

SENATE No. 2050

Message from His Excellency the Governor recommending legislation relative to reforming fine time.

The Commonwealth of Massachusetts



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April 11, 2017

To the Honorable Senate and House of Representatives,

In November 2016, the Senate Post Audit and Oversight Committee released a report entitled *Fine Time Massachusetts: Judges, Poor People, and Debtors’ Prison in the 21st Century*. As described in the report, “fine time” is the informal name for the process by which criminal defendants who fail to pay fines, fees and assessments may be incarcerated until their debt is satisfied—at a rate of \$30 per day. The Committee’s report reveals that the present system lacks adequate procedural safeguards to protect individuals’ rights and leads to unjust outcomes.

Accordingly, I am submitting for your consideration “An Act Reforming Fine Time.” This legislation incorporates several of the Committee’s ideas and recommendations and, if enacted, will reduce the number of individuals who serve “fine time”, ensure that only individuals who willfully fail to satisfy their obligations be incarcerated, and provide counsel for indigent defendants before a prison sentence is imposed.

First, this legislation gives defendants a right to convert monetary obligations into community service obligations. This allows defendants who are unable to make monetary payments to still take responsibility for their obligations to the court and to the community. To ensure that defendants are aware of this right, before a court initiates proceedings to commit the defendant for failure to make a payment, the court must notify the defendant of this right in writing.

Second, this legislation acknowledges that not every defendant will be able to satisfy his or her obligations due to extenuating circumstances. Judges will be empowered to waive any obligation upon a written finding that the defendant is unable to satisfy that obligation through monetary payment or community service.

Third, this legislation establishes a procedure whereby no person will be incarcerated for failure to make a payment or perform community service unless the court holds a hearing where the defendant, assisted by counsel, is able to present evidence showing an inability to satisfy his or her obligation to the court. Only after such a hearing and after a written finding that a failure to satisfy an obligation is willful may a court incarcerate a person.

Finally, should a person be incarcerated for failure to pay a debt to the court, this legislation triples the daily rate from \$30 per day to \$90 per day.

I urge your prompt enactment of this legislation to ensure that we provide robust safeguards for individuals' rights while providing opportunities for defendants to take personal responsibility through community service when they are unable to make monetary payments.

Respectfully submitted,

Charles D. Baker,
Governor

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In the One Hundred and Ninetieth General Court
(2017-2018)

An Act reforming fine time.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 144 of chapter 127 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by striking out, in line 3, the words "thirty dollars" and
3 inserting in place thereof the following figure:- \$90.

4 SECTION 2. Said chapter 127 is hereby further amended by striking out section 145 and
5 inserting in place thereof the following section:-

6 Section 145. (a) As used in this section, the following words shall have the following
7 meanings, unless the context clearly requires otherwise:

8 "Minimum wage rate" means the rate established by the minimum wage law in section 1
9 of chapter 151.

10 "Obligation" means a payment as defined in this subsection, or community service
11 ordered pursuant to subsection (b).

12 “Payment” means a fine, fee, or assessment ordered by a court in connection with a
13 criminal case, but shall not include restitution.

14 (b) Notwithstanding any general or special law to the contrary, a court may, and upon the
15 request of a defendant, shall, order a defendant who is a natural person to perform community
16 service in a community service program administered or approved by the probation department
17 of the executive office of the trial court in lieu of a payment. Such person may work off a
18 payment by performing a number of hours of community service equal to the outstanding
19 payment divided by the minimum wage rate.

20 (c) If a court imposes an obligation other than under section 87A of chapter 276, the court
21 shall set a date certain on which the obligation is due and order the defendant to appear on that
22 date, unless the defendant makes a full payment forthwith.

23 (d) The clerk shall, upon a defendant’s satisfaction of an obligation, cancel any future
24 court appearances associated solely with that obligation.

25 (e) Upon the initial appearance of a defendant for failure to satisfy an obligation, the
26 court shall: (i) if the obligation is a payment, inform the defendant in writing of the right to
27 request an order for community service under subsection (b); (ii) inform the defendant in writing
28 that continued failure to satisfy the obligation may result in incarceration; and (iii) set a new date
29 certain on which the obligation is due and order the defendant to appear on that date.

30 (f) Upon a second or subsequent appearance of a defendant for failure to satisfy an
31 obligation, the court shall: (i) set a new date certain on which the obligation is due and order the
32 defendant to appear on that date; (ii) make a written finding pursuant to subsection (g) and waive
33 the obligation; or (iii) appoint counsel to represent the defendant if the defendant meets the

34 definition of indigency under section 2 of chapter 211D and schedule a hearing to take place in
35 not less than 14 days nor more than 30 days, except upon good cause shown. At such hearing
36 there shall be a rebuttable presumption that a defendant is able to satisfy the obligation. A
37 defendant may rebut such presumption by presenting evidence, including but not limited to,
38 evidence concerning his employment status, earning ability, financial resources, living expenses,
39 dependent care responsibilities, transportation resources and any special circumstances that may
40 have bearing on his ability to make a payment or perform community service. If the court
41 determines that the defendant is unable to satisfy the obligation through either monetary payment
42 or community service, the court shall make a written finding pursuant to subsection (g) and
43 waive the obligation. If the court determines that the defendant has the ability to satisfy the
44 obligation through either monetary payment, community service or both, the court may either set
45 a new date certain on which the obligation is due and order the defendant to appear on that date
46 or, if the court makes a written finding that the defendant's failure to meet the obligation is
47 willful, the court may commit the defendant pursuant to section 144.

48 (g) Upon a written finding that a defendant is unable to satisfy an obligation through
49 either monetary payment or community service, the court shall waive the obligation.