



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

Making government work better

Official Audit Report – Issued February 22, 2016

East Brookfield 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 22, 2016

Maura K. McCarthy, First Justice
East Brookfield Division of the District Court Department
544 East Main Street
East Brookfield, MA 01515

Dear First Justice McCarthy:

I am pleased to provide this report on the East Brookfield 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 East Brookfield 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 "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

EBDC	East Brookfield Division of the District Court Department
OCC	Office of Community Corrections
OCP	Office of the Commissioner of Probation
PSF	probation supervision fee

EXECUTIVE SUMMARY

This report reflects audit testing performed at the East Brookfield Division of the District Court Department (EBDC) 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 EBDC, 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 EBDC 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.

Finding 1a Page 8	Some judges allow probation officers to choose whether probationers should pay monthly PSFs or perform community service, contrary to the General Laws.
Finding 1b Page 9	The Probation Office does not have a centralized method to effectively track hours of community service performed.
Recommendations Page 10	<ol style="list-style-type: none">1. EBDC 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 of those fees. 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. EBDC 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.

OVERVIEW OF ENTITY

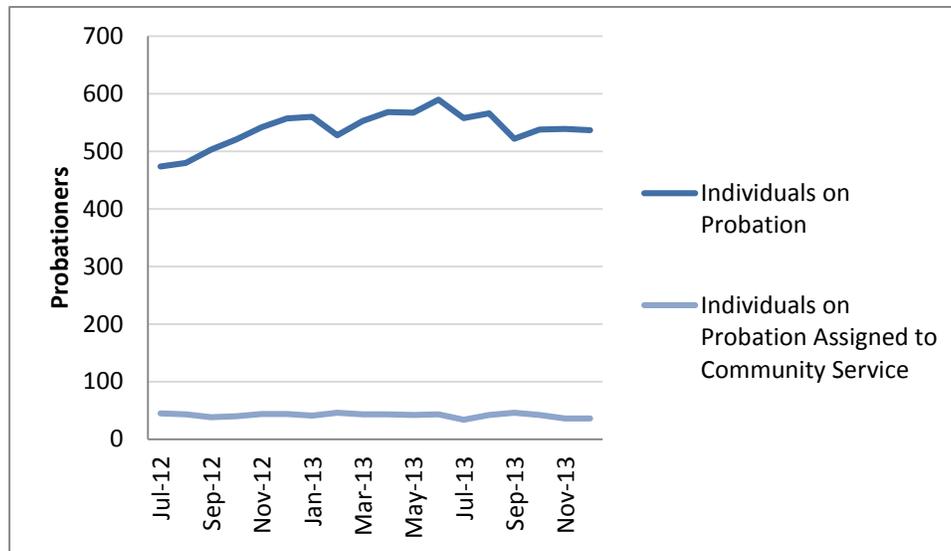
The East Brookfield Division of the District Court Department (EBDC) presides over civil, criminal, and other matters falling within its territorial jurisdiction: the towns of Barre, Brookfield, East Brookfield, Hardwick, Leicester, New Braintree, North Brookfield, Oakham, Paxton, Rutland, Spencer, Warren, and West Brookfield. 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. EBDC'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), EBDC reported 876 new probation cases and 694 discharged probation cases, leaving 537 probation cases at the end of this period. As of December 31, 2013, 61% of the probationers were on supervised probation and 39% were on administrative probation.

Additionally, EBDC records indicated that approximately 8% of these probationers were required to perform unpaid community service.

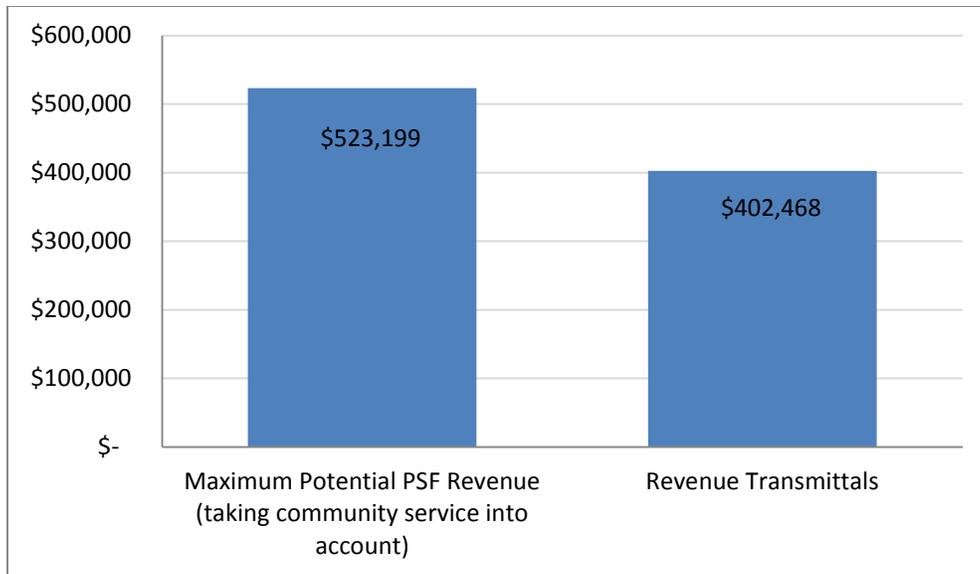
The graph below reflects the month-end number of probationers and how many of them were assigned community service.



During the testing period, EBDC collected and transmitted \$402,468 of PSFs to the State Treasurer. Taking into account the number of individuals required to perform community service, EBDC’s actual transmittals were approximately 77% of the estimated potential PSF revenue. We calculated this estimate by combining EBDC’s 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 subsequent court-ordered remittals¹ of PSFs (either the full amount or any remaining unpaid PSF balance) and/or probationers defaulting on their payment obligations.

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.

The following chart compares estimated potential PSF revenue with actual PSF revenue transmittals (after the community-service percentage is accounted for).



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 East Brookfield Division of the District Court Department (EBDC) was one of the 16 court locations selected. EBDC accounted for \$402,468 in PSF revenue transmitted during those 18 months.

The procedures we completed at EBDC 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 EBDC, 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 1a
2. Are PSF assessments properly recorded by the Clerk-Magistrate’s Office?	Yes
3. Are probation officers enforcing the requirement that probationers pay PSFs?	Yes

Objective	Conclusion
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 Finding <u>1b</u>

Our analysis of EBDC’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 EBDC 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 EBDC and reviewed relevant documents, statutes, and regulations as well as EBDC’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 EBDC’s monthly report of probation activity for the testing period.
- We obtained from the Trial Court PSF assessment data (financial docket reports) for EBDC, which we compared to EBDC 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 (EBDC’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 transactions primarily by using random, nonstatistical 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 40 out of 524 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 randomly selected 34 out of 102 probationers assigned community service 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 EBDC'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.

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 East Brookfield Division of the District Court Department (EBDC) 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 randomly selected 40 case files in which an individual had been placed on probation and ordered to pay a monthly PSF or perform community service 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 40 probationers selected, we identified 4 (10%) 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. For all 4 probationers, the sentencing judge did not sufficiently document that the PSF would be an undue hardship.

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 except that noncompliance was attributable to judges who did not regularly sit at EBDC and therefore might not have been aware of local protocol.

b. EBDC 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 the Office of Community Corrections (OCC)² or independent work arrangements made outside OCC. As a result, EBDC 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 provided to the Probation Office by OCC to determine whether Probation Office personnel verified the community-service hours.

We reviewed 20 criminal cases in which an individual was placed on probation and was ordered to perform community service. All 20 probationers had been ordered to perform community service rather than paying a PSF. In each case, 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.

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

Reasons for Ineffective Tracking

Rather than tracking specific types, dates, and amounts of community service via a single centralized method, EBDC has a system wherein each probation officer keeps files to record community service performed by individual probationers. The officer files a Community Service Completion Certificate with the court when a probationer has finished community service or probation. The hours of service performed are not updated in MassCourts until the end of probation. Therefore, the court cannot readily determine the aggregate amount of community service owed and its dollar value.

Recommendations

1. EBDC 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. EBDC 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

By permitting the probationer the option of either performing the required hours of community service work or paying the equivalent cash amount as each installment becomes due, the probationer is able to take advantage of periodic temporary employment opportunities that he or she would have to forgo if they could not temporarily switch their court obligations from community service work to a cash payment. My experience as a judge informs me that the probation population, many of whom are indigent, are often times unemployed for at least some period of time during the term of their probation. Many probationers have seasonal job opportunities, rather than any kind of steady employment.

Permitting the probationer this option of paying the probation supervision fee or performing community service does not appear to be inconsistent with the statute which specifically provides that a waiver of probation supervision fees "shall be in effect only during the period of time that said person is unable to pay his monthly probation fee." G. L. c. 276A, § 87A.

However, since my appointment as First Justice in December of 2013, I have asked that all of the judges assigned to sit in the East Brookfield District Court document a finding of fact hearing and where applicable a waiver by diligently using the existing Administrative Office of the District Court form on the Assessment or Waiver of Moneys in Criminal Case. Further, I have requested that any probationer whose employment status has changed to report that to Probation so that he or she may be brought before the court for an appropriate hearing. . . .

Finding 1b

The Probation Office in the East Brookfield District Court has a centralized method of effectively tracking all hours of community service assigned, performed and owed. For many years, the Probation Office has received a weekly spreadsheet from the Community Services program listing each probationer assigned to perform community service listing performance of hours or lack thereof. This spreadsheet is distributed electronically weekly to all probation officers. The probation office manager keeps paper copies of the spreadsheets in a binder which is centrally located and available at all times. All East Brookfield Probation employees have access to the spreadsheet and also employees from the Community Services program so they can keep accurate records and perform effective monitoring.

As a result of the above, the Probation Office can determine at any time how a probationer is doing with a community service obligation, the monetary value of the obligation and whether the obligation will be fulfilled on schedule. . . .

Through the use of a Community Service Completion form, Probation reports to the court at the end of a term of probation on the compliance with community service hours. It has been the practice of the court to have Probation monitor probationers to encourage compliance with the community service obligation by the end of a probation term. Currently the Trial Court is working on a change to its case management system which will permit Probation to report community service hours shortly thereafter in that system rather than on the Community Service Completion Form, and therefore available to the judge and clerk at any time. The practice in East Brookfield District Court is that Probation reports to the Court the status of the Community Service at each in court event. Probation Officers likewise address the status of Community Service during each Office Visit. The final verification of completed Community Service is usually faxed to the Department of Probation on the date it is due.

Auditor's Reply

Section 87A of Chapter 276 of the General Laws does not give the probationer the option of performing monthly community service or paying monthly PSF as each installment is due. Instead, the statute requires every person on probation to pay a monthly PSF unless there is a written finding by the judge that the PSF would be an undue hardship, in which case the probationer must perform monthly community service. Indigency and temporary employment may be factors contributing to the possibility of undue hardship, but the determination of such a hardship needs to be made by a judge, documented on the applicable court form, and accompanied by a requirement of monthly community service. We believe that the

actions taken by the First Justice (reiterating to all judges assigned to EBDC the Trial Court's process of holding findings of fact and documenting them 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 the spreadsheet referred to in EBDC's response does not specify the balance owed for each type of fee or the dates when community service was performed. Rather, the spreadsheet is an aggregate of information from various other sources, all of which a staff member would have to consult separately to find specific information. It also does not include probationers who have fulfilled their community-service obligations; it only reflects people currently on probation. This is less efficient than a single centralized record.

For instance, the community-service spreadsheet referred to does not break down community service by fee type. If a probationer is ordered to perform community service for various purposes (e.g., as a replacement for a legal counsel fee, as an intermediate sanction, and as a replacement for a PSF), the total obligation is recorded as one number, not segregated by type. Intermediate sanctions have no dollar equivalents, but the other assessments do; their hourly rates range from \$8.13 per hour to \$12.50 per hour, depending on the penalty. Additionally, when a probationer performs community service, there is no policy regarding which fee it should be applied to first. Without reconstructing the spreadsheet referred to in EBDC's response, it would not be possible to determine the total amount owed to the court specifically for PSFs by all probationers, let alone by each individual probationer.