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State Senate investigates “Fine Time”

*Report reveals judges’ jailing of poor people for failure to pay fees and fines*

BOSTON -- The State Senate Committee on Post Audit and Oversight has completed a first-of-its-kind investigation of “fine time” in Massachusetts -- the practice by district court judges of incarcerating defendants solely for failure to pay fines, fees or court costs.

State Sen. Mike Barrett (D-Lexington), Chair of the Committee, called the findings “eye-opening.” He and Committee staff identified 105 instances of fine time in 2015 in just three Massachusetts counties -- Essex, Plymouth and Worcester. In 60% of the cases, the defendant had at some point been verified as indigent; ten were described as unemployed; five, as homeless. Yet all 105 individuals were imprisoned for failure to pay fees and fines.

Barrett says a criminal defendant runs “a gauntlet of financial risk” as he or she moves through the Massachusetts district courts. Among the exactions commonly imposed: a fee for court-appointed counsel (even if a defendant is indigent), a fine (if he’s guilty of the underlying crime), a victim/witness assessment (even if the crime is victimless), a monthly supervision fee (if he’s put on probation), a daily monitoring fee (if he has to wear a GPS device), a default fee (if he defaults on a court date), and so on.

The expenses pile up, Barrett says. Yet, according to Committee estimates, in only six of the 105 instances did a judge ask whether the defendant was too poor to pay. An attorney was present, or at least offered to the defendant, only 46% of the time.

“The audio recordings of these court proceedings can be jarring,” said Barrett. “They’re abrupt — some as short as 45 seconds.”

In Newburyport District Court, a defendant, charged originally with three offenses that were dismissed, was ordered to serve 25 days in jail for failing to pay $760. The defendant, who was not represented by counsel, asked, “Do I have any say on this? Like, any defense?” The judge replied, “Pay the money. … We got to clean up the paperwork.”

Sixty-seven of 105 imprisoned defendants owed $500 or less. Confinement lengths varied from one day to nearly four months. Defendants “worked off” their fines and fees at a rate of $30 a day.

Release of the Post Audit and Oversight report follows a hearing the Committee held in July, in which senators heard from James K, who served 36 days in jail in 2015 for failure to pay fees and fines. Following James K’s appearance, the Committee began its in-depth inquiry into whether similar things happen to other poor people in the Massachusetts courts.

“Responsibility for the current situation rests ultimately with the Legislature and recent governors,” Barrett says. “Over the years, we’ve piled on fees and fines with little thought about their cumulative effect. When they’re imposed on poor people -- which is very often -- they constitute a hugely regressive tax, not only on offenders but on their families. We need to scale down the charges and -- here’s the hard part -- come up with alternative sources of revenue for courts and corrections. We appreciate that the change-over will take more than a single year. As a Committee, we urge our colleagues to begin the process.”

Barrett says he’s encouraged that leaders of the Massachusetts Judiciary are looking into the issues revealed by the Committee’s inquiry. The Committee report wants to see all district court judges adhere to a new set of best practices -- to inquire into a defendant’s ability to pay, ensure the availability of counsel in fine time cases, offer community service and other alternatives to incarceration, and give advance notice of the risk of imprisonment for failure to pay.

In addition to urging a multi-year plan to increase general appropriations and move away from fines and fees, the Committee urges legislative reform. It wants the Governor and Legislature to (1) oppose increases in those fees and fines that have big negative effects on poor defendants; (2) double the per-day credit for fine time served to $60; and (3) amend state law to mandate the offer of an attorney, free of any indigent counsel fee, in fine time cases.

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