$84)...sales taxes were paid on one purchase...” One purchase (\$2,813.67) was found to have been split into three transactions of \$937.89 each in order to avoid the \$1,000 purchase limit. The Office of Financial Accountability report may be found at:

http://www.nashville.gov/finance/docs/accountability/monitoring/procurement/pcard_2008.pdf

Criteria:

Metro Nashville Finance Policy #18 – Purchasing: “the procurement card should generally not be used for purchasing meals...when it is necessary...the cardholder should ensure there is proper documentation, approved by the

Department Head...” The policy further directs that a detailed list be made of the list of individuals, date, time location, and agenda. The purchase card shall not be used for “splitting” purchases to circumvent competitive bidding requirements. Cardholders shall not pay sales tax. Cardholders should collect and maintain sales receipts and invoices to support all charges.

Risk:

Cardholders are personally liable for unauthorized purchases. Non-adherence to Metro procurement requirements may result in negative publicity. Scarce Metro Nashville resources could be wasted by unauthorized transactions.

Recommendations:

State Trial Courts management should ensure its credit card program adheres to all procurement standards and requirements.

D – Formalize Time and Attendance Policies and Record Keeping

The State Trial Courts have no specified formal time and attendance policy for all of its employees. Of the 18 judges, seven judges had some form of a written time and attendance policy. The other eleven judges had no written policy to provide guidance related to acceptable and unacceptable practices. Although seven written policies were obtained, variances in length, structure and requirements were noted. Some policies were contained on one sheet of paper and contained unspecific elements subject to various interpretations, such as “after they have been here for some time...” In contrast, employees of the Metro General Sessions Courts, who are not Civil Service employees, do have a uniform “Personnel Manual” that precisely details the relationship, standards of conduct, time accrual and leave policies. Selected elements of the seven provided policies are summarized below.

Policy	Hours Wk	Vacation Days	Sick Days	Notes
1	37.5	16	*	Accumulate 150 hours vacation
2	39 or 38 ²	17 ³	7	
3	*	5	12	Accumulate 120 days sick leave
4	37.5	12	12	
5	45 or 41	25 ⁴	“when approved”	
6	*	13 ⁵	“as needed”	
7	*	10	“as needed”	
8-18	*	*	*	

Source: Compiled Information Supplied by State Trial Court

*No details provided

Note that two policies above contain the ability to accumulate either sick or vacation days but no accrued balances are reported to Metro Nashville and carried on liability reports.

² First number is hours during jury weeks, second number is non-jury weeks

³ Seven days chosen plus two weeks taken during particular specified weeks

⁴ Three weeks chosen vacation plus two specified weeks

⁵ All particular days are specified

Additionally, various methods were found related to documenting individual work days for particular employees. In several cases these methods consisted of entering known absences on the administrative assistant's planner. Using this method, the ability to determine if a particular employee worked on a particular day, at a particular hour during the past several years is unreliable and the current methodology should be enhanced. Detailed time and attendance records should be maintained for three years.

Most Metro Nashville employees are Civil Service employees and are subject to specified time and attendance policies, including the earning and accrual of leave balances. Some departments and elected official workforces are not civil service employees but have other specified time and attendance policies (some have adopted the Metro Civil Service Rules although the employees are not Civil Service employees). The State Trial Courts operate 18 different courts with 18 different judges. All of the 18 judges are State of Tennessee employees and not paid by Metro Nashville. The remainder of the employees are either Metro Nashville employees or grant funded employees (neither are civil service). All of the State Trial Court employees paid by Metro Nashville are covered by the Metro pension plan and other benefits such as insurance, injury on duty, etc. Metro government currently carries no earned leave liability on its books for State Trial Court employees (earned leave such as vacation and sick leave is a financial liability item included on the financial statements).

Criteria:

- Prudent Business Practices
- Metro Record Retention Schedule: Time and Attendance Reports - Reports or cards detailing hours worked or vacation, sick, or compensatory time used, destroy after 3 years.
- The COSO Internal Control - Integrated Framework establishes a common definition of internal controls, standards, and criteria by which organizations can assess their internal control systems. Having a formalized, detailed set of operating procedures that are periodically reviewed and updated is critical in ensuring a strong internal control framework. Written procedures enhance the control activities and information and communication components of a strong internal controls framework.

Risk:

- Lack of detailed, written procedures over each critical process enhances the risk that the process will not meet the expected and unexpected needs of the organization.
- Without an accurate and complete record retention program, there can be no assurance that valid and authenticated time, attendance and leave records will be available when requested by outside agencies.

Recommendations:

State Trial Courts management should ensure documented Time and Attendance policies exist for all courtrooms and functions. The policies should include leave, absences, tardiness, time keeping, attendance documentation and retention of time, attendance and leave usage.

E- Position Vacancies Not Widely Advertised

Position vacancies have not been consistently widely advertised to ensure all qualified candidates have an opportunity to be considered for employment. Employees of the State Trial Courts are not Metro Civil Service employees. Thus, the vacancy announcements and position descriptions are not reviewed or approved by the Metro Civil Service Commission and there is no mandatory requirement to advertise the positions via Metro Human Resources. Interviews with State Trial Court personnel including the Presiding Judge indicate that certain positions, such as Court Officers, “serve at the pleasure of the judge” and are never posted for the general public to apply for. Other positions are “posted in the Birch Building.”

Metro Nashville Human Resources advertises “courtesy postings” via its website when requested by departments, elected officials, and other affiliated units for position vacancies that are not Metro Civil Service positions. The “Employment – Current Openings” (powered by “NEO-Gov”) website is located at: <http://agency.governmentjobs.com/nashville/default.cfm>

Between December 1, 2007, and December 1, 2010, fifteen such courtesy postings had been advertised for State Trial Court positions (includes grant, temporary and part-time positions). A review of the current employees of the State Trial Courts indicates that for 19 of the last 26 positions filled with employees new to Metro Nashville, not existing employee promotional opportunities, there was no matching or similar courtesy posting for the position vacancy (when considering job duties and salary) in the eight weeks prior to the position being filled. One of the top ten highest paid positions (the highest paying position) filled during this period did have a vacancy courtesy post. Those ten positions and hire dates are shown below.

	Position	Salary	Date Hired
1	Court Administrator*	100,000	10/1/2010
2	Judicial Asst 2	52,710	8/30/2010
3	Judicial Asst 2	51,974	9/1/2010
4	Judicial Asst 2	50,653	8/1/2010
5	Judicial Asst 1	47,691	8/18/2008
6	Judicial Asst 1	46,203	3/22/2010
7	Judicial Asst 1	44,817	4/21/2008
8	Judicial Clerk	44,290	11/1/2010
9	HR Officer	36,720	11/16/2009
10	Program Spec 2	36,500	7/12/2010

Source: Enterprise One, EE Master Grid Report

* Metro Courtesy Posting vacancy Announcement Used

Criteria:

- Prudent Business Practices
- *The COSO Internal Control-Integrated Framework* establishes a common definition of internal controls, standards, and criteria by which organizations can assess their internal control system. Maintaining appropriate employee candidate identification, screening and hiring practices is an integral part of the human resource function.

Risk:

- Without widely advertising position vacancies, citizens and others who feel they were provided no opportunity to compete may be dissatisfied with present government operations.
- Applicant pools are smaller thus increasing the possibility that the person hired is not the best available candidate that could have been found.
- The public will perceive that hiring is based on nepotism and friendships.

Recommendation:

State Trial Courts management should enhance its hiring practices and broaden its base of available applicants by advertising all position vacancies through Metro Nashville courtesy postings.

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APPENDIX C. MANAGEMENT RESPONSE

- Management's Responses Starts on Next Page –



State of Tennessee

JOE P. BINKLEY, JR., JUDGE
FIFTH CIRCUIT COURT

TWENTIETH JUDICIAL DISTRICT
509 METROPOLITAN COURTHOUSE
NASHVILLE, TENNESSEE 37201
(615) 862-5915
FAX (615) 880-2332
JUDGEJOEP.BINKLEYJR@JIS.NASHVILLE.ORG

June 29, 2011

Mr. Mark Swann
Metropolitan Auditor
Office of Internal Audit
222 3rd Avenue, North, Suite 401
Nashville, TN 37201

Re: Audit of the State Trial Courts,
Twentieth Judicial District

Dear Mr. Swann:

In February 2011, the Metropolitan Government Office of Internal Audit issued a draft report of the State Trial Courts Performance Audit. The State Trial Courts were provided a copy of the draft report for review and comment.

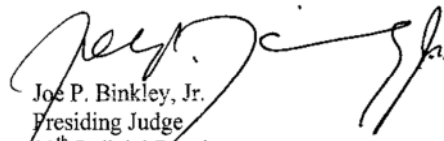
After thoroughly reviewing the draft report, the trial courts promptly provided a detailed response, including, but not limited to, missing data, charts, and citing the areas where the Trial Judges believed the auditors exceeded their authority and expertise by making recommendations that related to core functions performed by the trial judges. The auditors failed to appreciate the unique aspects of the Davidson County, Tennessee trial courts and the effect the attendant burdens have on the performance of the trial courts. The report failed to mention important data. One example is the report failed to mention that in 2009, the criminal courts disposed of four-thousand sixty-seven (4,067) probation violations. Except for the total number of cases concluded, the report did not deal with the large volume of work performed by all the courts on non-jury days. In addition, the report never acknowledged the extensive administrative work performed by all the Courts' staff when court is not in session.

Following the Judges' detailed responses to the original draft report, the auditors sent a revised draft report in April 2011. This revised report, however, did not address most of the trial courts' detailed response and additional data. This process of preparing revised draft reports appears to be unproductive. The trial courts believe that it is unnecessary to respond in detail a second time to the areas of concern which were

previously submitted to the auditors. The trial courts are, therefore, resubmitting the original detailed draft as our official public response to the Performance Audit.

Although the audit draft report was in many areas inadequate, inaccurate and misleading in its conclusions and recommendations, the report has many helpful suggestions which the courts will implement and/or consider. Whenever a group or an entity is required to examine their internal operations and operating procedures, positive results occur.

Sincerely,



Joe P. Binkley, Jr.
Presiding Judge
20th Judicial District

JPBJR/mrg

**Additional management comments related to the National Center for Courts Performance
Audit report begin on page C-12**



State of Tennessee

TWENTIETH JUDICIAL DISTRICT

TIM D. TOWNSEND
TRIAL COURT ADMINISTRATOR

601 METROPOLITAN COURTHOUSE
NASHVILLE, TN 37201
(615) 880-2558
FAX (615) 880-1435

June 2, 2011

Mr. Mark Swann
Metropolitan Auditor
Office of Internal Audit
222 3rd Avenue, North, Suite 401
Nashville, TN 37201

Re: Audit of the Operations of the State Trial Courts,
Twentieth Judicial District

Dear Mr. Swann:

This letter acknowledges that the State Trial Courts received the Audit of the Operations of the State Trial Courts' audit report but this response only pertains to Appendix B, Compliance Audit. The staff and I have reviewed the recommendations and our responses to the findings and recommendations are attached. We have established a timetable for the completion of all the recommendations and look forward to your review of our progress.

It was a pleasure working with your office on this audit. Please let us know if you need any further information.

Sincerely,

Tim D. Townsend
Trial Court Administrator

TDT:ss

**Audit of the State Trial Courts of the 20th Judicial District of Tennessee
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
National Center for State Courts - Performance Audit Recommendations			
1. The Circuit Court should investigate the feasibility of hiring an additional master to be shared between Divisions 4 and 8 to hear child support, paternity and other family cases.	<p>Metropolitan Nashville Office of Internal Audit Comment: State Trial Courts of the 20th Judicial District of Tennessee chose not to discretely respond to individual audit recommendations included in the report section prepared by the National Center for State Courts. The comments included below were extracted from management's response to the initial draft audit report.</p> <p><i>Additional management comments related to the National Center for Courts Performance Audit report begin on page C-12.</i></p>		
2. The Circuit Court should endeavor to schedule its jury trial weeks from among those set by the Criminal Court.			
3. When it is necessary for the Circuit Court to schedule a civil trial during a non-Circuit Court jury week, to the extent possible, that trial should be scheduled to coincide with a week in which jurors for the Criminal Court are already being summoned. This should include the Circuit Court DUI "blitz" weeks. This would allow the most efficient use of summoned prospective jurors.	<p>Comment: The Criminal Court currently has 30 designated jury weeks. Prior to budget cuts the Criminal Courts had 36-38 jury weeks. The Circuit Courts currently has 23-34 designated jury weeks which include Monday and Tuesday jury case settings and where 60 jurors are summoned. Prior to budget cuts the Circuit Courts had the same number of designated jury weeks; however, cases were set on Mondays, Tuesdays and Wednesdays, and 90 jurors were summoned.</p> <p>The recommendation of greater coordination of Criminal and Circuit Courts jury weeks to reduce the number of jurors summoned is not based on the reality of jury selection. The recommendation ignores the fact that if more Courts are scheduled to have trials on given weeks, greater numbers of jurors would have to be summoned on these combined days. Further, potential jurors who are excused from one Court are not necessarily excused to another courtroom. They are often excused for a reason which would disqualify them for all similar Courts (personal obligations related to that week, issues of fairness on any trial because of personal opinions and experiences). Any judge who has attempted to select a jury with a large number of jurors "excused" from other trials knows that the "excused" jurors were "excused" for a reason and it greatly interferes with the ability to get a fair jury. Staggering times will not solve the problems that are</p>		

**Audit of the State Trial Courts of the 20th Judicial District of Tennessee
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
	<p>encountered by the number of excused jurors who are disqualified to be on any jury.</p> <p>Trial dates and trial starting times must also accommodate attorneys, witnesses, victims, as well as court schedules. For example, courts may be sharing witnesses with other local courts as well as courts from other state jurisdictions; or witnesses may be brought in from out of state, at considerable cost. Sitting and waiting for the availability of jurors is very inefficient and costly to the entire justice system</p>		
<p>4. The State Trial Courts in Davidson County should:</p> <p>a. Develop appropriate measures that apply across all the trial courts based on CourTools measures two through five, as well as more detailed measures specific to individual courts.</p> <p>b. Work with the Trial Court Administrator, the Criminal Court Clerk, the Metro Office of Criminal Justice Planning, the Circuit Court Clerk, and the Chancery Court Clerk and Master to design a set of clear, consistent reports enabling them to determine performance and manage their caseloads effectively.</p>	<p>Comment: In recommending a uniform measure, the report does not address the constitutional issues which are different for the various courts and the variables which might prevent a uniform measure for all Courts. The report does not address the cost issue and millions of dollars spent by the Metropolitan Government to develop CJIS to coordinate with all parts of the criminal justice system and the needs specific to that system. Unlike other courts, except for cases on forfeit status, the criminal court cases regularly appear on the court docket. The criminal court judge is reminded of the age of the case by the case number, the number of settings listed on the docket, and a notation if the case is past the final settlement date. According to the criminal court clerk, the CJIS can be programmed to provide data concerning age of case given agreed upon parameters.</p>		
<p>5. The Clerk's Office of each component of the State Trial Courts and the Office of Criminal Justice Planning should enhance their respective information systems as necessary to produce the reports specified in Recommendation 4.b.</p>			
<p>6. The State Trial Courts should refresh its jury list data annually to improve accuracy and to ensure more current name and address information is used.</p>			

**Audit of the State Trial Courts of the 20th Judicial District of Tennessee
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
7. Evaluate and consider using additional sources of information to compile the jury list in order to improve accuracy and completeness.			
8. Review all business arrangements with the outside vendor that performs summons folding and sealing services to ensure that the duties and costs are properly documented in accordance with Metro procurement. This review should also include an assessment of various alternatives to this outside service, such as obtaining equipment for such functions in the jury office or using a Metro internal service agency.			
9. The Circuit Court should endeavor to select its jury trial weeks from among those set by the Criminal Court.	<p>Comment: The recommendation of greater coordination of Criminal and Circuit Courts jury weeks to reduce the number of jurors summoned is not based on the reality of jury selection. The recommendation ignores the fact that if more Courts are scheduled to have trials on given weeks, greater numbers of jurors would have to be summoned on these combined days. Further, potential jurors who are excused from one Court are not necessarily excused to another courtroom. They are often excused for a reason which would disqualify them for all similar Courts (personal obligations related to that week, issues of fairness on any trial because of personal opinions and experiences). Any judge who has attempted to select a jury with a large number of jurors “excused” from other trials knows that the “excused” jurors were “excused” for a reason and it greatly interferes with the ability to get a fair jury. Staggering times will not solve the problems that are encountered by the number of excused jurors who are disqualified to be on any jury.</p> <p>Trial dates and trial starting times must also accommodate attorneys, witnesses, victims, as well as court schedules. For example, courts may be sharing witnesses with other local courts as well as courts from other state jurisdictions; or witnesses may be brought in from out of state, at</p>		

**Audit of the State Trial Courts of the 20th Judicial District of Tennessee
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
	considerable cost. Sitting and waiting for the availability of jurors is very inefficient and costly to the entire justice system		
10. Consider converting to a 1-step petit jury summoning process to reduce the manual procedures, printing and postage costs.			
11. Upgrade or consider replacing the current automated jury management system.			
12. The Drug Court should finalize the Joint Plan with the State as quickly as possible.	Comment: The Joint Plan between Metro and the Tennessee Department of Corrections was approved and passed by the Metro Council via Resolution RS2010-1491 and enacted on December 22, 2010.		
13. The Drug Court and the Nashville Drug Court Support Foundation should document and formalize their financial/operational relationship.			
14. To the extent Metro Nashville funds are used, document and formalize the organizational/reporting relationships between the State Trial Courts, Drug Court, DCCCP, and the Nashville Drug Court Support Foundation.			
15. The State Trial Courts, Drug Court and DCCCP should centralize grant management functional responsibilities to more effectively manage and oversee all public and private grants they receive.			
16. The DCCCP should require that all receipts be generated from the ADPB system rather than utilizing the manual receipt books.			
17. The DCCCP should review the existing fee collection process and strive to eliminate the manual/duplicate steps and update the corresponding policy.			

**Audit of the State Trial Courts of the 20th Judicial District of Tennessee
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
18. The DCCCP should provide a workspace (that includes a computer and printer) inside the corrections office for the probation officer to collect and electronically generate the DUI litter fees receipts.			
19. The DCCCP should work with the Criminal Court Clerk to arrange for that office to collect all community corrections-related fines and fees.			
20. The DCCCP should collaborate/partner with JIS (or other agency) to identify a funding source (federal, state, local, and/or private) and obtain the required money to complete the comprehensive probation module.			
21. The DCCCP should review and update if appropriate, all written policies and create new policies where applicable, to ensure that the policies accurately reflect the desired processes and practices within the office.			
22. In addition to revocation rates, the DCCCP should start tracking recidivism rates.			
23. Compile a centralized listing and assign either a full- or part-time staff member to validate and verify that community service agencies are in compliance with reporting standards and that service is occurring as ordered by the court.			
24. To the extent Metro Nashville funds are used, develop new scheduling practices and policies to reduce the time spent in court by the case/probation officers.	Comment: Community Corrections officers are required to attend the Courts for several different reasons. Because each court is independent, it is impractical to create such a schedule.		
25. Bailiffs should be provided with multiple channel radios so that they are able to summon assistance,	Comment: The court officers had separate radios at one time and were forced to turn them in because of budget cuts.		

**Audit of the State Trial Courts of the 20th Judicial District of Tennessee
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
when needed, quickly and easily.	Radios do not work in the basement of the Birch Building. The recommendation does not address the costs or the funding source.		
26. To the extent Metro Nashville funds are used, the Criminal Court should evaluate appropriate options for reallocating the duties of Court Officers (such as pooling arrangements or transferring certain duties such as transporting prisoners from the basement to the courtroom level to the Sheriff) that would enable the court to effectively use all its resources while safely and efficiently performing its responsibilities.			
27. Separate job classifications should be established for judicial assistants, law clerks, staff attorneys, bailiffs, and masters, with salary ranges set for each classification based on job duties and qualifications. The salary ranges should be consistent with those of Metro employees with similar responsibilities and qualifications.			
28. Consider establishing a universal screening policy for all persons entering the court buildings.			

**Audit of the State Trial Courts of the 20th Judicial District of Tennessee
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
Metro Nashville Office of Internal Audit - Compliance Audit Recommendations			
A. State Trial Courts management should: <ol style="list-style-type: none"> 1. Closely scrutinize all current expenditures to determine their sustainability until fiscal year end without relying on supplemental Metro Funding. 2. Discontinue relying on possible future grant revenues for current expenditures until such grants have been accepted or tentatively accepted by the Metropolitan Council. 3. Discontinue the practice of incurring expenditures in excess of predictable fine and forfeiture funding availability, resulting in the constant movement and transfer of payroll expenditures from one business unit to another that are not substantiated by budget availability. 4. Ensure grant funded positions are attached to grant funded business units and the budgets for those positions should be allotted in accordance with the terms of the grant award. 5. Ensure that, at a minimum, several individuals receive continuing training to use Metro provided resources for accounting and budget transactions. 6. Conduct a thorough month-end review of all general ledger entries to ensure accurate postings of expenditures and revenue. Reclassifications should be performed immediately along with a review and analysis of the cause of the inaccurate posting in order to prevent repeated occurrences. 	Accept: <ol style="list-style-type: none"> 1. We will scrutinize all current expenditures to determine their sustainability through the fiscal year end. 2. We will more closely monitor possible future grant revenues for current expenditures. 3. We will consult with OMB when payroll transactions are needed. 4. We have sent three employees to EBS training for accounting and budgeting transactions. 5. We are working to assure accurate payables entries to cut down on the number of journal entries. Progress has been made. 6. We partially accept. The STC will monitor expenditures and payroll expenses. Department of Finance's assistance will not be needed in the future to assure a balanced budget. 	<p>Tim Townsend</p> <p>Tim Townsend</p> <p>Tim Townsend</p> <p></p> <p></p> <p></p>	<p>Completed</p> <p>Completed</p> <p>Completed</p> <p>Completed</p> <p>In Process. By June 30, 2011</p> <p>Completed</p>

**Audit of the State Trial Courts of the 20th Judicial District of Tennessee
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
B. State Trial Courts management should: <ul style="list-style-type: none"> 1. Adhere to all Metro procurement requirements including retention and maintenance of required documents. 2. Contact the Metro Finance Department Procurement Division to set up additional procurement training for selected Stated Trial Court personnel. 	Accept: <ul style="list-style-type: none"> 1. We will better maintain required documentation. 2. We have had some training but will schedule more. 	Tim Townsend Tim Townsend Charlotte Pirtle Debbie McCord	Completed July 31, 2011
C. State Trial Courts management should ensure its credit card program adheres to all procurement standards and requirements.	Accept: We will receive training and follow Metro procedures for the credit card program.	Tim Townsend Charlotte Pirtle Debbie McCord	July 31, 2011
D. State Trial Courts management should ensure documented Time and Attendance policies exist for all courtrooms and functions. The policies should include leave, absences, tardiness, time keeping, attendance documentation and retention of time, attendance and leave usage.	Accept: The STC Administrator agrees and is in the process of creating a database necessary to accomplish the recommendation for his administrative staff.	Tim Townsend	July 31, 2011
E. State Trial Courts management should enhance its hiring practices and broaden its base of available applicants by advertising all position vacancies through Metro Nashville courtesy postings.	Accept: The STC Administrator agrees and will enhance the hiring practice when positions become available within his administrative staff.	Tim Townsend	July 31, 2011

**Additional State Trial Courts of the 20th Judicial District of Tennessee Management
Response to the National Center for Courts Performance Audit Report (Appendix A).**

Page 5, Case Management & Scheduling Procedures/Practices

In 2010, the six criminal courts disposed of 1,519 cases by information agreements. See Chart #1, page C-25.

Page 9, ADDITIONAL TABLE 2

**2009 CIRCUIT COURT JURY CASE CLEARANCE RATE, BY DIVISION
(Calendar Year January – December 2009)**

DIVISION	JURY CASES FILED	*JURY CASES CONCLUDED	PERCENTAGE CONCLUDED TO FILED
CIVIL DIVISIONS			
1	231	295	127.70%
2	231	289	125.10%
3	231	357	153.21%
5	233	374	160.51%
6	232	348	150.00%

The table provided on page 9 includes adoptions and settlements, which increased 1st Circuit's filings by 368 and 3rd Circuit's filings by 1,703. The above table compares only jury filings to jury cases concluded.

Neither table 2 on page 9 nor additional tables 2 on this page reflect the following:

1. DUI trials completed by 1st, 2nd and 5th Circuit Courts.
2. Mistrials and hung jury cases in all the Circuit Courts.
3. Domestic Relations cases and Probate cases heard by several of the Circuit Courts.
- *4. Skewed results occur whenever one Circuit Court hears pre-trial litigation in a particular case, and another Circuit Court signs the Final Order in that case. Currently, the policy is that the Circuit Judge who signs the Final Order is credited with the disposition of the case.

Page 12, Recommendation 3

-When it is necessary for the Circuit Court to schedule a civil trial during a non-Circuit Court jury week, to the extent possible, that trial should be scheduled to coincide with a week in which jurors for the Criminal Court are already being summoned. This should include the Circuit Court DUI “blitz” weeks. This would allow the most efficient use of summoned prospective jurors.

The Criminal Court currently has 30 designated jury weeks. Prior to budget cuts the Criminal Courts had 36-38 jury weeks. The Circuit Court currently has 23-24 designated jury weeks which include Monday and Tuesday jury case settings and where 60 jurors are summoned. Prior to budget cuts the Circuit Courts had the same number of designated jury weeks; however, cases were set on Mondays, Tuesdays and Wednesdays, and 90 jurors were summoned.

The recommendation of greater coordination of Criminal and Circuit Courts jury weeks to reduce the number of jurors summoned is not based on the reality of jury selection. The recommendation ignores the fact that if more Courts are scheduled to have trials on given weeks, greater numbers of jurors would have to be summoned on these combined days. Further, potential jurors who are excused from one Court are not necessarily excused to another courtroom. They are often excused for a reason which would disqualify them for all similar Courts (personal obligations related to that week, issues of fairness on any trial because of personal opinions and experiences). Any judge who has attempted to select a jury with a large number of jurors “excused” from other trials knows that the “excused” jurors were “excused” for a reason and it greatly interferes with the ability to get a fair jury. Staggering times will not solve the problems that are encountered by the number of excused jurors who are disqualified to be on any jury.

Trial dates and trial starting times must also accommodate attorneys, witnesses, victims, as well as court schedules. For example, courts may be sharing witnesses with other local courts as well as courts from other state jurisdictions; or witnesses may be brought in from out of state, at considerable cost. Sitting and waiting for the availability of jurors is very inefficient and costly to the entire justice system.

Page 13, Case Management Issue 3

Does data exist to be able to measure performance of the State Trial Courts against internal and national standards, including the average length of time required for various case types to reach resolution?

Seventh Circuit Court receives a separate monthly report from the Circuit Court Clerk showing cases filed and concluded, broken down into various categories, including probate petitions, conservatorships, guardianships and trust actions filed and concluded.

Page 15, Recommendation 4

- *The State Trial Courts in Davidson County should:*
 - a. *Develop appropriate measures that apply across all the trial courts based on CourTools measures two through five, as well as more detailed measures specific to individual courts.*
 - b. *Work with the Trial Court Administrator, the Criminal Court Clerk, the Metro Office of Criminal Justice Planning, the Circuit Court Clerk, and the Chancery Court Clerk and Master to design a set of clear, consistent reports enabling them to determine performance and manage their caseloads effectively.*

In recommending a uniform measure, the report does not address the constitutional issues which are different for the various courts and the variables which might prevent a uniform measure for all Courts. The report does not address the cost issue and millions of dollars spent by the Metropolitan Government to develop CJIS to coordinate with all parts of the criminal justice system and the needs specific to that system. Unlike other courts, except for cases on forfeit status, the criminal court cases regularly appear on the court docket. The criminal court judge is reminded of the age of the case by the case number, the number of settings listed on the docket, and a notation if the case is past the final settlement date. According to the criminal court clerk, the CJIS can be programmed to provide data concerning age of case given agreed upon parameters.

Page 17, Jury Management

The combination of the two pools will require the need for more jurors rather than less.

The Criminal Court currently has 30 designated jury weeks. Prior to budget cuts the Criminal Courts had 36-38 jury weeks. The Circuit Court currently has 23-24 designated jury weeks which include Monday and Tuesday jury case settings and where 60 jurors are summoned. Prior to budget cuts the Circuit Courts had the same number of designated jury weeks; however, cases were set on Mondays, Tuesdays and Wednesdays, and 90 jurors were summoned.

The recommendation of greater coordination of Criminal and Circuit Courts jury weeks to reduce the number of jurors summoned is not based on the reality of jury selection. The recommendation ignores the fact that if more Courts are scheduled to have trials on given weeks, greater numbers of jurors would have to be summoned on these combined days. Further, potential jurors who are excused from one Court are not necessarily excused to another courtroom. They are often excused for a reason which would disqualify them for all similar Courts (personal obligations related to that week, issues of fairness on any trial because of personal opinions and experiences). Any judge who has attempted to select a jury with a large number of jurors “excused” from other trials knows that the “excused” jurors were “excused” for a reason and it greatly interferes with the ability to get a fair jury. Staggering times will not solve the problems that are encountered by the number of excused jurors who are disqualified to be on any jury.

Trial dates and trial starting times must also accommodate attorneys, witnesses, victims, as well as court schedules. For example, courts may be sharing witnesses with other local courts as well as courts from other state jurisdictions; or witnesses may be brought in from out of state, at considerable cost. Sitting and waiting for the availability of jurors is very inefficient and costly to the entire justice system.

Page 20, Jury Management

This two-step process does not apply when Grand Jurors are summoned independently of the petit jury panel. When Grand Jurors are summoned separately, the initial summons is processed by the jury coordinator. All other communication and steps are handled by the staff of the specific criminal court for which the summons for the Grand Jury is issued.

Page 20, Recommendation 7

- Evaluate and consider using additional sources of information to compile the jury list in order to improve accuracy and completeness.

The types of records referenced (welfare, unemployment) are either not available for court use or contain a number of non-residence information which means a greater number of individuals summoned do not meet the basic qualifications for jury service.

Page 21, Recommendation 9

- The Circuit Court should endeavor to select its jury trial weeks from among those set by the Criminal Court.

The Criminal Court currently has 30 designated jury weeks. Prior to budget cuts the Criminal Courts had 36-38 jury weeks. The Circuit Court currently has 23-24 designated jury weeks which include Monday and Tuesday jury case settings and where 60 jurors are summoned. Prior to budget cuts the Circuit Courts had the same number of designated jury weeks; however, cases were set on Mondays, Tuesdays and Wednesdays, and 90 jurors were summoned.

The recommendation of greater coordination of Criminal and Circuit Courts jury weeks to reduce the number of jurors summoned is not based on the reality of jury selection. The recommendation ignores the fact that if more Courts are scheduled to have trials on given weeks, greater numbers of jurors would have to be summoned on these combined days. Further, potential jurors who are excused from one Court are not necessarily excused to another courtroom. They are often excused for a reason which would disqualify them for all similar Courts (personal obligations related to that week, issues of fairness on any trial because of personal opinions and experiences). Any judge who has attempted to select a jury with a large number of jurors “excused” from other trials knows that the “excused” jurors were “excused” for a reason and it greatly interferes with the ability to get a fair jury. Staggering times will not solve the problems that are encountered by the number of excused jurors who are disqualified to be on any jury.

Trial dates and trial starting times must also accommodate attorneys, witnesses, victims, as well as court schedules. For example, courts may be sharing witnesses with other local courts as well as courts from other state jurisdictions; or witnesses may be brought in from out of state, at considerable cost. Sitting and waiting for the availability of jurors is very inefficient and costly to the entire justice system.

Page 22, Recommendation 10

- Consider converting to a 1-step petit jury summoning process to reduce the manual procedures, printing and postage costs.

How does this eliminate the need of rescheduling jurors for different weeks later in the year?

Page 22, Recommendation 11

- Upgrade or consider replacing the current automated jury management system.

The recommendation does not address the costs or the funding source.

Page 36, Table 4

Funding Sources for the Davidson County Drug Court

The funding sources for Drug Court are incorrect. The amount from the Department of Corrections is not a grant, neither is the \$500,000.00. The \$982,000.00 is by contract with TDOC and the \$500,000.00 is a direct appropriation from the Legislature.

Page 43, Recommendation 14

- Document and formalize the organizational/reporting relationships between the State Trial Courts, Drug Court, DCCCP, and the Nashville Drug Court Support Foundation.

The Nashville Drug Court Support Foundation is a not for profit 501 (c)(3) corporation completely independent of the Drug Court and is not subject to this survey/audit.

Page 57, Recommendation 24

- Develop new scheduling practices and policies to reduce the time spent in court by the case/probation officers.

Community Corrections officers are required to attend the Courts for several different reasons. Because each court is independent, it is impractical to create such a schedule.

The Criminal Court Judges schedule probation and community correction violation hearings based on the court schedule (which considers all issues involving trial obligations), the state probation officers concerns, and the community correction concerns. Generally, each court currently has a specific day set aside for violation hearings, which varies across courts. The development of individual court schedules are a core function performed by each trial judge. Recommendations about individual court schedules are outside the authority of the Metro Performance Audit.

Page 59, Staffing & Job Classifications

Criminal Court judges are allotted six court officer positions by private statute;⁶ Circuit Court judges in Circuits hearing civil cases have three court officer positions; Circuit Court judges hearing domestic relations or probate matters have four court officer positions; and Chancellors have two court officers.

Chancellors have two court positions: secretary and law clerk

The Clerk's Offices for the Criminal and Chancery Courts normally assign a deputy clerk to each division or part as well.

The Circuit Court Judges for Divisions 1-8 do not have an assigned Deputy Clerk to their Courts:

- a) One of the three listed staff members (court officer positions) from each Circuit Court hearing civil cases, divisions 1, 2, 3, 5 & 6, is a Deputy Clerk; however, Circuit Court

⁶ Chapter 331, Private Acts, 1967, §1 (1968); Chapter 518 Private Acts, 1923, page 1985.

divisions 1, 2, 3, 5 & 6 are not assigned an additional Deputy Clerk from the Circuit Court Clerk's Office;

- b) One of the four listed staff members (court officer positions) in the two Circuit Courts hearing domestic relations (divisions 4 & 8) and probate matters (division 7) is a Deputy Clerk; however, Circuit Court divisions 4, 7 & 8 are not assigned an additional Deputy Clerk from the Circuit Court Clerk's Office;
- c) Each of the six Criminal Courts and each of the four Chancery Courts are assigned a deputy from their respective Clerks' offices which provides one additional staff member to each Court (Criminal Court has six court officer positions and Chancery Court has two court officer positions).

Page 60, Judicial Assistants generally perform such duties as:

- Substituting for the docket clerk when necessary. As stated above in Circuit Court Divisions 1, 2, 3, 5 & 6, either the judicial assistant or one of the other two court officer positions (3 court officer positions total) serve as the docket clerk. Also, in Circuit Court Divisions 4, 7 & 8 either the judicial assistant or one of the other three court officer positions (4 court officer positions total) is the docket clerk. All court officer personnel in Divisions 1, 2, 3, 5 & 6 (3 court officer positions total) and all court officer personnel in Divisions 4, 7 & 8 (4 court officer positions total) are cross-trained to perform the duties of a docket clerk.
- For Criminal Courts, judicial assistants have grand jury responsibilities, prepare reports required by the Tennessee Supreme Court, draft jury charges and screen all correspondence

Page 60, Among the responsibilities of bailiffs are:

- Locating prisoners in the system
- Transporting and coordinating field trips for the Grand Jury
- Reviewing plea petitions and judgment forms
- Reviewing court minutes for accuracy

Page 61, Masters, other than the Circuit Court centralized special master, may handle such matters as:

- Preparing written reports and proposed findings upon matters referred to them by the judge or Chancellor
- Performing Judicial Settlement Conferences, primarily Domestic Courts

The number of court officers employed in Criminal Court has not increased since 1923. The case load and administrative responsibilities of the criminal courts have increased dramatically over that nearly ninety (90) year period. The criminal courts have had to modify the responsibilities of the court officers in order to meet the needs of the increased demand. For example, the criminal courts are not funded with a designated law clerk, leading each judge to change at least one court officer position to a law clerk position. The assignment of judicial administrative tasks and duties to staff by individual judges is a core judicial function performed by individual trial court judges.

Page 62, Recommendation 25

- Bailiffs should be provided with multiple channel radios so that they are able to summon assistance, when needed, quickly and easily.

The court officers had separate radios at one time and were forced to turn them in because of budget cuts. Radios do not work in the basement of the Birch Building. The recommendation does not address the costs or the funding source.

It is clear that the current staffing level is designed to meet the needs of the Criminal Court during peak periods. The need for courtroom security is particularly heavy during jury trials when at least one bailiff must attend to the juryThus, there is a potential that having a pool of court officers trained to work in the courtroom and able to rotate among divisions could accommodate the Criminal Court's needs.

This is inaccurate and inadequate. Staffing was not designed to simply meet the needs of criminal court for a jury trial. The summary and recommendation completely ignore the security

risks associated with the defendants on bond who are present in large numbers in the courtroom audience. To be accurate, peak periods are greatest on the non-jury days.⁷ The distinction between jury days and non-jury days should be noted in order to assess staffing needs. (See attached chart #2, page C-26, for jury trials and chart #3, page C-26, for number of defendants processed on non-jury days. See chart #4, C-27, for number of days spent in court per year. See chart #5, page C-27, for a sample of numbers of individuals entering a criminal court on a daily basis.

Page 63, Recommendation 26

- The Criminal Court should evaluate appropriate options for reallocating the duties of Court Officers (such as pooling arrangements or transferring certain duties such as transporting prisoners from the basement to the courtroom level to the Sheriff) that would enable the court to effectively use all its resources while safely and efficiently performing its responsibilities.

CRIMINAL COURT JURY DAYS

(See attached Chart #2, page C-26, for number of jury trials per division conducted since 2007.)

On jury days at least one, possibly two court officers collect at least 30 jurors from the jury deliberation room. During jury selection, generally one court officer is at the front of the courtroom monitoring and providing assistance to the jurors both in the jury box and the jurors in the courtroom audience. One or two court officers are monitoring the defendant (or defendants), and the remaining court officers are in the rear of the courtroom monitoring the jurors, any witnesses, or family members in the courtroom. The officer(s) in the rear of the courtroom are also responsible for monitoring jurors and witnesses so there is no communication in the hallway during breaks.

After the trial begins, generally one court officer is at the front of the courtroom monitoring the jurors and the witnesses, adjusting the monitors and microphones, handling exhibits and monitoring the individuals seated in the courtroom. At least one court officer is with the defendant (more are used if more defendants) and monitoring any behavior associated with the defendant and assisting the attorney in the courtroom. The remaining court officer(s) are in the

⁷ The criminal courts disposed of 6,441 cases during 2010. In 2010, the criminal courts tried 125 jury trials, or approximately 2% of the total cases.

rear or the side, bringing in witnesses, monitoring the audience and monitoring the activity just outside the courtroom doors.

During breaks or deliberation, there are usually one or two court officers assigned to work with the jury, and one or two with the defendant(s) in the holding cell, and one monitoring the family members and witnesses in the courtroom.

After the verdict, at least two court officers are needed to escort the jurors to their cars. One maintains the individuals in the courtroom, and one works with the defendant and his attorney. Additional court officers are brought in, if necessary, to maintain order while the verdict is read and immediately thereafter.

CRIMINAL COURT NON-JURY DAYS

(See attached Chart # 3, page C-26, for volume of jail and bond defendants and Chart #4, page C-27, for days in court.)

On non-jury days the criminal courts handle the majority of court business, which would be arraignments, motion hearings, sentencing hearings, probation violation hearings⁸, post-conviction hearings, etc. The needs of the criminal court for staffing are just as great for non-jury days as jury days, if not greater.⁹

As a general rule, during non-jury days, at least one court officer is needed to move the jailed defendants from the basement to the holding cells behind the courtroom. Another court officer monitors the defendants, in the holding cells, as well as working with the defense attorneys in meeting with the jailed defendants. A third court officer is monitoring the access to the courtroom from the hallway, the bond defendants, as well as victims and witnesses who are present in the audience. A fourth court officer is preparing court papers, monitoring the courtroom and moving defendants in and out of the courtroom. Some courts may have more than one court officer assisting in these duties depending on the volume and availability.

⁸ For example, during 2010, Division III Criminal Court conducted 288 probation violation hearings, each one lasts no less than ten minutes and as long as one to two hours. Each court handles many more types of proceedings, each with their own security issues.

⁹ The criminal courts disposed of 6,441 cases during 2010. In 2010, the criminal courts tried 125 jury trials, or approximately 2% of the total cases.

During hearings on on-jury days, at least one court officer sits by the witness, monitors the witness behavior (witnesses can include the defendant), as well as the audience, passes exhibits to the witnesses and protects the judge. Another court officer stays in the holding area monitoring all the remaining jail defendants and working with their defense attorneys. Another court officer is with the in-court defendant, and a fourth court officer is at the courtroom door, monitoring the bond defendants as well as the audience which includes victims and defendant supporters. Some courts may have more than one court officer assisting in these duties depending on the number of defendants in a courtroom and the availability of court personnel.

During guilty pleas, at least one court officer is preparing paperwork or moving jail defendants from the holding cell behind the court to the basement; one court officer is with the jail defendants and working with the attorneys; and one court officer is monitoring the audience and entrance which includes bond defendants, victims and defendant supporters. Again, some courts may have more than one court officer assisting with the duties depending on the number of defendants in the courtroom and the availability of court personnel.

Any suggestion that “best practices” is for only two court officers to be in a courtroom completely ignores the nature of the proceedings being conducted and the number of defendants, both jailed and bond, who are processed in court during non-jury times. Further, the court is open to victims, their supporters as well as defendant supporters. These parties rarely leave their feelings at the courtroom door. The suggestion would lead to major security issues which are now not present.

The suggestion of pooling and rotating court officers totally ignores the most beneficial and efficient part of the current system. First, current practice allows the court officers to become familiar with the defendants, the facts of their cases, any issues with regard to co-defendants, witnesses and family members. This court officer knowledge is invaluable in maintaining security, order in the courtroom and transportation of the defendants. The court officers treat the defendants with dignity and respect as a party to the case with the constitutional rights that are afforded all defendants. They are not just another criminal to be housed and transported. Other law enforcement and correctional officers do not have the same obligations and responsibilities as those of the staff of the criminal courts.

The suggestion that pooling and rotating court officers is more “efficient” is not based on any facts. It is a conclusory statement based on speculation. There is no suggestion of how the process (pooling and rotating) would function or who would make the decisions. Court officers are responsible for issuing and serving subpoenas for a particular court. Issues often arise as to whether a witness has been properly subpoenaed. If that court officer is arbitrarily rotated to another court, disruption to two different court proceedings would occur until that court officer could be summoned to the appropriate court for resolution of the issues. This is not an efficient use of court time.

The recommendation references Canon 3.B(a) as being cited by judges as creating a problem when the court officers would not be under the direct supervision of a particular judge. The recommendation attempts without legal basis to dismiss the concerns expressed by the judges. The last 5 lines on page 62 after “Furthermore” and the top four lines on page 63 should be stricken since the auditors are not qualified to interpret Judicial Canons.

Recommendation #26 fails to mention Canon 3.B.(4) and (5) which read as follows:

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and **shall require similar conduct of lawyers, and of staff, court officers, and others subject to the judge’s direction and control.** (emphasis added)

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and **shall not permit staff, court officials, and others subject to the Judge’s direction and control to do so.** (emphasis added)

The recommendation also fails to mention the most important Canon 3.C(2) which reads as follows:

(2) A judge shall require **staff, court officials and others subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.** (emphasis added)

Canon 3.C.(2) requires all persons subject to the judge's direction and control to observe the standards which apply to a judge. The requirement is more than communications with jurors, it is a requirement relating to all aspects of the court and its staff's behavior. Any employee subject to a judge's direction and control would be required to follow the Canons. The difficulty in implementing a system which rotates non-judicial staff to the control of a judge should be obvious.

**CHART #1
2010 GRAND JURY CASES PRESENTED**

2010 CASES PRESENTED TO THE GRAND JURY

January Term	716	(15 no true bills)
April Term	978	(3 no true bills)
July Term	1077	(9 no true bills)
October Term	829	(4 no true bills)
TOTAL	3600	(31 no true bills)

INFORMATIONS

TOTAL 2010 INFORMATIONS 1,519

(Defendants waive Grand Jury. Case directly filed in Criminal Court)

**CHART #2
JURY TRIALS BY YEAR AND DIVISION**

DIV	I	II	III	IV	V	VI	# of jury weeks	Average
2007	18	13	22	11	13	11	38	15
2008	21	15	19	17	20	16	35	18
2009	19	15	24	14	27	14	30*	19
2010	21	16	28	16	18	26	30	21
Average	20	15	23	15	20	17		

*Reduction because of budget constraints.

**CHART #3
2010 NON-JURY DAYS***

Number of defendants in Court for a single Division of Criminal Court

	JAIL	BOND	TOTAL	AVERAGE JAIL (per day)	AVERAGE BOND (per day)
WEDNESDAY	955	528	1483	23	13
THURSDAY	1233	886	2119	30	21
FRIDAY	1113	505	1618	26	12

Yearly total of defendants 5,220

Based on 44 weeks, 2 weeks trials all week

*Division III statistics used, but are representative of all six criminal court divisions

**Some Wednesdays are both “jury days” and “non-jury days” in which court staff is responsible for jury issues as well as issues with large numbers of defendants. During non-jury weeks, the number of defendants for Mondays and Tuesdays are similar.

***Does not include video arraignment totals. The trial courts IT manager has worked with TDOC to set up and utilize video conferencing for TDOC arraignments. This procedure saves money and time. The manager has also established video conferencing to allow defense attorneys to privately confer with defendants housed at TDOC across the state and the

Davidson County facilities. This procedure, which is a model for other jurisdictions, will result in a tremendous savings to the state and indigent defense budget.

CHART # 4
COURT DAYS**

2009 Court Days Summary

220 available court days
214 days court in session
30 jury weeks
24 jury trials

2010 Court Days Summary

219 available court days
214 days court in session
30 jury weeks
28 jury trials

**Division III statistics used, but are representative of all six criminal court divisions

CHART #5
SAMPLE NUMBER OF INDIVIDUALS* ENTERING COURTROOM**

<u>DATE</u>	<u>DAY OF WEEK</u>	<u>DOCKET</u>	<u># OF PEOPLE IN COURTROOM</u> (NO DUPLICATES)
2/28/11	Monday	Trial-First Degree Felony Murder	49 (includes jurors)
3/01/11	Tuesday	Trial-First Degree Felony Murder	24 (includes jurors)
03/02/11	Wednesday	Trial-First Degree Felony Murder/Regular Docket	53 (includes jurors) Jurors on 5 th floor deliberating
03/03/11	Thursday	Discussion Docket	64
03/04/11	Friday	Misc. Docket/Motions, hearings, pleas	94

*Does not include in-custody defendants.

****Sample for one week in Division III Criminal Court. Division III is representative of all criminal courts**

Comment

The sentence prior to footnote 81 and the footnote itself are inaccurate and misleading. There are no current accepted best practices. The document cited does not support the statement about the recommended number of court officers needed in all court proceedings. Using the logic and formulas developed by NCSC's staff, the minimum number of court officers needed in a court proceeding with jurors is four.

Summary of Guidelines for Implementation of Best Practices of Court Building Security developed by NCSC

Footnote 76 cites a document published by The National Center for State Courts in 2010, titled "Guidelines for Implementing Best Practices in Court Building Security: Costs, Priorities, Funding, Strategies and Accountability" [hereinafter "The Guidelines"]. The paper was funded by the State Justice Institute. The stated purpose of the paper was to assist courts in the development and implementation of effective measures for court building security. The document sets forth opinions in the form of suggested guidelines for identifying costs for implementing recommendations, a framework of priorities, recommended strategies for seeking funds, and describes performance and accountability measures. Prominent at the beginning of the document is the following disclaimer:

"The points of view and opinions expressed in this document are those of the author, and they do not necessarily represent the policies and positions of the State Justice Institute."

A fundamental recommendation of the paper is the establishment of a courthouse security committee, which in their opinion, should be chaired by a judge (preferably the presiding judge). The purpose of said committee is to establish building policy and procedures, assignment of personnel, equipment needed and its associated costs, and building access and training. The paper recommends that the security committee headed by the court should consist of all stakeholders: the sheriff or chief of police, clerk of the court, court administrator, the district attorney and public defender, bar associations, first responders, facilities managers, and local

elected officials. (Note that effective July 1, 2010, the Metropolitan Government removed the supervision of security for the courthouses from the Courts.)

In short, the overall opinion stated in “The Guidelines” is that there is no rigid formula; each court needs to decide what is best based on its own needs and capacity. However, to provide guidance, the NCSC paper includes an Appendix titled “Steps to Best Practices” (pp. 30-62). There is no information as to how the “Best Practices” were developed, nor is their information as to why they used the term “Best Practices.”

Summary of “Best Practices” (Appendix) developed by NCSC

In attempting to ascertain the number of court officers in a court proceeding recommended by NCSC, one must consider the following logic employed in the “Best Practices” Appendix to the “Guidelines.”

The court security officer staffing of the courts is addressed in Category B of the “Best Practices”, found at pages 39-48. Category B is divided into various categories. These categories include access of people to court building, after-hours access to court building, chambers security, courtrooms, court security officer (CSO) staffing levels, duress alarms, threat and incident reporting, in-custody defendants, threat and incident reporting, and training. Each category is divided into three phases. Each successive phase of implementation of “Best Practices” builds on the prior phase, starting with the minimal requirement and increasing the number of CSOs in each phase until the optimal number of 6-7 CSOs per court is reached (the “Best Practice” per the paper). Category C similarly addresses juror issues. (p.55)

This phasing process detailed on pages 34-50 and 55 can be summarized as follows.

A. NCSC “Best Practice” for Security Officer Staffing for In-Court Proceedings (pp.43-45)

- 1) Phase One: One CSO or transport officer is recommended during court proceedings when an in-custody defendant is involved. (Total: 1 CSO)
- 2) Phase Two: One CSO when an in-court proceeding is in progress and a second CSO when in-custody defendant is involved is recommended. (Total: 2 CSOs)

- 3) Phase Three: One CSO for when an in-court proceeding is in progress, one CSO for the judge, and one CSO for an in-custody defendant are recommended. (Total: 3 CSOs)
- 4) Best Practices: Phase 3 number of CSOs plus an additional CSO for high visibility trials is recommended. (Total: CSOs)

B. NCSC “Best Practices” for Jurors (p. 55)

- 1) Phase One: One CSO to screen as jurors enter the building is recommended. (Total: 1 CSO)
- 2) Phase Two: One CSO as jurors enter the building and one CSO to be present when jurors are paid is recommended. (Total: 2 CSOs) (note: not applicable to Davidson County)
- 3) Best Practices: One CSO inside and out of the jury assembly room is recommended. One CSO to escort jurors, or 2 CSOs to escort jurors if an elevator is involved is recommended. One CSO for jury during deliberation is recommended. (Total: 3 CSOs assuming multi-tasking)

C. Total Recommendation from NCSC “Best Practices”

Total recommendations from the “Best Practices” developed by NCSC for in-court and jury security would be 6-7 total CSOs for each criminal court. It is assumed by the NCSC “Best Practices” guide that each CSO position requires 1.33 full time CSOs to cover sick and annual leave issues. Thus, the effective total according to the “Best Practices” of the NCSC would be 8-10 CSOs (taking 1.33 times 6-7 CSOs) for a jury trial with in-custody defendant for each criminal court.

Observations:

- 1) According to “Best Practices” published by NCSC, the bare minimum to staff a court proceeding requiring transportation of jurors in an elevator would be four CSOs. To allow for leave, at least five CSOs would be needed according to the NCSC “Best Practices” ($4 \times 1.33 = 5.3$).

- 2) The statement contained in the audit at page 63 that the accepted best practice for numbers of court officers needed in any court proceeding is “2” is not supported by the NCSC’s own “Best Practices.”
- 3) Court proceedings are not single isolated events. The courts are required to multi-task to handle the large volume of cases. NCSC “Best Practices” does not address this issue.
- 4) The NCSC “Best Practices” does not address recommendations for court proceedings with more than one in-custody defendant, proceedings with large numbers of bond defendants, or a large number of jurors.
- 5) NCSC “Best Practices” does not address the number of CSOs needed to transport in-custody defendants to the holding cells behind the courtrooms and to monitor the in-custody defendants while in the holding cells behind the courtrooms.
- 6) NCSC “Best Practices” does not address all the additional duties performed by the court officers in Davidson County. These duties would require additional staff.
- 7) Each criminal court in Davidson County uses between 4-5 court officers to provide in-court security for all proceedings, for all defendants and parties to transport and protect jurors, to transport and supervise in-custody defendants, and to perform all the ancillary duties of issuing subpoenas, working the equipment, working with exhibits, working with attorneys, etc. There is no provision to increase staff for time off for annual or sick leave.
- 8) None of these recommendations of NCSC “Best Practices” have any relevance to the way the criminal courts of Davidson County function, how the building is designed, the volume of cases, or the number of in-custody and or bond defendants who appear in court simultaneously.
- 9) There is no information about how NCSC developed the “Best Practices” or why the NCSC opinions are labeled “Best Practices.” There is no information that would justify calling “Best Practices” as “accepted.”

Footnote 82 - (In all other jurisdictions in Tennessee, the Sheriff has law enforcement powers. The Metro Charter limits the Davidson County Sheriff to maintaining the jail and workhouse and service of civil process. See Metro Charter Section 16.05.)

Page 64, Recommendation 26 (Continued)

- Even if it were concluded that by shifting responsibilities, standardizing procedures, and careful scheduling, the Criminal Court could operate effectively with fewer court officers,

Chapter 331 of the 1967 Private Acts and possibly Tennessee Code Annotated §8-8-201(a)(2)(B would have to be amended.

Comment: The summary of shifting responsibilities (to other law enforcement) standardizing procedures (in the courtroom) and careful scheduling (undefined) could make the court operate more effectively is not supported by any data. Each judge develops his or her own procedures to effectuate judicial decision making; they cannot be standardized. The individual court procedures and schedule is a core function performed by each trial judge. Recommendations about standardizing court procedures are outside the authority of the Metro Performance Audit.

Page 66, Table 6 - Staffing Levels in Comparable Jurisdictions

In Table 6 of the audit where the Sheriff furnishes the courtroom security, the chart does not state the number of personnel involved thereby making the total inaccurate. The Davidson County Sheriff's responsibilities are limited to maintaining the jail and workhouse and service of civil process. (See Metro Charter Section 16.05)

Correction: The data set forth for Shelby County is inaccurate and misleading. The Table reflects a total of 22 Judges. It fails to list the two Probate Judges that are provided for that Jurisdiction. Shelby County has 24 Trial Court Judges (9 Circuit Court Judges, 3 Chancellors, 10 Criminal Court Judges and 2 Probate Judges). In addition the Shelby County data fails to include the fact that each of the Shelby County Judges are provided with a Secretary/Judicial Assistant and a Law Clerk. In addition, while that county does not provide staffed court officer positions within the Judicial Department budget, the Shelby County Sheriff's Department does provide court officers for the security of these judges. Therefore, any use of comparative data with Shelby County must include a detailed recognition of these resources.