



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued February 2, 2016

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## Concord Division of the District Court Department— Review of Probation Supervision Fees: Transactions and Monitoring of Fulfillment by Probationers

For the period July 1, 2012 through December 31, 2013





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February 2, 2016

Sabita Singh, First Justice  
Concord Division of the District Court Department  
305 Walden Street  
Concord, MA 01742

Dear First Justice Singh:

I am pleased to provide this report on the Concord Division of the District Court Department. This report details the scope of our overall audit of the Trial Court as well as the objectives, procedures, findings, and recommendations related to our audit testing at this specific court for the period July 1, 2012 through December 31, 2013. My staff discussed the contents of this report with court personnel, whose comments we considered in drafting this report.

I would also like to express my appreciation to the Concord Division of the District Court Department for the cooperation and assistance provided to my staff during the audit testing.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular watermark.

Suzanne M. Bump  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

CDC	Concord Division of the District Court Department
FSM	Fiscal Systems Manual
OCP	Office of the Commissioner of Probation
PSF	probation supervision fee

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## EXECUTIVE SUMMARY

This report reflects audit testing performed at the Concord Division of the District Court Department (CDC) as part of an audit of the Trial Court’s administration and oversight of probation supervision fee (PSF) assessments. A PSF is a monthly fee that judges are statutorily required to assess for a criminal offender placed on probation (a probationer), to be paid for the length of his or her probation term. Section 87A of Chapter 276 of the Massachusetts General Laws allows for PSFs to be waived in certain instances; normally, in order to grant a waiver, the court must document the existence of financial problems or other issues that would make paying the monthly fee an undue hardship for the probationer. In these situations, the statute requires the probationer to perform unpaid monthly community service for as long as the potential undue hardship exists.

Our overall audit of the Trial Court’s administration of PSFs (Report No. 2014-5160-3J) included audit testing at 16 district-court locations, including CDC, to assess the process the Trial Court has established for PSFs, determine whether PSF-related transactions were properly documented in court records, and determine whether probationers were adequately monitored to ensure that they were fulfilling the PSF requirement. This report presents the results of our audit testing at CDC specifically. Audit findings for the entire audit project are presented in a separate report for that project.

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1a</b> <b>Page <a href="#">8</a></b>	Some judges at CDC allow probation officers to choose whether a probationer should pay a monthly PSF or perform community service, contrary to the General Laws.
<b>Finding 1b</b> <b>Page <a href="#">9</a></b>	The Probation Office does not have a centralized method to effectively track hours of community service performed.
<b>Recommendations</b> <b>Page <a href="#">10</a></b>	<ol style="list-style-type: none"><li>1. CDC should comply with the requirements of Section 87A of Chapter 276 of the General Laws for the imposition and waiving of PSFs and the restitution made for nonpayment. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a monthly PSF or whether a finding of fact has been held to allow the fee to be waived and community service performed instead.</li><li>2. CDC should establish a centralized method of tracking community service performed.</li><li>3. The Probation Office should promptly report all hours of community service performed by each probationer, regularly throughout the probation term, to the Clerk-Magistrate’s Office for recording in MassCourts so that both offices can readily determine the status of probationers’ accounts.</li></ol>

<b>Finding 2</b> <b>Page <u>12</u></b>	The court records the value of community service worked in place of PSFs at \$10/hour rather than the rates set by the Trial Court.
<b>Recommendation</b> <b>Page <u>13</u></b>	CDC should credit probationers' accounts for community service at the rates established by the General Laws and the Trial Court's Fiscal Systems Manual (currently \$8.13 per hour for community service performed during supervised probation and \$12.50 per hour for community service performed during administrative probation).

## OVERVIEW OF ENTITY

The Concord Division of the District Court Department (CDC) presides over civil, criminal, and other matters falling within its territorial jurisdiction: the towns of Concord, Carlisle, Lincoln, Lexington, Bedford, Acton, Maynard, and Stow. It is responsible for scheduling, holding, and recording proceedings in civil and criminal matters and for the care and custody of all the records, books, and papers that pertain to, or are filed or deposited in, the Clerk-Magistrate's Office. CDC's Probation Office is responsible for enforcing court orders when an individual before the court is placed on probation.

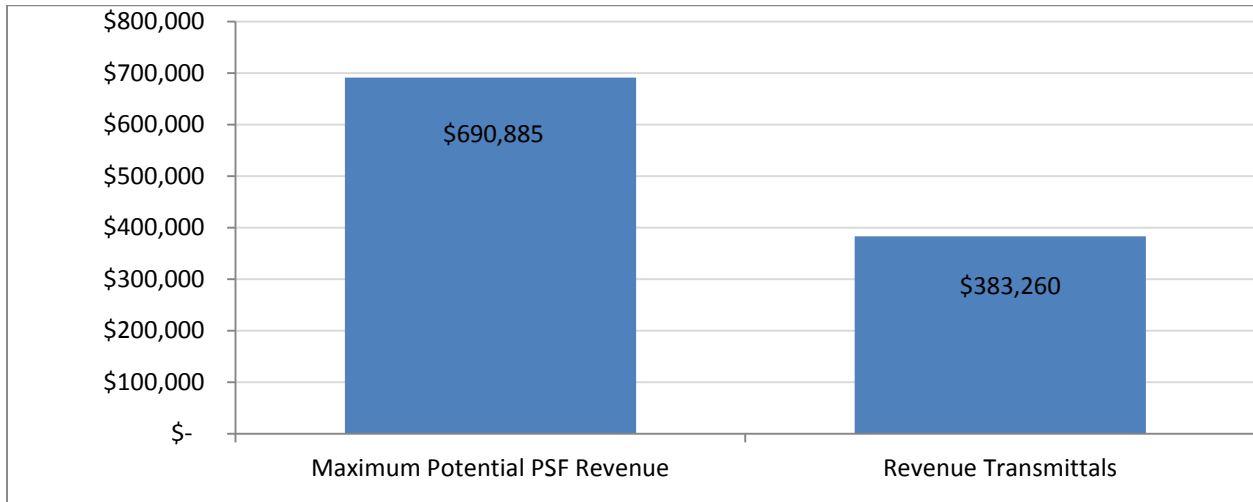
When an individual is placed on probation, Section 87A of Chapter 276 of the Massachusetts General Laws requires courts to assess the individual a \$50 (administrative) or \$65 (supervised) monthly probation supervision fee (PSF). Supervised probation requires more interaction with a probation officer than administrative probation, which may only require the individual to report to the officer quarterly or at the end of the probation term. It also generally has a longer duration than administrative probation. The statute allows judges to waive the fee in full if the individual is making monthly restitution payments that are greater than or equal to the fee. It also allows the judge to waive the fee if the court "determines after a hearing and upon written finding that such payment would constitute an undue hardship on [a probationer] or his family due to limited income, employment status or any other factor." That waiver requires the individual to perform unpaid monthly community service.

During the audit testing period (July 1, 2012 through December 31, 2013), CDC reported 816 new probation cases and 819 discharged probation cases, leaving 631 probation cases at the end of the period. As of December 31, 2013, 56% of the probationers were on supervised probation and 44% were on administrative probation.

During the testing period, CDC collected and transmitted \$383,260 of PSFs to the State Treasurer. CDC's actual transmittals were approximately 55% of the estimated potential PSF revenue. We calculated this estimate by combining CDC's 18 monthly reports of probation activity; totaling the numbers of individuals on administrative and supervised probation at the end of each month; and multiplying those numbers by either \$50 or \$65, as applicable. The estimate does not include probationers whose supervision may have been transferred to another court but who are carried on the original court's record. The difference between this percentage and 100% could be the result of probationers performing community service

instead of paying PSFs, subsequent court-ordered remittals<sup>1</sup> of PSFs (either the full amount or any remaining unpaid PSF balance), and/or probationers defaulting on their payment obligations.

The following chart compares estimated potential PSF revenue with actual PSF revenue transmittals.



1. Remittal occurs when the court terminates a person's probation because s/he has not complied with the terms and conditions of probation (sometimes resulting in incarceration) or when the court waives the balance of a PSF for a documented reason at the end of the probation term.



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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Trial Court’s administration and oversight of monthly probation supervision fees (PSFs) for the period July 1, 2012 through December 31, 2013. The scope of that audit includes an assessment of the process the Trial Court has established for PSFs and whether court divisions are adequately recording, monitoring, and fulfilling court-ordered assessments of PSFs at 16 selected district-court locations, which together account for \$7.5 million (23%) of the \$32.8 million in PSF collections transmitted to the state for the 18 months covered by the audit. The Concord Division of the District Court Department (CDC) was one of the 16 court locations selected. CDC accounted for \$383,260 in PSF revenue transmitted during those 18 months.

The procedures we completed at CDC were part of the overall Trial Court PSF audit, which we conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of our work at each court location was limited to determining the extent to which the court was complying with the responsibilities established by Section 87A of Chapter 276 of the General Laws, as well as guidance issued by the Trial Court; the Office of the Commissioner of Probation (OCP); and the court location itself, if it had issued any.

Below is a list of our objectives related to the procedures completed at CDC, indicating each question we intended our audit testing to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in our findings.

Objective	Conclusion
1. Are PSFs assessed in the correct amounts, and when a PSF is waived, does the court record include a written finding that the fee would constitute an undue hardship that requires monthly community service instead?	No; see Finding <a href="#">1a</a>
2. Are PSF assessments properly recorded by the Clerk-Magistrate’s Office?	Yes

Objective	Conclusion
3. Are probation officers enforcing the requirement that probationers pay PSFs?	Yes
4. Is the performance of community service, when allowed by the court in lieu of monthly PSF payments, adequately tracked, promptly reported, and accurately recorded?	No; see Findings <u>1b</u> and <u>2</u>

Our analysis of CDC’s information and data was intended to determine whether PSF transactions and the court’s monitoring of probationers’ PSF obligations were adequately supported by the court records; it was not designed to detect all weaknesses in the court’s internal control system. Further, our procedures did not include tests of internal controls to determine their effectiveness, because in our judgment, such testing was not necessary to determine the accuracy or reliability of PSF records. Our understanding of internal controls and management activity at CDC was based on our interviews and document reviews. Our audit testing was limited to what we considered appropriate when determining the cause of any PSF noncompliance.

To achieve our objectives, we performed the following procedures:

- We interviewed officials and other staff members from the Trial Court, OCP, and CDC and reviewed relevant documents, statutes, and regulations as well as CDC’s policies, procedures, and accounting records.
- We reviewed internal audits conducted by the Trial Court and OCP to determine whether any weaknesses that had been identified pertained to our current objectives.
- We obtained statistical data regarding probationer counts from OCP and compared the data to counts in CDC’s monthly report of probation activity for the testing period.
- We obtained from the Trial Court PSF assessment data (financial docket reports) for CDC, which we compared to CDC case files for accuracy.
- We obtained and analyzed case data from selected court criminal case docket records and traced and compared them to MassCourts (CDC’s case-management system) for consistency and completeness. We also interviewed court officials who were knowledgeable about MassCourts data-input activities. Since the court case docket record is the source document used to update MassCourts and the principal document that identifies all court activity for a civil or criminal case (including the assessment and collection of various fees and fines, civil judgments, and criminal case adjudication), we did not rely on MassCourts for the purposes of our audit testing. We believe the information we obtained from case docket records was sufficient for the purposes of our analysis and findings. We relied on hardcopy source documents, interviews, and other non-computer-processed data as supporting documentation on which we based our conclusions.

- We obtained and analyzed information regarding probationers from the Probation Office's hardcopy files and traced and compared it to MassCourts for consistency and completeness. Since the Probation Office file is the source document that identifies all the probationer's activity (including documentation of assessment, waiving, and collection of monthly PSFs and monitoring of monthly PSFs and/or performance of community service), we did not rely on computer-processed data. We believe the information we obtained from the Probation Office files was sufficient for the purposes of our analysis and findings.
- For our examination of PSFs, we selected 100% of transactions for one test; for another, we used random, nonstatistical sampling in order to eliminate bias by giving all items in the population an equal chance of being chosen. Therefore, in this second case, we did not project the results of our samples to the population. More specifically,
  - For recording and fulfillment of court-ordered PSF assessments, we randomly selected 30 out of 583 cases on the financial docket reports to test whether the PSF activity was accurately and promptly recorded by the Clerk-Magistrate's Office and whether, when PSFs were waived, judges provided written findings of fact and required probationers to perform monthly community service instead.
  - For performance of community service (when allowed by the court as a means of fulfilling the PSF assessment), we selected all 14 cases from the community-service logbook to verify that probation officers were monitoring and tracking the probationers' progress toward completion.

Any financial data we obtained from the Massachusetts Management Accounting and Reporting System about CDC's activities during the testing period were not used in our testing; the data were used solely for the purpose of presenting background information in our report. Consequently, we did not assess the reliability of these data.

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## DETAILED FINDINGS WITH COURT RESPONSE

### **1. The court does not always waive monthly probation supervision fees as required or effectively track community service.**

#### **a. The court does not always waive probation supervision fees as required.**

Some judges at the Concord Division of the District Court Department (CDC) allow a person's probation officer to choose whether s/he should pay a monthly probation supervision fee (PSF) or perform community service, a procedure that is contrary to Section 87A of Chapter 276 of the Massachusetts General Laws. Specifically, the sentencing judge imposes either a monthly probation fee or unpaid community service on the probationer. However, the judge allows the supervising probation officer to decide which penalty is appropriate without documenting a finding-of-fact hearing that would determine whether the probationer was able to pay the monthly probation fee. Because probation officers can choose to allow probationers to perform community service instead of paying PSFs, the usual requirements of the Office of the Commissioner of Probation (such as conducting administrative and surrender hearings for nonpayment of PSFs) may be bypassed. As a result, the Commonwealth may be forgoing PSFs that probationers would have been able to pay.

We reviewed 44 probationers by randomly selecting 30 case files in which an individual had been placed on probation and ordered to pay a monthly PSF or perform community service. To this sample, we added a supplemental test of 14 more probationers who performed community service in lieu of paying PSFs during the testing period. The purpose of our review was to determine whether the court was adequately documenting PSF waivers and requiring community service of probationers who could not pay PSFs.

Of the 44 probationers selected, we identified 4 for whom the judge had added "or community service" to the probation sentence, allowing the probation officer to decide which penalty—a fee or community service—was appropriate and an additional 5 for whom the judge waived the fee without requiring the probationer to perform monthly community service instead of paying the fee. The sentencing judge did not sufficiently document that the PSF would be an undue hardship for any of these 9 probationers.

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## **Authoritative Guidance**

Section 87A of Chapter 276 of the General Laws requires the imposition of a designated fee, depending on which type of probation the probationer is placed on. The PSF can be waived (in which case community service must be performed) upon order of the court after a finding of fact establishing that the probationer cannot pay the fee.

## **Reasons for Assessment Issues**

Court officials could not provide a reason for these issues.

### **b. CDC does not effectively track community service performed by probationers.**

The Probation Office does not have a centralized method to effectively track all the hours of community service performed through independent work arrangements made at public or nonprofit agencies. As a result, the Probation Office cannot readily determine how many community-service hours are owed, what community service amounts to in dollars, and whether offenders will be able to fulfill the requirements of court orders on schedule.

Our review was intended to confirm that the Probation Office staff tracks whether probationers are performing community service during each month in which it is required. We reviewed the probationers' files and copies of community-service records maintained by the CDC Probation Office to determine whether Probation Office personnel verified the community-service hours.

We selected all of the criminal cases in which an individual had been placed on probation and ordered to perform community service. For all 14 cases, the community-service hours were not updated in MassCourts as they were performed; they were updated at the end of the probation term.

## **Authoritative Guidance**

The Probation Office is responsible for monitoring community service performed by individuals under Section 87A of Chapter 276 of the General Laws. Though the General Laws do not address the issue of a centralized tracking method, they do require adequate monitoring, and best business practices would require the use of a centralized tracking system. Adequate monitoring requires the maintenance of accurate records.

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## Reasons for Ineffective Tracking

Rather than tracking specific types, dates, and amounts of community service via a single centralized method, CDC has a system wherein each probation officer keeps files to record community service performed by each probationer based on the records received from nonprofit agencies where the work is performed. Those records show the hours that the probationer worked. Depending on the practices of the nonprofit agency, a record may be submitted each time the probationer performs community service or may not be submitted until the end of his/her probation term. The Probation Office staff files a Community Service Completion Certificate with the court when the probationer has finished community service or probation. Since the Community Service Completion Certificate is the document that the Clerk-Magistrate's Office staff needs in order to update the information in MassCourts, that information may not be updated until the end of probation. Therefore, the court cannot readily determine the aggregate amount of community service owed and its dollar value.

## Recommendations

1. CDC should comply with the requirements of Section 87A of Chapter 276 of the General Laws for the imposition and waiving of PSFs and the restitution made for nonpayment. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a monthly PSF or whether a finding of fact has been held to allow the fee to be waived and community service performed instead.
2. CDC should establish a centralized method of tracking community service performed.
3. The Probation Office should promptly report all hours of community service performed by each probationer, regularly throughout the probation term, to the Clerk-Magistrate's Office for recording in MassCourts so that both offices can readily determine the status of probationers' accounts.

## Court's Response

After consulting with the Chief Probation Officer and Clerk-Magistrate, the First Justice provided the following response:

### Finding 1a

*I intend forthwith to ask all of the judges assigned to sit in the Concord District Court to document a finding of fact hearing and determination of whether a probationer should pay a monthly probation supervision fee or whether such fee constitutes an undue hardship for probationer or his/her family and should be waived, by diligently using the existing Administrative Office of the District Court form on Assessment or Waiver of Moneys in Criminal Case. Further, I intend to remind all judges that an imposition of community service is required when waiving probation supervision fees. . . .*

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## Finding 1b

*The Probation Office in the Concord District Court has a centralized method of effectively tracking all hours of community service assigned, performed and owed. For years, the Probation Office Manager ("POM") at the Concord District Court Probation Office has received information from non-profits, or less frequently the Community Service Program, regarding performance of community service obligations of current probationers. The POM and Chief Probation Officer evaluate the information and keep it in paper format in a centrally located log book as soon as it is approved. The log book contains the letters from the non-profits notifying Probation how many hours were performed, by whom, when and where. The log book is always available to all the probation officers.*

*In addition, the POM gives a copy of the letters to the appropriate probation officers as well as places a copy in the probationer's file. All Concord Probation employees, therefore, can use the updated information from the letters and log book to keep accurate records and perform effective monitoring.*

*Since the audit period but during the audit, the Clerk-Magistrate's Office agreed to accept from the POM a copy of the letters showing performance of community service hours prior to the end of Probation.*

*The above system allows Probation employees to determine at any time how a probationer is doing with a community service obligation, know the monetary value remaining on the obligation, and whether the obligation is anticipated to be fulfilled on schedule. Once hours are entered into Mass Courts by the Clerk-Magistrate, the Court also can access the information. . . .*

*Currently the Trial Court is working on a change to its case management system which will permit Probation to report community service hours as they are completed rather than on the Community Service Completion Form and therefore available to the judge and clerk at any time. On an interim basis we are discussing how Probation can report community service information to the clerk's office on a more routine basis rather than waiting until the end of the probationary period.*

## Auditor's Reply

We believe that the actions taken by the First Justice (reiterating to all judges assigned to CDC the Trial Court's process of holding and documenting findings of fact on PSF waivers) were responsive to our concerns and should help address this matter.

We do not dispute that the court may be able to determine a probationer's progress toward fulfilling the community-service obligation. However, the court lacks an efficient means to do this, because in order to compute the probationer's progress toward fulfilling the community-service obligation, a staff member would have to consult both the logbook and the Probation Office file to find the necessary information. Moreover, in order to determine the aggregate amount of community service ordered, performed, and

owed and its equivalent dollar value, a staff member would have to review every probation file to determine whether community service was ordered and then reconstruct the record using the files, the logbook, and the community-service letters referred to in the court's response. This is less efficient than a single centralized record. Additionally, nonprofits often send letters at the end of the probation period rather than each time the probationer performs community service, which can create significant lag time between when the service is performed and when it is recorded.

## **2. The court records the value of community-service hours using the wrong rates.**

CDC credits community-service hours at \$10/hour rather than the rates set by the Trial Court. As a result, probationers on supervised probation are not performing the required amount of community service, and conversely, those on administrative probation are required to work additional hours to fulfill their monthly PSF obligation.

### **Authoritative Guidance**

Section 87A of Chapter 276 of the General Laws requires probationers to perform community service when a PSF is waived. The specific amounts required are one day (eight hours) of monthly community service for supervised probationers and four hours of monthly community service for administrative probationers.

To adhere to the PSF statutory requirement, the Trial Court, in Section 5 of its Fiscal Systems Manual (FSM), established the conversion rates (\$8.13 per hour for supervised probation and \$12.50 per hour for administrative probation) that courts are to use when crediting a probationer for community service.

### **Reasons for Noncompliance**

Court officials stated that several years ago, the then-First Justice approved a request from the Chief Probation Officer to change the monetary conversion for community service in place of PSFs to \$10 per hour regardless of whether a probationer was on administrative or supervised probation. This was done in order to facilitate the Probation Officers' calculation of the value of the community-service hours worked.



## **Recommendation**

CDC should credit probationers' accounts for community service at the rates established by the General Laws and the FSM (currently \$8.13 per hour for community service performed during supervised probation and \$12.50 per hour for community service performed during administrative probation).

## **Court's Response**

After consulting with the Chief Probation Officer and Clerk-Magistrate, the First Justice provided the following response:

*I have discussed the audit findings on this issue with both the Clerk Magistrate and the Chief Probation Officer. Community-Service hours will henceforth be calculated at the statutory rate.*

## **Auditor's Reply**

We believe that the actions taken by the First Justice (to have probationers' community-service hours worked calculated at the statutory rate) were responsive to our concerns and should help address this matter.