



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

*Making government work better*

Official Audit Report – February 3, 2016

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## Southern Berkshire 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 3, 2014

Paul M. Vrabel, First Justice  
Southern Berkshire Division of the District Court Department  
9 Gilmore Avenue  
Great Barrington, MA 01230

Dear First Justice Vrabel:

I am pleased to provide this report on the Southern Berkshire 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 Southern Berkshire 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**

OCC	Office of Community Corrections
OCP	Office of the Commissioner of Probation
PSF	probation supervision fee
SBDC	Southern Berkshire Division of the District Court Department

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## EXECUTIVE SUMMARY

This report reflects audit testing performed at the Southern Berkshire Division of the District Court Department (SBDC) 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 SBDC, 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 SBDC specifically. Audit findings for the entire audit project are presented in a separate report for that project.

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

<b>Finding 1a</b> <b>Page <a href="#">9</a></b>	Some judges allow probation officers to choose whether a probationer should pay a monthly PSF or perform community service, contrary to the General Laws.
<b>Finding 1b</b> <b>Page <a href="#">10</a></b>	The court does not have a centralized method to effectively track hours of community service performed.
<b>Recommendations</b> <b>Page <a href="#">11</a></b>	<ol style="list-style-type: none"><li>1. SBDC should comply with the requirements of Section 87A of Chapter 276 of the General Laws for the imposition and waiving of PSFs and the restitution made for nonpayment. Specifically, it should make sure that it documents whether, based on court order, a probationer will pay a monthly PSF or whether a finding of fact has been held to allow the fee to be waived and community service performed instead.</li><li>2. SBDC should establish a centralized method of tracking community service performed.</li><li>3. The Probation Office should promptly report all hours of community service performed by each probationer, regularly throughout the probation term, to the Clerk-Magistrate’s Office for recording in MassCourts so that both offices can readily determine the status of probationers’ accounts.</li></ol>

<b>Finding 2</b> <b>Page <u>13</u></b>	The court sometimes ordered PSFs as one-time fees rather than as monthly payments. Additionally, some judges charged PSFs to non-probationers.
<b>Recommendation</b> <b>Page <u>14</u></b>	Judges should cease ordering one-time PSF assessments that contradict the statute. They should assess other allowable court fines/fees to non-probationers, if they feel that there are costs for which the defendants should be responsible.

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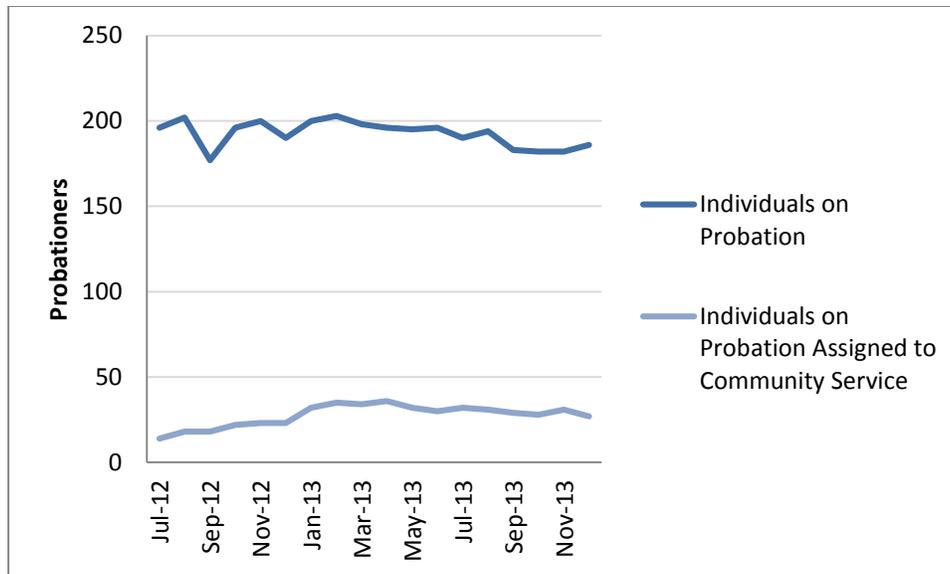
## OVERVIEW OF ENTITY

The Southern Berkshire Division of the District Court Department (SBDC) presides over civil, criminal, and other matters falling within its territorial jurisdiction: the towns of Alford, Becket, Egremont, Great Barrington, Lee, Lenox, Monterey, Mount Washington, New Marlborough, Otis, Sandisfield, Sheffield, Stockbridge, Tyringham, and West Stockbridge. 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. SBDC'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), SBDC reported 484 new probation cases and 506 discharged probation cases, leaving 186 probation cases at the end of this period. As of December 31, 2013, 55% of the probationers were on supervised probation and 45% were on administrative probation. Additionally, SBDC records indicated that approximately 14% of these probationers were required to perform unpaid community service.

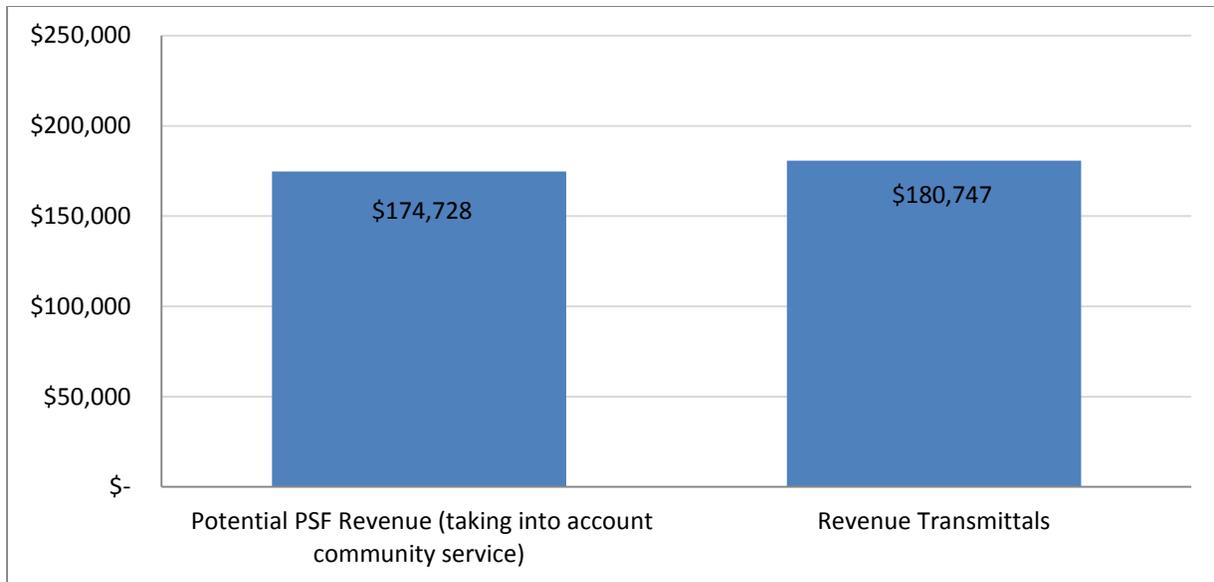
The graph below reflects the month-end number of probationers and how many of them were assigned community service.



During the testing period, SBDC collected and transmitted \$180,747 of PSFs to the State Treasurer. Taking into account the number of individuals required to perform community service, SBDC's actual transmittals were approximately 103% of the estimated potential PSF revenue. We calculated this estimate by combining SBDC'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 remittals<sup>1</sup> of PSFs (either the full amount or any remaining unpaid PSF balance), probationers defaulting on their payment obligations, and/or the imposition of one-time PSF assessments on non-probationers (see Finding 2).

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).



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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Trial Court’s administration and oversight of monthly probation supervision fees (PSFs) for the period July 1, 2012 through December 31, 2013. The scope of that audit includes an assessment of the process the Trial Court has established for PSFs and whether court divisions are adequately recording, monitoring, and fulfilling court-ordered assessments of PSFs at 16 selected district-court locations, which together account for \$7.5 million (23%) of the \$32.8 million in PSF collections transmitted to the state for the 18 months covered by the audit. The Southern Berkshire Division of the District Court Department (SBDC) was one of the 16 court locations selected. SBDC accounted for \$180,747 in PSF revenue transmitted during those 18 months.

The procedures we completed at SBDC 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 SBDC, 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 Findings <u>1a</u> and <u>2</u>
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?	<b>No; see Finding <u>1b</u></b>

Our analysis of SBDC’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 SBDC 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 SBDC and reviewed relevant documents, statutes, and regulations as well as SBDC’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 SBDC’s monthly report of probation activity for the testing period.
- We obtained from the Trial Court PSF assessment data (financial docket reports) for SBDC, which we compared to SBDC 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 (SBDC’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 33 out of 407 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 10 out of 44 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 SBDC's activities during the testing period were not used in our testing; the data were used solely for the purpose of presenting background information in our report. Consequently, we did not assess the reliability of these data.

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## DETAILED FINDINGS WITH COURT RESPONSE

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

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

Some judges at the Southern Berkshire Division of the District Court Department (SBDC) 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 the fees, may be bypassed. As a result, the Commonwealth may be forgoing PSFs that probationers would have been able to pay.

We randomly selected 33 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 33 probationers selected, we identified 2 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. In both cases, the sentencing judge did not sufficiently document that the PSF would be an undue hardship on the probationer.

#### **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.

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## Reasons for Assessment Issues

Court officials could not provide a reason why the sentencing judge allowed probation officers to decide which penalty was appropriate.

### **b. SBDC 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)<sup>2</sup> or independent work arrangements made outside OCC. As a result, SBDC 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 randomly sampled 10 criminal cases in which an individual had been placed on probation and ordered to perform community service. In 9 of these 10 cases, community-service hours were not updated in MassCourts as the probationer performed them; they were updated at the end of the probation term.

## Authoritative Guidance

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

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

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## Reasons for Ineffective Tracking

Rather than tracking specific types, dates, and amounts of community service via a single centralized method, SBDC has a system wherein the Probation Office staff keeps files to record community service performed by individual probationers. The staff files a Community Service Completion Certificate with the court when the 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. SBDC 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. SBDC 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

*The very small number of cases the auditors found fault with in their review of cases in the Southern Berkshire District Court should be underscored. In all but **two** of the cases reviewed by the auditors, individuals were placed on probation and the file included documentation that a finding of fact hearing was held to determine whether probationer was able to pay the monthly probation fee. Occasionally a judge may feel that permitting 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. However, I intend forthwith to remind all judges assigned to the Southern Berkshire District Court, that regardless of circumstance, they must document a finding of fact hearing and waiver by diligently using the existing Administrative Office of the District Court form on the Assessment or Waiver of Moneys in Criminal Case. 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.*

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## Finding 1b

*The Probation Office in the Southern Berkshire District Court has a centralized method of effectively tracking all hours of community service assigned, performed and owed. For years, the Probation Community Service program has sent a spreadsheet at least monthly to the Associate Probation Officer. The Associate PO has printed the spreadsheet for each probation officer or forwarded it via email. The spreadsheet includes up-to-date information about every person assigned by the court to perform community service, their obligation, hours performed, termination dates, etc. Should the officers have questions about the spreadsheet or need information in between deliveries, the local Community Service office staff are always available to provide that information. Many times the Probation office staff can update their records in between deliveries of the spreadsheet, including requesting this information at the weekly Community Corrections Center Multi-Disciplinary meetings.*

*As a result of receiving the Community Service spreadsheet and periodic information in between deliveries, Probation Office employees can determine at any given time how a probationer is doing with a community service obligation, know the monetary value remaining on the obligation, and whether the obligation is anticipated to be fulfilled on schedule.*

*For approximately five years, including the audit period, probation officers have provided the Clerk's Office monthly with certificates of compliance showing community service hours performed. Probation may have reported sooner if the matter was before the court for any reason, such as a violation of probation for non-payment of the fee or non-performance of the hours. . . .*

*Finally, it is my understanding that 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 into MassCourts rather than on the spread sheet.*

## Auditor's Reply

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

We do not dispute that the court may be able to determine a probationer's progress toward fulfilling the community-service obligation. However, the court lacks an efficient means to do this, because the spreadsheet referred to in SBDC'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.

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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 SBDC'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.

## **2. Some judges assess PSFs in incorrect amounts or against non-probationers.**

The court sometimes ordered PSFs as one-time fees rather than monthly payments. The one-time fees ordered were higher than what is statutorily required. Additionally, some judges charged PSFs to people who were not on probation.

We randomly selected 33 case files in which an individual had been ordered to pay a monthly PSF or perform community service in order to determine whether the court was adequately assessing PSFs.

Of the 33 cases selected, we identified 10 in which the judge ordered a one-time, rather than monthly, PSF. On further review of court records, we determined that 9 of the one-time fees were charged to individuals who were not on probation and the 10th was greater than what the probationer should have paid during the probation term: it was \$450, whereas the full amount the probationer should have paid was \$300 (six months at \$50 per month).

### **Authoritative Guidance**

Section 87A of Chapter 276 of the General Laws requires that probationers pay a monthly fee of \$50 or \$65, depending on the type of probation, each month throughout probation. It does not authorize courts to collect PSFs from non-probationers to cover the costs of handling their cases. However, Chapter 6 of Chapter 280 of the General Laws allows judges to assess court costs to offenders as a way to defray the costs of prosecuting their cases.

### **Reasons for Noncompliance**

Court officials could not provide a reason that judges sometimes ordered one-time fees.

## **Recommendation**

Judges should cease ordering one-time PSF assessments that contradict the statute. They should assess other allowable court fines/fees to non-probationers, if they feel that there are costs for which the defendants should be responsible.

## **Court's Response**

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

*While historically, some judges at the Southern Berkshire District 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, I have now asked all judges assigned to the Southern Berkshire District Court to discontinue this practice.*

*As to the onetime fee imposed in lieu of a monthly probation supervision fee, 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.*

*Once again, I have now asked all judges assigned to the Southern Berkshire District Court to discontinue this practice.*

## **Auditor's Reply**

We believe that the actions taken by the First Justice (asking all judges assigned to SBDC to cease ordering PSFs for non-probationers and assessing one-time PSFs) were responsive to our concerns and should help address this matter.