



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

Making government work better

Official Audit Report – Issued January 13, 2016

Trial Court—Administration and Oversight of Probation Supervision Fee Assessments

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





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

Making government work better

January 13, 2016

Paula M. Carey, Chief Justice
Harry Spence, Court Administrator
Executive Office of the Trial Court
One Pemberton Square
Boston, MA 02108

Dear Chief Justice Carey and Court Administrator Spence:

I am pleased to provide this performance audit of the Trial Court's administration and oversight of probation supervision fee assessments. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2012 through December 31, 2013. My staff discussed the contents of this report with management of the Trial Court, whose comments we considered in drafting this report.

I would also like to express my appreciation to the Trial Court for the cooperation and assistance provided to my staff during the audit.

Sincerely,

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

Suzanne M. Bump
Auditor of the Commonwealth

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
OVERVIEW OF AUDITED ENTITY	4
AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY	8
DETAILED AUDIT FINDINGS WITH AUDITEE’S RESPONSE.....	12
1. The Trial Court is not properly enforcing the required assessment and waiver process for probation supervision fees.	12
a. Courts did not always sufficiently document PSF waivers or issue court orders requiring community service.	13
b. Some judges allow probation officers to decide whether probationers should pay a PSF or perform community service.....	16
c. Some judges assessed PSFs in incorrect amounts or assessed them against non-probationers.....	18
d. Some probationers were allowed to perform community service even though they had been ordered to pay PSFs.	19
2. The Trial Court has not uniformly implemented its community-service program and does not have an adequate process to record, and account for, community service performed.	24
APPENDIX A	30
APPENDIX B	31
APPENDIX C	32

LIST OF ABBREVIATIONS

CJAM	Chief Justice for Administration and Management
CJTC	Chief Justice of the Trial Court
DCD	District Court Department
EOTC	Executive Office of the Trial Court
OCC	Office of Community Corrections
OCP	Office of the Commissioner of Probation
PSF	probation supervision fee

EXECUTIVE SUMMARY

The Office of the State Auditor undertook this audit to review 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, to be paid for the length of his/her probation term. Section 87A of Chapter 276 of the Massachusetts General Laws allows for PSFs to be waived if the probationer is making monthly restitution payments that are greater than or equal to the fee or if the court determines that the PSF would constitute an undue hardship on the probationer or his/her family. In the latter situation, the statute requires the probationer to perform unpaid community service each month during probation for as long as the potential undue hardship exists.

As part of our audit, we also conducted on-site audit testing at 16 Trial Court locations that together accounted for 12,470 (16%) of Trial Court probationers as of December 31, 2013, and \$7.5 million (23%) of the \$32.8 million in PSF collections transferred to the Office of the State Treasurer during the audit period. In addition to this report, we issued separate reports to each of the 16 Trial Court locations.

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

Finding 1a Page 13	At 12 courts, judges waived PSFs, or allowed probation officers to waive them, without documenting the decision and sometimes without requiring probationers to perform community service instead.
Finding 1b Page 16	At 11 courts, judges wrote judicial orders allowing probation officers to choose whether the probationers should pay a monthly PSF or perform community service.
Finding 1c Page 18	At 5 courts, judges assessed PSFs in incorrect amounts and/or collected one-time PSFs from people who were not on probation.
Finding 1d Page 19	At 4 courts, probationers were allowed to fulfill their PSF assessments by performing community service even though sentencing judges had ordered them to pay monthly PSFs.

Recommendations Page 20	<ol style="list-style-type: none">1. The Trial Court should ensure that judges 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 they document 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. If the Trial Court feels that the statute places too much restriction on the judges' discretion, it should seek legislative changes.2. The Trial Court should instruct judges to cease ordering one-time PSF assessments that contradict the statute. It should also instruct judges to assess other allowable court fines/fees to non-probationers, if judges feel that there are costs that those defendants should be responsible for.3. The Trial Court should reiterate its process of requiring a judicial order before a penalty can be changed from a payment to community service.
Finding 2 Page 24	The Trial Court's community-service program is not uniformly implemented among all court locations. The Trial Court also does not have an adequate process that instructs courts on how to record court-ordered community service and account for community service performed in lieu of monthly PSF payments.
Recommendations Page 28	<ol style="list-style-type: none">1. The Trial Court should revise existing procedures to require real-time reporting of community service to Probation Offices so they can quickly communicate this information to their Clerk-Magistrate's Offices for recording in the courts' case-management systems.2. The Trial Court should work with the Office of Community Corrections (OCC) to develop a reconciliation process to increase the efficiency and effectiveness of the process used to track community service.3. The Trial Court should develop a system to require OCC to record community service in accordance with the type of fee the service is intended to pay. The system should enable OCC to report whether a probationer has fulfilled his or her monthly PSF requirement.4. The Trial Court's community-service program should be managed by OCC statewide, for all geographic locations, to ensure that probationers are receiving adequate job training and appropriate monitoring. In situations where independent work arrangements outside OCC are necessary, the court should notify OCC of those arrangements so that OCC can account for them.

Post-Audit Action

In response to our audit, the Chief Justice of the Trial Court and the Court Administrator stated,

Since the draft audits have issued, Hon. Paul C. Dawley, Chief Justice of the District Court has issued a transmittal to all District Court Judges, Chief Probation Officers and Clerk Magistrates regarding the collection of Probation Supervision Fees. The Transmittal includes a review of the complex statutory requirements relative to the assessment and waiver of probation supervision fees, as well as other assessments and fees in criminal cases, and reminds judges of the

necessity of documenting any finding of undue hardship. Chief Justice Dawley has also revised and re-promulgated the existing Assessment or Waiver of Moneys in Criminal Case form, which offers a simple way for a judge to make the written finding required by statute when probation supervision fees are waived pursuant to G.L. c. 276, § 87A. Chief Justice Dawley has made the use of the form mandatory in any case where probation supervision fees are waived.

Additionally, a review of each of the First Justice responses to the individual draft audit reports indicates that First Justices have asked all visiting judges, and probation staff where applicable, to correct any inappropriate business process issue raised by the auditors.

Based on this statement, we believe that the Chief Justice of the District Court Department is addressing the issues we identified that affect the District Court Department. Additionally, the First Justices' responses to the findings at each location visited will reinforce Chief Justice Dawley's position. Since the Probation Offices of the Superior, Juvenile, and Boston Municipal Court Departments account for an estimated 31% of the Commonwealth's probationers, the Trial Court should consider issuing similar guidance to those departments in order to provide adequate system-wide administration and oversight of PSFs.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which reorganized the courts into seven Trial Court departments. The statute also created a centralized administrative office managed by a Chief Justice for Administration and Management (CJAM), who was also responsible for the overall management of the Trial Court. Additionally, the reorganization allowed for the appointment of a Commissioner of Probation with control and supervisory responsibility over the probation service.

Legislative changes that took effect July 1, 2012 eliminated the CJAM position and created two new Trial Court leadership positions: the Chief Justice of the Trial Court (CJTC) and the Court Administrator. Together, the CJTC and Court Administrator established the Executive Office of the Trial Court (EOTC) to facilitate communication and enable joint leadership of the Trial Court. The CJTC is considered the judicial head of the Trial Court, working from EOTC's Office of the Chief Justice of the Trial Court, and is responsible for all matters of judicial policy. The Court Administrator is the administrative head of the Trial Court, working from EOTC's Office of Court Management and collaborating with the CJTC, with overall responsibility for budget preparation and oversight, labor relations, information technology, capital projects, and personnel policy (thereby performing the many administrative functions of the former CJAM position).

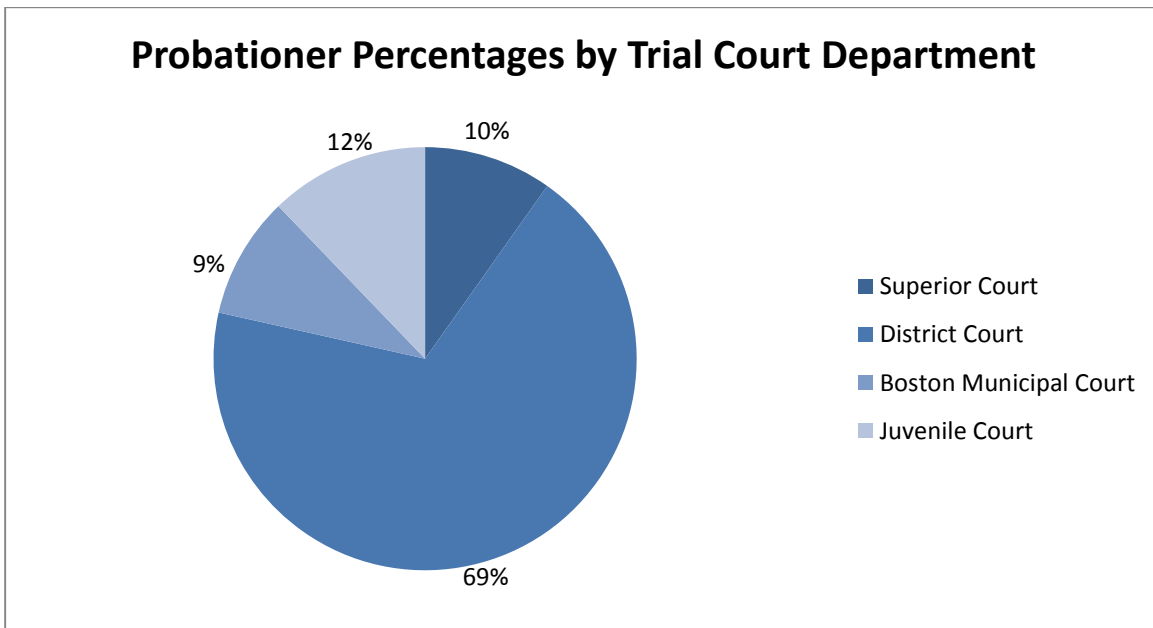
Each court location has a Judge's Lobby, Clerk-Magistrate's Office or equivalent, and Probation Office. The Judge's Lobby is responsible for hearing, and ruling on, criminal and civil matters. The Clerk-Magistrate's Office or its equivalent is responsible for scheduling, holding, and recording court proceedings and managing the care and custody of all the records, books, and papers that pertain to, or are filed or deposited in, that office. The Probation Office is responsible for enforcing court orders when an individual is placed on probation.

When the court rules that a person has committed a crime, the judge can order the offender to be placed on probation, which allows him/her to remain in the community under the supervision of a probation officer. Cases requiring a person to report for probation usually begin in one of four Trial Court departments: the Superior Court, District Court, Boston Municipal Court, and Juvenile Court.

When an individual is placed on probation, Section 87A of Chapter 276 of the Massachusetts General Laws (see Appendix B) requires courts to assess the individual a \$50 (administrative) or \$65 (supervised)

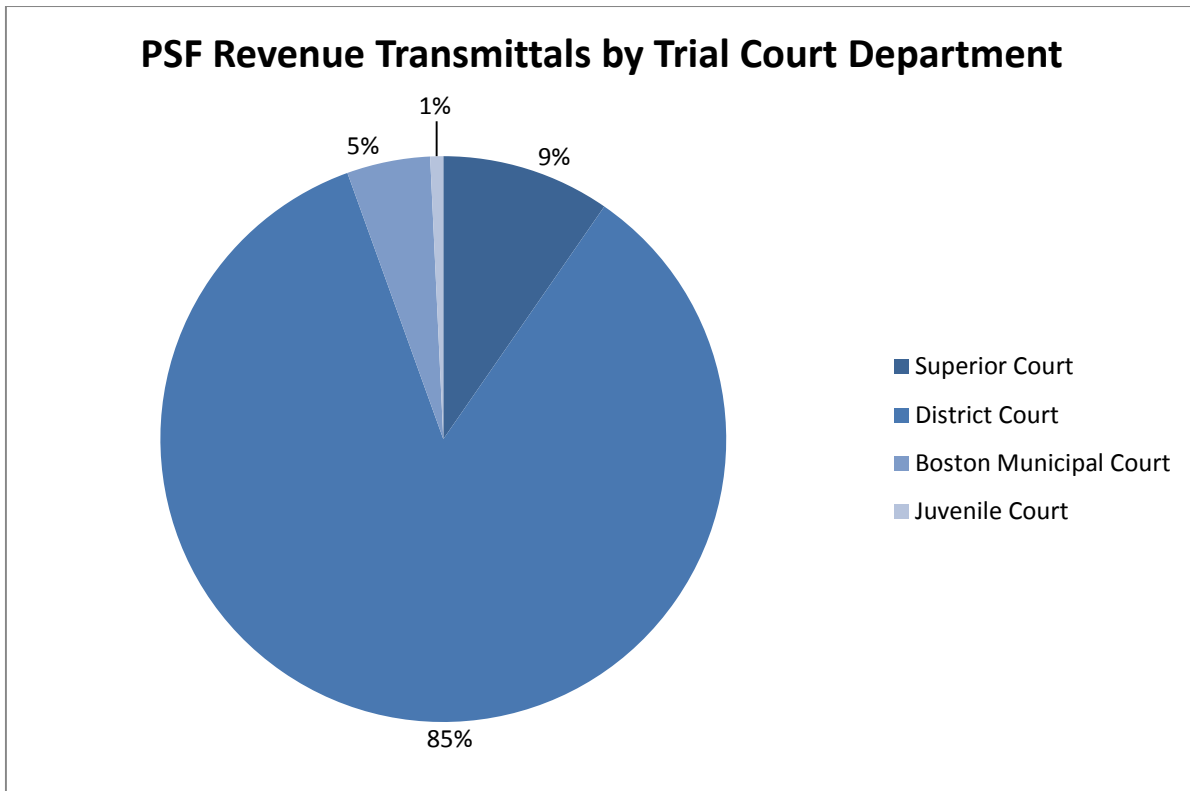
monthly probation supervision fee (PSF). Supervised probation requires more interaction with a probation officer than administrative probation, which may only require the individual to report to the officer quarterly or at the end of the probation term. It also usually has a longer duration than administrative probation. The statute allows judges to waive the fee in full if the probationer is making monthly restitution payments that are greater than or equal to the fee. It also requires 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 throughout probation.

As of December 31, 2013, the Office of the Commissioner of Probation (OCP) reported that there were 77,192 individuals on probation, with the District Court Department (DCD) handling the largest number of probation cases. The chart below shows the distribution of probationers among the four Trial Court departments that usually order probation.



During the audit period, the Trial Court (through the multiple court locations within these four departments) collected approximately \$32.8 million in PSFs and transmitted it to the Office of the State Treasurer, with the largest share generated by DCD. DCD operates 62 court locations throughout the Commonwealth. The administrative organization at each location consists of a First Justice, a Clerk-Magistrate, and a Chief Probation Officer.

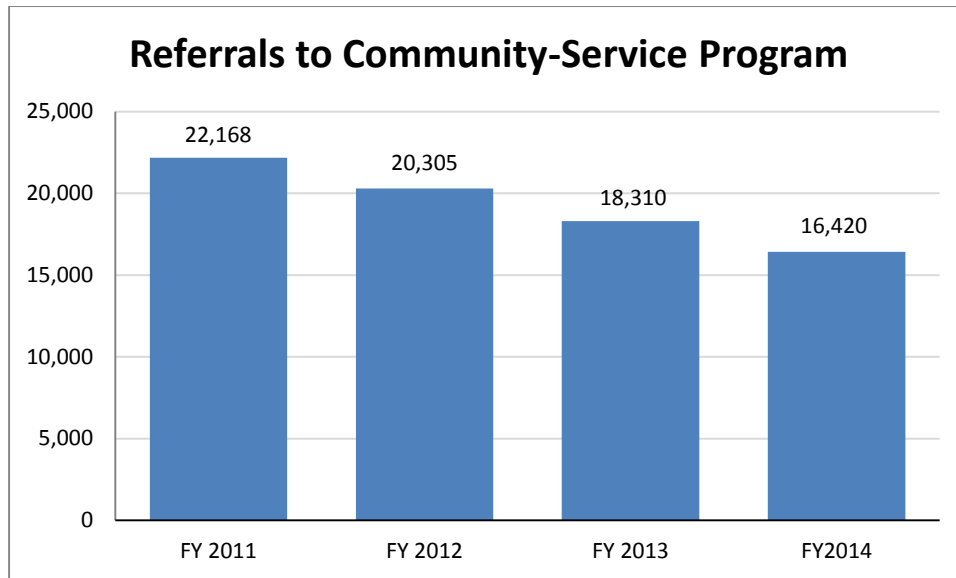
The chart below indicates the total transmittals by Trial Court departments over the 18-month audit period.



The Trial Court's community-service program, operated by OCP's Office of Community Corrections,¹ handles referrals for probationers ordered to perform unpaid community service, including those for whom a court has waived the monthly PSF. The number of community-service referrals, including those associated with PSF waivers, decreased during the audit period: there were approximately 26% fewer referrals to the community-service program in fiscal year 2014 than in 2011.²

1. Because of their locations or other circumstances, probationers at some court locations are permitted to perform unpaid community service at nonprofit/public organizations outside the Trial Court community-service program operated by the Office of Community Corrections.
2. Statistical data were obtained from the Massachusetts court system's annual reports for fiscal years 2011, 2012, and 2013 and Utilization of Community Corrections Center Statistical Report for fiscal year 2014. Statistics on community-service referrals were not reported in the court system's fiscal year 2014 annual report.

The following chart reflects all Trial Court locations that made referrals during the audit period, not just DCD.



AUDIT 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. In reviewing PSF payments and community-service information, it was necessary for us to review records, and obtain information on Trial Court locations' operations, outside this audit period. The scope of this audit includes an assessment of the process the Trial Court has established for administering PSFs and whether its 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 by the Trial Court to the state for the 18 months covered by the audit.

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

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

Objective	Conclusion
1. Does the Trial Court have an adequate process in place to document the assessment, waiver, and collection of PSFs?	No; see Finding 1
2. Does the Trial Court sufficiently monitor court divisions' compliance with statutory requirements for PSFs?	No; see Finding 2

To achieve our objectives, we obtained probationer information for four of the Trial Court's departments as of December 31, 2013 along with revenue-collection data for the audit period. This information reflected the majority of probationers. PSF revenue transmittals were attributed to 62 court

locations of the District Court Department (DCD). We selected a sample of 16 DCD court locations geographically dispersed throughout the Commonwealth (Appendix A), shown in the table below.

Court Location	PSF Revenue Collected and Transmitted	Probationer Caseload as of December 31, 2013
Fitchburg	\$ 270,011	458
Eastern Hampshire	534,463	654
East Brookfield	402,468	537
Southern Berkshire	180,747	186
Fall River	920,009	1,896
Falmouth	367,003	757
Concord	383,260	631
Worcester	838,806	1,700
Northampton	449,752	617
Orange	147,282	307
Wareham	531,764	999
Wrentham	534,261	621
Holyoke	339,731	536
Palmer	375,150	563
Lowell	934,117	1,529
Milford	316,685	479
Total	<u>\$7,525,509</u>	<u>12,470</u>

In addition, we gained an understanding of Trial Court internal controls that we deemed significant to our audit objectives. Our analysis of specific court information and data was intended to determine whether PSF transactions and the courts' monitoring of probationers' PSF obligations were adequately supported by the court records; it was not designed to detect all weaknesses in the courts' internal control systems. Further, our audit did not include tests of internal controls to determine their effectiveness as part of our audit risk assessment procedures, 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 specific court locations was based on our interviews and document reviews. Therefore, our procedures were limited to what we considered appropriate when determining the cause of any PSF noncompliance.

In addition, we performed the following audit procedures:

- We reviewed Section 87A of Chapter 276 of the Massachusetts General Laws; the Office of the Commissioner of Probation's (OCP's) Supervision Standards; and memorandums and directives issued by the Trial Court, DCD, and OCP that were applicable to our audit objectives.
- We interviewed officials and other staff members from the Trial Court, OCP, and the 16 selected court locations and reviewed relevant documents, statutes, and regulations.
- We reviewed internal audits conducted by the Trial Court and OCP to determine whether any weaknesses that had been identified at the 16 selected court locations pertained to our current audit objectives.
- We obtained statistical data regarding probationer counts from OCP and compared the data to counts in the 16 selected court locations' monthly reports of probation activity for our audit period.
- We obtained from the Trial Court PSF assessment data (financial docket reports), which we compared to court case files for accuracy.
- We obtained and reviewed records of community service from OCP's Office of Community Corrections, which operates the Trial Court's community-service program.
- We obtained and analyzed case data from selected court criminal case docket records and traced and compared them to MassCourts (the Trial Court's case-management system) for consistency and completeness. We interviewed agency 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. We believe that 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 selected courts' Probation Offices' 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 transactions primarily by using random, non-statistical sampling in order to eliminate bias by giving all items in the population an equal chance of being chosen. Therefore, 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 680 out of 17,233 cases appearing on the financial docket reports during our audit period 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 randomly selected 314 out of 2,066 probationers assigned community service during our audit period 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 court activities during our audit period were not used in our audit 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.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Trial Court is not properly enforcing the required assessment and waiver process for probation supervision fees.

The Trial Court does not ensure that courts follow the required process when they waive assessments of probation supervision fees (PSFs) and that they assess PSFs in the correct amounts and only for probation cases. Also, although the Trial Court has established a process for recording and collecting PSF assessments, it is not monitoring courts' documentation of orders for, and performance of, community service to ensure that they are complying with its process.

The Trial Court has conveyed to court-location officials the importance of compliance with statutory PSF requirements and has provided instruction on how to go about balancing the application of the mandatory fee with an offender's ability to pay and documenting the related decisions. However, at various locations, judges do not formally document their decisions to waive PSFs and/or do not always require probationers to perform community service when the fee is waived; judges allow probation officers to choose whether to assign a PSF or community service rather than assigning a specific penalty themselves; courts assess PSFs that are higher than allowed by law or assign them to people who are not on probation; and courts allow probationers to fulfill their PSF assessments by performing community service even though the sentencing judge has ordered the probationer to pay a monthly PSF.

As a result, courts may be allowing some offenders not to fulfill the terms and conditions of their probation; PSF assessments may go uncollected, meaning that the Commonwealth loses revenue it depends on; and nonprofit/public agencies that depend on this community service may not be receiving it.

The table below indicates the locations where, based on the criminal case records tested, enforcement of the mandatory PSF assessment and waiver process was lacking. The related issues are more fully discussed in the sections that follow.

Location	Insufficiently Documented Waivers and Waivers without Community Service	Probation Officers Allowed to Choose between PSF and Community Service	Incorrect Amount Assessed	Probationers Performing Community Service without Court Orders
Fitchburg	X			
Eastern Hampshire	X	X	X	X
East Brookfield	X	X		
Southern Berkshire	X	X	X	
Fall River				
Falmouth	X	X		
Concord	X	X		
Worcester	X	X		
Northampton	X	X	X	X
Orange				
Wareham	X	X		
Wrentham	X	X		
Holyoke	X	X	X	X
Palmer			X	
Lowell	X	X		X
Milford				

a. Courts did not always sufficiently document PSF waivers or issue court orders requiring community service.

In some cases, judges waived PSFs, or allowed probation officers to waive them, without documenting the decision and sometimes without requiring probationers to perform community service instead. As a result, the Commonwealth may not be receiving certain fees; nonprofit and public-service agencies (e.g., homeless shelters, schools, and city parks) that count on this community service may not be getting the benefit; and some probationers may appear to be receiving preferential treatment by not being penalized with monthly community service. In fact, for the 16 court locations we visited, PSF revenue transmittals to the Office of the State Treasurer amounted to \$7.5 million, but if all probationers had paid PSFs, we estimate that these courts could have collected as much as \$13.2 million. We calculated this estimate by combining the monthly reports of probation activity for the 16 locations; 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. This estimate does not take into account the following types of probationer, because the corresponding data was not available for our review at the local courts, the Office of Community Corrections (OCC),³ the Office of the Commissioner of Probation (OCP), or the Trial Court:

- those who were performing community service rather than paying PSFs
- those who had had a PSF waived on one criminal charge because they were paying one on another criminal charge
- those who were transferred to another court but remained on the original court's records
- those who had had part of their PSFs remitted, possibly because they were incarcerated or enrolled in treatment programs
- those who were in default

To determine whether courts were following the Trial Court's PSF waiver process, we reviewed the activity at 16 court locations of the District Court Department (DCD). We tested 694 criminal cases and identified 115 instances where the sentencing judge waived the PSF. However, in 79 (69%) of those cases, the sentencing judge did not provide a written finding of fact to support the PSF waiver (this includes cases where the judge deferred the decision of whether to pay or perform community service to the supervising probation officer, which are more fully discussed in the next section). Also, in 13 (11%) of these 115 cases, the offender was not required to perform an equivalent amount of unpaid community service. A breakdown of this issue by location is shown in the following table.

Location	Criminal Cases Tested	Cases Where PSF Was Waived	Waivers without Written Finding of Fact	Waivers without Community Service
Fitchburg	17	6	5	5
Eastern Hampshire	60	9	7	0
East Brookfield	40	6	4	0
Southern Berkshire	33	2	2	0
Fall River	60	3	0	0

3. OCC is the office within the Office of the Commissioner of Probation that administers the Trial Court's community-service program.

Location	Criminal Cases Tested	Cases Where PSF Was Waived	Waivers without Written Finding of Fact	Waivers without Community Service
Falmouth	35	2	2	0
Concord	44	10	9	5
Worcester	60	9	9	3
Northampton	60	3	2	0
Orange	30	9	0	0
Wareham	35	6	2	0
Wrentham	60	21	15	0
Holyoke	40	5	3	0
Palmer	35	1	0	0
Lowell	60	21	19	0
Milford	25	2	0	0
Total	<u>694</u>	<u>115</u>	<u>79</u>	<u>13</u>

The lack of documentation of written findings was not isolated to a specific court location or to a particular judge. It was an issue identified at 75% of courts (all except the Orange, Milford, Palmer, and Fall River courts) and 91% of sentencing judges (49 out of 54) whose cases we reviewed.

Authoritative Guidance

Section 87A of Chapter 276 of the Massachusetts 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.

Memoranda from the former Chief Justice of the DCD (Appendix C) reiterate the requirement of assessing PSFs for probationers and require sentencing judges to use the Assessment or Waiver of Moneys in Criminal Case form to document cases where, after a finding-of-fact hearing, the probationer is found to have issues, such as limited income, that would make a PSF an undue hardship. These memoranda also require judges to order monthly unpaid community service at nonprofit organizations when PSFs are waived for hardship reasons.

Reasons for Lack of Written Findings

Some judges stated that the fact that “waived” is written on the clerk’s docket indicates that the probationer gave the sentencing judge sufficient information to indicate that a PSF would be an undue hardship, which would require the judge to waive the PSF. Court officials stated that in many instances, the offenders have been before the court in the past, and the court is aware of their hardships and does not need to hold a new hearing. Some judges stated that they did not like using the Assessment or Waiver of Moneys in Criminal Case form because there is a lot of information on the form and it seems cumbersome to go through all the information while hearing a case. Other judges felt that the form could be improved by adding more specific reasons, in a checkbox format, for waivers of undue hardship.

Reasons for Lack of Community Service

Some judges believed that because Section 87A of Chapter 276 of the General Laws does not specifically prohibit PSFs being waived in full and not replaced with community service, judges have the authority to use their discretion to waive PSFs fully in certain circumstances: for example, if evidence had been presented to the court that the offender was disabled, paying a PSF for another case at another court location, or unable to perform community service for some other undocumented but compelling reason, the judge could use judicial discretion to waive the PSF in full without ordering community service. Court officials also told us that when a judge orders a probationer to attend a program, like the state’s Certified Batterer Intervention Program, as a condition of probation, it would be a hardship to require the probationer to perform community service as well.

b. Some judges allow probation officers to decide whether probationers should pay a PSF or perform community service.

As previously discussed, we identified 115 cases where the PSF was waived, and for 79 of those cases, the sentencing judge did not provide a written finding of fact to support the waiver. Further review of these cases indicated that in 65 (57%) of the 115 cases, the judicial order was written so as to allow the probation officer to choose whether the probationer should pay a monthly PSF or perform community service, a procedure that is contrary to Section 87A of Chapter 276 of the General Laws. A breakdown of this issue by location is shown in the following table.

Location	Cases Where PSF Was Waived	Either/Or Order
Fitchburg	6	0
Eastern Hampshire	9	7
East Brookfield	6	4
Southern Berkshire	2	2
Fall River	3	0
Falmouth	2	2
Concord	10	4
Worcester	9	5
Northampton	3	2
Orange	9	0
Wareham	6	2
Wrentham	21	15
Holyoke	5	3
Palmer	1	0
Lowell	21	19
Milford	2	0
Total	<u>115</u>	<u>65</u>

In the latter (“Either/Or”) cases, 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.

As a result, the usual OCP requirements (such as administrative and surrender hearings for nonpayment of PSFs) may be bypassed, and therefore the Commonwealth may be forgoing PSFs that probationers would have been able to pay.

Authoritative Guidance

As previously discussed, Section 87A of Chapter 276 of the General Laws (see Appendix B) requires community service and documentation of a finding of fact if a PSF is to be waived for reasons of undue hardship. Additionally, Section 2:00 of OCP’s 1989 Supervision Standards sets forth the responsibilities of the courts: judges must set the specific conditions of probation, and probation officers must enforce them.

Reasons for Delegation of Decision

Staff members at various court locations said that judges giving probation officers the flexibility to accept either payment or performance of community service prevents cases from being brought back onto the court schedule for a finding-of-fact hearing and therefore saves time and keeps the court process flowing, which they felt was important because of limited staff within the Clerk's Offices and Probation Offices to manage cases. They also believe that the probation officers know best; these officers are considered the eyes and ears of the court and the people most knowledgeable about a probationer's ability to pay.

c. Some judges assessed PSFs in incorrect amounts or assessed them against non-probationers.

Judges at five courts assessed PSFs in incorrect amounts and/or collected fees from people who were not on probation. Of the 694 criminal cases we tested, 579 cases resulted in PSF assessments; 228 of these occurred at the five courts in question. In 78 (13%) of these 579 cases, the sentencing judge imposed a lump-sum (one-time) PSF, rather than the statutorily established monthly amount of either \$65 or \$50, and occasionally charged the one-time fee to individuals not on probation. This occurred at the five court locations shown in the following table.

Location	Cases Sampled	Cases with One-Time Fee Assessed	Percentage
Eastern Hampshire	60	19	32%
Southern Berkshire	33	10	30%
Northampton	60	26	43%
Holyoke	40	14	35%
Palmer	35	9	26%

For probationers, the one-time fee was usually lower than the monthly PSF required by the statute. For instance, a judge might assess a one-time \$100 fee rather than six months at \$50 each month. For the people who were not on probation, the assessment was also usually a one-time fee of \$50 or \$100.

As a result, some individuals are paying amounts that they are not statutorily required to pay, and others are effectively receiving discounts that result in lost revenue for the Commonwealth.

Authoritative Guidance

Section 87A of Chapter 276 of the General Laws requires the monthly probation fee and does not authorize courts to collect PSFs from non-probationers to cover the costs of handling their cases. However, Section 6 of Chapter 280 of the General Laws allows a judge to assess court costs against an offender as a way to defray the costs of prosecuting the case.

Reasons for One-Time PSF Assessments

Some judges stated that in court jurisdictions where there are colleges, many defendants are students who do not always have the resources and often move away, and it is therefore more efficient to assess the PSF as a one-time lump sum. Other judges stated that by requiring a one-time PSF of individuals who are found guilty but not sentenced to probation, the court is recouping some of the costs associated with prosecution, and since it is the Probation Office that is responsible for the pretrial intake process and gathering data on the defendant, a probation fee is the appropriate type of assessment.

d. Some probationers were allowed to perform community service even though they had been ordered to pay PSFs.

At four courts, some probationers were allowed to fulfill their PSF assessments by performing community service even though sentencing judges had ordered them to pay monthly PSFs. As a result, the Commonwealth forwent PSFs that probationers were able to pay.

As part of our audit testing, we reviewed the probationers' files and copies of community-service records provided to the Probation Office by OCC to determine whether the Probation Office staff verified that the community-service hours were completed as ordered. At the four courts in question, we reviewed a total of 84 criminal cases in which a probationer was ordered to perform, or was performing, community service instead of paying a PSF. Within those 84, we identified 29 (35%) in which the probationer had been ordered to pay a PSF instead, as shown in the table below.

Location	Cases Reviewed	Community Service Performed without Court Order	Percentage
Eastern Hampshire	12	5	42%
Lowell	10	2	20%
Northampton	29	7	24%
Holyoke	33	15	45%
Total	<u>84</u>	<u>29</u>	35%

Authoritative Guidance

As previously discussed, Section 87A of Chapter 276 of the General Laws requires a fee that can be waived and replaced with community service upon order of the court after a finding of fact establishing that the probationer cannot pay the fee.

Additionally, probation officers are responsible for monitoring probationers' compliance with court orders. According to Section 2:01 of the 1989 OCP Supervision Standards, "the court, not the probation officer, sets the conditions of probation / terms of supervision." Furthermore, probationers must obtain consent from the court to change from payments to community service, according to Section 5 of the Trial Court's Fiscal Systems Manual:

*If a community service order is changed (judicial order required) from a monetary assessment to a non-monetary assessment or vice versa, the appropriate community service docket codes must be entered in the MassCourt system. **No allowance is available to assess a fiscal obligation and then to convert the obligation to community service without a judicial order.** [emphasis added]*

Reasons for Noncompliance

We were unable to obtain an explanation from officials at these four courts of why this was occurring. Court officials at one location did state that the practice had stopped, attributing it to a judge and probation officer who were no longer employed by the Trial Court.

Recommendations

1. The Trial Court should ensure that judges 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 they document 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. If the Trial Court feels that the statute places too much restriction on the judges' discretion, it should seek legislative changes.

2. The Trial Court should instruct judges to cease ordering one-time PSF assessments that contradict the statute. It should also instruct judges to assess other allowable court fines/fees to non-probationers, if judges feel that there are costs that those defendants should be responsible for.
3. The Trial Court should reiterate its process of requiring a judicial order before a penalty can be changed from a payment to community service.

Auditee's Response

The Chief Justice of the Trial Court (CJTC) and the Court Administrator provided the following response.

The methodology used by the auditors to determine what could have been collected included all cases where a defendant was placed on probation, but neglected to account for those cases where probationers were not legally obligated to pay the probation supervision fee.

General Laws c. 276, § 87A governs court imposition and collection of probation supervision fees. The same statute requires that the court waive the payment of those fees when the probationer is ordered to perform community service or to pay restitution. Additionally, if the probationer fails to comply with probation conditions and as a result is incarcerated, or is incarcerated for any other matter during his term of probation, probation fees are no longer due or collected. Similarly if a probationer enters a certified residential treatment program and successfully completes it, court mandated or not, probation service fees are routinely remitted by the court for the time in the program, where probationer is paying to participate in the program. Finally when a person is placed on probation in one court and is found to already be on probation in another court, a second probation fee will not be collected, and the probationer will continue to pay fees in the first court rather than the second. . . .

Finding 1a

Lack of Written findings

While the draft audit notes the absence of the required written waiver of probation supervision fees in 12 of the 16 courts sampled and that the document was omitted in case files by 49 different judges, there is no evidence that any single judge or court failed to include a written waiver with any consistency. The omission appears to be the exception to the rule. Specifically, of the 694 cases reviewed across the 16 sampled courts only 79 case files were found to contain no written waiver, less than 12% of the total cases examined. On average this means that each of the 49 judges faulted would have made the omission in 1.6 cases. The phenomenon appears to be the result of an occasional oversight in a busy court session rather than a specific intent to overlook the law.

As was suggested in many of the responses filed by the First Justices, occasionally a judge may feel that allowing an option to permit the probationer to either pay the probation service fee or perform the required hours of community work service as each payment becomes due enable

indigent probationers to take advantage of periodic employment. Delegating this decision to the supervising probation officer also indicates the reality that he or she is the person most knowledgeable about the probationer's employment status and ability to pay.

However, in addition to the Transmittal and mandatory form sent to every District Court correcting this situation, each of the First Justices who received a draft audit report noting these omissions in documentation have taken steps to require that all visiting judges in their courts use the Assessment of Moneys in a Criminal Case [sic] form and that any change in circumstance from a probationer's ability to pay, to circumstances requiring a waiver and imposition of community service will be returned to the court for a hearing.

Lack of Community Service

The probation supervision fee statute requires the imposition of community service where the payment of a probation supervision fee is waived. Community service becomes a condition of the defendant's probation. As with any other condition of probation, the court has the authority to waive the community service requirement where the probationer is unable to perform community service. In Commonwealth v. Canadyan, 458 Mass. 574, 577-79 (2010), the Supreme Judicial Court held that a defendant may not be held to a probation condition which he is unable to perform, see also Commonwealth v. Al Saud, 459 Mass. 221, 229 (2011) ("It is true that a probationer may not be found to be in violation of conditions of probation where those conditions, despite diligent effort, cannot be met."); Commonwealth v. Poirer, 458 Mass. 1014, 1016 (2010).

Finding 1b

As was suggested above and in many of the responses filed by the First Justices, occasionally a judge may feel that allowing an option to permit the probationer to either pay the probation service fee or perform the required hours of community service work as each payment becomes due enable indigent probationers to take advantage of periodic employment.

Delegating this decision to the supervising probation officer also indicates the reality that he or she is the person most knowledgeable about the probationer's employment status and ability to pay.

However, as also indicated above, rather than continue the practice of permitting probation to make this determination, any change in circumstance from a probationer's ability to pay, to circumstances requiring a waiver and imposition of community service will be returned to the court for a hearing. This point has also been addressed in Chief Justice Dawley's transmittal.

Finding 1c

*The draft audit notes that in **five** of the 16 district courts sampled, judges sometimes ordered Probation Supervision fees as a onetime fee rather than as monthly payments or sometimes charged probation supervision fees to people who are not on probation. . . .*

As referenced in the responses by those five First Justices, occasionally a judge may feel that a probationer is able to pay some amount of probation supervision fees, while at the same time

making a determination that probationer is unable to make a full payment of such fees. In those cases a onetime payment of less than all probation supervision fees has been sometimes ordered. The court is thereby partially waiving the probation supervision fee, based upon the requisite showing of hardship required by the statute. As to assessing probation fees to people who are not on probation, some judges at the Trial Court have felt that the dismissal of some cases for costs should be attributed to Probation because the Probation Office performs the bulk of the work associated with the criminal case.

These practices have now ceased and have been specifically addressed by Chief Justice Dawley in his recent Transmittal to the District Court. As noted in the responses filed by these 5 courts referenced in the auditor's draft report, each of these First Justices have now acted to ensure that that practice no longer occurs.

Finding 1d

The draft audit notes that in four courts, "some probationers were allowed to fulfill their probation supervision fee assessments by performing community service even though the sentencing judge had ordered them to pay monthly probation supervision fees." . . .

As referenced in the responses filed by these four first justices, this practice has ceased. Any change in circumstance from a probationer's ability to pay, to circumstances requiring a waiver and imposition of community service will be returned to the court for a hearing and a required written finding if grounds for a waiver are found by the court. Apparently in some of the courts reported, probationers had on their own initiative, with no prior knowledge or approval from the court, made arrangements to perform community service in lieu of making payments. In his Transmittal, Chief Justice Dawley has suggested that probationers be instructed that if ordered to pay probation supervision fees they may not instead perform community service without further judicial order.

Auditor's Reply

Our report points out that the courts included in this audit could have collected as much as \$13.2 million in PSFs and describes how we calculated this amount. We also point out that this figure does not account for various types of probationers who may have not been required to pay a probation fee. This is because the local courts, OCC, OCP, and the Trial Court do not maintain data on all probationers who performed community service rather than paying PSF; were ordered to pay PSFs but either defaulted or violated the terms and conditions of probation; or had waivers of both PSFs and community service. Therefore, we were not able to estimate the extent to which these events would affect potential PSF revenue.

Regarding Finding 1a, we noted that of the 694 cases reviewed, there were 115 in which the PSF was waived (presumably because it would have been an undue hardship), but 79 of those 115 cases did not

have documentation to support any waiver. In other words, documentation that the sentencing judge held a finding-of-fact hearing to determine that the fee would be an undue hardship was missing in 69% of the criminal case files requiring such documentation. This high percentage speaks more to a systemic issue than to occasional oversight.

Regarding Finding 1b, we do not dispute that the court has the authority to waive the community-service requirement when the probationer is unable to perform community service. However, the reasons for waivers of PSFs and for the resulting community service must be documented in the criminal case files.

Overall, however, we believe that the actions taken by the Trial Court were responsive to our concerns and should help address this matter.

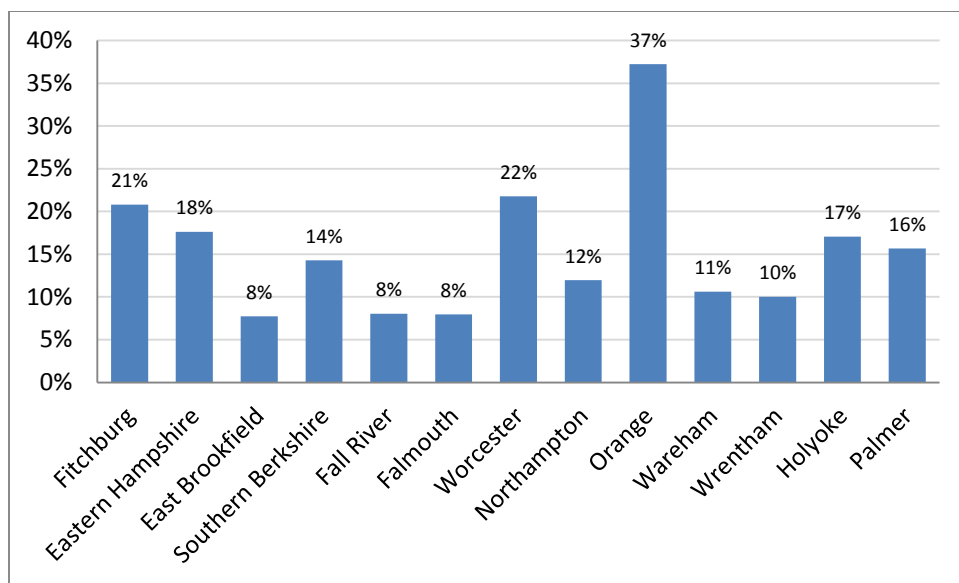
2. The Trial Court has not uniformly implemented its community-service program and does not have an adequate process to record, and account for, community service performed.

The Trial Court's community-service program is not uniformly implemented across court locations. It also does not have an adequate process that instructs courts on how to record court-ordered community service and account for community service performed in lieu of monthly PSF payments. Specifically, Probation Office personnel at some, but not all, court locations make community-service arrangements outside OCC. For example, some offices have a list of nonprofits that work with them; they arrange work directly through those nonprofits, which report to the Probation Office the hours worked. Also, the Probation Office staff records the performance of community service in probationers' files, but the office lacks a centralized system to track all the hours of community service performed through OCC or independent work arrangements made outside OCC. Additionally, the Clerk-Magistrate's Office staff records community service as a financial obligation in the court's financial records and then (usually at the end of the probationer's probation period, which could be up to 24 months later) adjusts the amount due upon the submission of a certificate of completion of community service. Also, although there are policies and procedures in place for collecting PSFs, there are no formal procedures on what measures to take to enforce the requirement of monthly community service.

As a result, court locations cannot readily determine how many community-service hours are owed, what community service amounts to in dollars, and whether probationers will be able to fulfill the requirements of court orders on schedule. In addition, if probationers do not comply with the terms and

conditions of probation through the monthly performance of community service, the issue may go unnoticed; court-location records are out of date because offenders are not promptly credited with community service; and payments for other court assessments may mistakenly be applied to PSF assessments. Additionally, unlike probationers performing community service through OCC, who are closely monitored by OCC (transported to work sites and physically observed to ensure safety and security), probationers performing community service outside OCC may not be adequately supervised or provided with necessary job training.

From OCC's reports of community-service activity, we determined that for 13 of the 16 court locations we visited, an average of 15.5% of probationers are required to perform community service.⁴ The chart below shows the average percentage for each of these court locations and includes all court orders for community service, not solely those associated with PSF waivers.



Taking into account the estimated potential revenue for these locations, the following table indicates the approximate value of community service, in dollars and hours, assessed against probationers:

4. Three of the court locations visited (Milford, Concord, and Lowell) did not use OCC. Instead, they used local nonprofit organizations like the Salvation Army and Daily Bread Food Pantry for community service outside OCC. We did not determine the aggregate number of probationers required to perform community service at these locations, so this number is not included in the charts and tables that follow.

Location	Equivalent Amount of Community Service (in dollars)*	Equivalent Amount of Community Service (in hours)
Fitchburg	\$ 109,206	10,592
Eastern Hampshire	129,903	12,600
East Brookfield	44,336	4,300
Southern Berkshire	28,076	2,723
Fall River	151,923	14,736
Falmouth	61,592	5,974
Worcester	414,185	40,173
Northampton	72,923	7,073
Orange	105,534	10,236
Wareham	113,006	10,961
Wrentham	72,872	7,068
Holyoke	90,688	8,796
Palmer	103,823	10,070
Total	<u>\$ 1,498,067</u>	<u>145,302</u>

* We estimated the percentage of probationers performing community service on the basis of OCC reports and multiplied that percentage by the estimated potential revenue to determine the equivalent amount of community service in dollars. To calculate the equivalent amount of community service in hours, we divided the community-service dollars by \$10.31, which is the average of the hourly rates of the supervised and administrative supervision fees.

The current process established by the Trial Court does not permit easily tracking and monitoring community service, which could have generated an estimated 135,000 hours of work at nonprofit agencies and public entities, or \$1.4 million⁵ for the Commonwealth if replaced with PSFs. This process was in place at all the courts we reviewed except Orange and Milford, which satisfactorily managed and accounted for community service assigned and worked by its probationers.

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 record, they do require adequate monitoring, and best business practices would require the use of a centralized tracking method. Adequate monitoring requires the maintenance of accurate records. Also, best business practices would require real-time recording of community service so that

5. We estimated this by calculating the total estimated community-service hours (less those reported for Orange, since it had an adequate system for tracking community service promptly) and multiplying that adjusted total by the average of administrative and supervised PSFs.

court records portray timely information. Further, to effect proper administration and ensure consistency in monitoring and community safety, the community-service program should be uniformly implemented across all court locations.

Reasons for Issues

Court officials at some locations indicated that geographic challenges prevented them from using OCC for probation services. Officials at another court told us they preferred to make independent arrangements outside OCC in order to ensure that probationers performed community service locally. The court locations that use OCC to arrange community service told us that they relied on information provided by OCC to track community service performed in place of PSFs and that this constituted a centralized tracking method. However, OCC's case-management system shows community-service assessments as a total number of hours owed; it does not separate the hours worked according to type of fee. If a probationer owes other types of fees or community service besides those for probation supervision, the OCC case-management system does not prorate the hours among the various types of fees owed by the probationer. For instance, if a probationer owes \$50 (or 4 hours) of community service for a PSF and \$150 (or 15 hours) for legal counsel fees, OCC's case management system does not differentiate between the two; they are recorded together as a total of 19 hours owed. Therefore, when the probationer performs community service, his/her record is reduced by the number of hours worked, which is eventually reported to Probation Office personnel. They must then determine how to apply the hours worked in order to adjust the amount still owed in MassCourts for each individual fee. In addition, Probation Office personnel cannot easily reconcile the information provided by OCC to that recorded in MassCourts, since one is reported in total hours and the other in dollars by type of fee.

Moreover, Trial Court procedures require completion certificates in order for courts to adjust their financial records for community service performed, and there are no provisions in these procedures that provide for periodic updates of these records as community service is performed. Probation Office personnel informed us that they interpreted this to mean that the completion certificate is provided to the Clerk-Magistrate's Office for recording after the probationer has completed all the community service ordered or the probation term has ended, but that no recording is necessary in the meantime.

Recommendations

1. The Trial Court should revise existing procedures to require real-time reporting of community service to Probation Offices so they can quickly communicate this information to their Clerk-Magistrate's Offices for recording in the courts' case-management systems.
2. The Trial Court should work with OCC to develop a reconciliation process to increase the efficiency and effectiveness of the process used to track community service.
3. The Trial Court should develop a system to require OCC to record community service in accordance with the type of fee the service is intended to pay. The system should enable OCC to report whether a probationer has fulfilled his or her monthly PSF requirement.
4. The Trial Court's community-service program should be managed by OCC statewide, for all geographic locations, to ensure that probationers are receiving adequate job training and appropriate monitoring. In situations where independent work arrangements outside OCC are necessary, the court should notify OCC of those arrangements so that OCC can account for them.

Auditee's Response

The CJTC and the Court Administrator provided the following response.

The Community Service Program does not have adequate resources to provide supervised work crews to be picked up at every court location statewide. Program availability is limited by availability of staff and vans. By necessity, community service arrangements are therefore made outside of the Community Service Program as a result of these limited resources. Reports of completed community service work is received by probation officers, just as they are received from the community service program.

In addition, probation officers monitor the payment of probation supervision fee or community service on an ongoing basis. If probationers are not in compliance, such matters are brought before the court, well prior to the end of the probation term.

With increased funding and staffing the Trial Court would be able to expand the scope of its Community Service Program to include in a more structured and formal way the elements of robust job training, job readiness and transitional employment programming. In addition expanded Community Service infrastructure will present the opportunity to introduce elements of restorative justice programming which will benefit the participants and their communities.

The Trial Court is currently working on a change to its case management system which will permit Probation to report community service hours as they are completed. The credit for time module in MassCourts is being developed to enter community service hours as they are completed. Once accomplished, the hours performed will be applied to the outstanding financial obligation, on the docket number. Community service work will not offset the financial amount unless the court has made the proper finding of hardship.

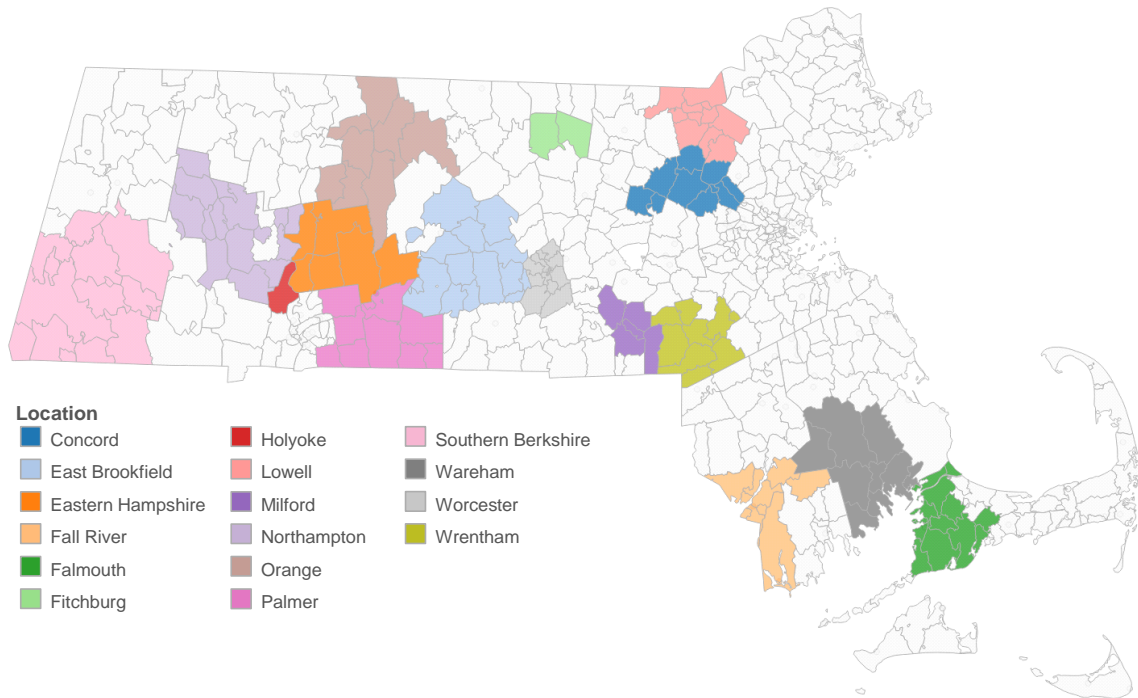
Auditor's Reply

We believe that the actions taken by the Trial Court (developing the capacity in its case-management system to allow real-time reporting of community service worked) were responsive to some of our concerns and will help address this matter.

Additionally, in light of limited financial resources, the Trial Court should consider requiring courts to report all community-service orders to OCC and have OCC report all community service ordered, assigned, and completed so the Trial Court can relatively easily determine the status of probationers' community-service performance and its equivalent dollar value at any point.

APPENDIX A

Geographic Areas of the 16 Court Locations



about Tableau maps: www.tableausoftware.com/mapdata

APPENDIX B

Massachusetts General Laws Involving Monthly Probation Fees

Probation Fee, Supervised Probation

Established in accordance with Section 87A of Chapter 276 of the Massachusetts General Laws, this is a required fee if a defendant is placed on either supervised probation or operating-under-the-influence probation. If the defendant is found indigent, he or she must perform one day of community service monthly. The fee is \$60 per month plus a \$5-per-month Victim Services surcharge. (The fee does not apply to nonsupport convictions where support payments are a condition of probation; individuals who are required to make child-support payments are not required to pay the monthly probation supervision fee.) The fee can be waived or reduced upon a court hearing if the payment of the fee would constitute an undue hardship on the defendant or his/her family, with the defendant required to perform some amount of community service. Additionally, the court hearing can result in the fee being offset by the amount of restitution payments (if applicable) against the defendant.

Probation Fee, Administrative Probation

Established in accordance with Section 87A of Chapter 276 of the General Laws, this is a required fee if a defendant is placed on administrative probation. If the defendant is found indigent, he or she must perform four hours of community service monthly. The fee is \$45 per month plus a \$5-per-month Victim Services surcharge. (The fee does not apply to nonsupport convictions where support payments are a condition of probation; individuals who are required to make child-support payments are not required to pay the monthly probation supervision fee.) The fee can be waived or reduced upon a court hearing if the payment of the fee would constitute an undue hardship on the defendant or his/her family, with the defendant required to perform some amount of community service. Additionally, the court hearing can result in the fee being offset by the amount of restitution payments (if applicable) against the defendant.

APPENDIX C

Excerpts from Memoranda Issued by the Chief Justice of the District Court Department

September 1, 2006

Judges. *It is important that each judge routinely use the mandatory "Assessment or Waiver of Moneys in Criminal Case" form . . . **whenever the judge disposes of a criminal case that involves the assessment or waiver of any required financial amount.** This form has several functions. It serves as a reference checklist; it documents that the complex statutory requirements relative to assessments have been complied with; it avoids any omissions or errors in recording what the judge has ordered; and it offers a simple way for the judge to make the written finding(s) required when a judge waives the victim/witness assessment (G.L. c. 258B, § 8) or the probation supervision fee or surcharge (G.L. c. 276, § 87A). . . .*

Clerks' office personnel. *Assistant clerks and session clerks, when assisting a sitting judge in the courtroom, should make certain that all assessments or waivers have been properly docketed, and should obtain and include in the case file the judge's "Assessment or Waiver of Moneys in Criminal Case" form whenever a criminal case is disposed of that involves the assessment or waiver of any required financial amount.*

January 29, 2009

It is important to keep in mind, of course, that in appropriate cases the probation supervision fee can and should be waived if it would work "an undue hardship on said person or his family due to limited income, employment status or any other factor" (G.L. c. 276, § 87A). Probationers who are granted such a waiver must then perform one day of monthly community service in lieu of the \$65 probation supervision fee (or four hours monthly in lieu of the \$21 administrative probation fee). The statute requires that the fee may be waived only "after a hearing and upon written finding." Judges should always record such decisions on the standard "Assessment or Waiver of Moneys in Criminal Case" form.