Executive Office of Public Safety and Security

# Inmate Fees as a Source of Revenue
# Review of Challenges

July 1, 2011

*Report of the Special Commission to Study the Feasibility of Establishing Inmate Fees*

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# Executive Summary

The Special Commission to Study the Feasibility of Establishing Inmate Fees (hereafter referred to as "the commission"), formed as directed by Outside Section 177 of Chapter 131 of the Acts of 2010, was tasked with the following:[1]

*". . . a comprehensive study of the feasibility of establishing inmate fees within the correctional system of the commonwealth. The study shall include, but not be limited to, the types and amount of fees to be charged, including a daily room and board fee and medical co-pays; revenue that could be generated from the fees; the cost of administering the fees; the impact on the affected population; use of the collected fees by the respective sheriff's office; method and sources of collecting the fees; impact on the prisoner work programs; waiver of the fees for indigents; exemptions from the fees for certain medical services; and forgiveness of the balance due for good behavior." (See Appendix A for complete language.)*

### Types and Amount of Fees

After reviewing Massachusetts Sheriffs' and Department of Correction's (DOC) inmate fee and revenue generation support structures, the commission finds there are a number of fees (e.g. medical co-pays, telephone, booking, per diem, etc.) already placed upon inmates. Fees may be imposed pre-incarceration, during incarceration, and post-incarceration, often increasing the debt-burden "on a population uniquely unable to make payments."[2] Fees range from agency to agency and support the Commonwealth's General Fund, Sheriffs' and DOC's operations, as well as inmate programming.

- The commission supports Sheriffs' and DOC's ongoing efforts to strike the balance between securing revenue from inmates and promoting successful reentry.

### Impact on Inmates

When weighing the feasibility of additional inmate fees and the impact on the affected population, the commission took into consideration that inmates have limited means to earn income while imprisoned and that many inmates rely on family members for contributions to their commissary (financial) account. Given that "more than half of male inmates were the primary source of financial support for their children" pre-incarceration[3], fees will not only impact inmates but also their family members. Inmates that are indigent or have limited sources of income will often rely on funds transferred from their canteen

[1] Statutory language hereafter set off in blue.
[2] Bannon, Alicia, Diller, Rebekah, Nagrecha, Mitali. "Criminal Justice Debt: A Barrier to Reentry." Brennan Center for Justice. 2010 (4).
[3] Western, Bruce, Pettit, Becky. "Collateral Costs: Incarceration's Effect on Economic Mobility." Pew Charitable Trusts. 2010 (3).

# Executive Summary, continued

accounts for reentry upon their release, including for the purpose of securing housing, access to substance abuse/mental health programming, and educational opportunities. Funds may also be necessary to regain drivers' licenses for commuting to and from the workplace as well as to pay down the costs associated with imprisonment.

- The commission believes that additional fees would increase the number of inmates qualifying as indigent, increase the financial burdens on the inmate and their family, and jeopardize inmates' opportunities for successful reentry.

### Cost of Administering Fees

The commission surveyed Massachusetts Sheriffs and DOC and conducted a literature review of other states with inmate fees to attempt to access the cost of implementing inmate fees. Costs varied both within Massachusetts (answers ranged from $50,000 to no cost) and throughout the country. Additionally, agencies' responses and research findings vary on the practicality of collecting fees. Some view it negatively, seeing it as a pathway to "debtors' prison" in which "individuals can face arrest and incarceration not for any criminal activity, but rather for falling behind in debt payments,"[4] while others report it changing the ways inmates think about future actions[5].

- The commission believes that additional fees would increase the cost to the taxpayers by creating a cost associated with implementing the fees and would likely increase recidivism rates.

### Summary

The commission, after surveying Massachusetts Sheriffs and DOC and conducting a literature review of this issue, believes[5] that establishing additional inmate fees will lead to a host of negative and unintended consequences. Successful reentry, already a challenge, will become a greater challenge because additional fees will decrease the already limited savings and economic resources available to inmates upon release.

[4] Bannon, Alicia, Diller, Rebekah, Nagrecha, Mitali. "Criminal Justice Debt: A Barrier to Reentry." Brennan Center for Justice. 2010 (19).

[5] See Appendix H for a description of Bristol County's "cost-of-care" and other fees, which were found unconstitutional by the Massachusetts Supreme Judicial Court. See Appendix I for the Supreme Judicial Court decision.

# Committee Membership/Methodology

The commission membership as detailed in statute consists of:

*"...the secretary of public safety and security or a designee, who shall be the chair; the president of the Massachusetts Sheriffs' Association or a designee; 2 sheriffs to be designated by the president of the Massachusetts Sheriffs' Association, each of whom shall be from a different political party; the chief counsel of the committee for public counsel services or a designee; a correctional system union representative; and a representative from prisoners' legal services."*

The following people are the designated representatives to the commission:

- Sandra M. McCroom- Chairwoman- Undersecretary of Criminal Justice, EOPSS
- Sheriff Michael Bellotti- President Massachusetts Sheriffs' Association
- Sheriff Michael Ashe- Democrat Sheriff Designee
- Sheriff Thomas Hodgson- Republican Sheriff Designee
- Attorney Leslie Walker- Representative from Prisoners' Legal Services
- Brian Jansen- Correctional System Union Representative
- Attorney Radha Natarajan- Chief Counsel of CPCS designee

Methodology

The commission met several times to discuss a workplan, approve surveys, review current literature on the topic, review responses to surveys, and approve a report outline. The meetings took place on August 26, 2010, November 17, 2010, December 7, 2010, March 25, 2011, March 31, 2011, and June 2, 2011. (The final draft will include all meeting minutes, the most recent of which have yet to be approved.) The first survey was disseminated to all sheriffs on October 15, 2010. The second survey was disseminated to all Sheriffs and the Department of Correction on February 10, 2010. (Please see Appendix E for minutes of each meeting.)

Phone interviews were conducted with Eileen Ners and Linda Foglia from the New York State Department of Correction and with Acting Deputy Secretary for Administration Timothy Ringler from the Pennsylvania Department of Correction. Literature review, particularly that of the Brennan Center for Justice report, *Criminal Justice Debt: A Barrier to Reentry*, which surveys the practices of 15 states, provided a framework for analysis and identified avenues of investigation.

# Survey Results

For the purposes of this report, the commission disseminated two different surveys to the Sheriffs and the Massachusetts Department of Correction (DOC). The first survey, sent only to Sheriffs, focused on determining indigency, systems for collecting fees, and the cost of these systems. Twelve of 14 Sheriffs responded partially or completely to the first survey, and 11 of 15 departments responded partially or completely to the second survey.

*Highlights of Survey #1- Distributed on October 15, 2010.*
Please see Appendix B for full summary of responses to first survey.

- Sheriffs' definitions of indigency were fairly similar, in that 64% deemed an inmate indigent if the inmate's account had a balance of less than $10. Besides this common characteristic, the definition of indigency varied by frequency of verifying indigency, time period examined to determine indigency, etc.
- 79% evaluate inmates on pre-trial status for indigency.
- 79% of respondents indicated that they used an inmate's commissary and/or account balance to determine indigency.
- 57% determine indigency at the time an inmate requests services.
- Responses detailing operating costs for software and the staff associated with its management, data entry, and tracking varied significantly, ranging from $50,000 for one department to little or no cost in another.
- The commission felt it could draw no significant conclusions from the departments' estimates of indigency due to the lack of a system-wide definition of indigency.

The second survey, sent to both Sheriffs and the DOC, focused on the amount of money in inmate accounts, the variety of fees charged to inmates during incarceration, and how the revenue is utilized by the Sheriffs and the Department of Correction. The commission later requested follow-up interviews to clarify respondents' answers to the second survey (Appendix G).

*Highlights of Survey #2- Distributed on February 10, 2011.*
Please see Appendix C for full summary of responses to second survey.

- 90% of departments that responded to this question reported an average monthly balance in an inmate's account of $200 or less, with several agencies under $100.
- Several departments either charge a room and board fee associated with work release or a percentage-based fee on what is in an inmate's commissary account.

# Survey Results, continued

*Highlights of Survey #2- Distributed on February 10, 2011, continued*

The surveys taken as a whole paint the following picture of inmate fee collection:

- Most departments are charging several fees, including room and board fees mostly associated with work release programs (not including fees charged to inmates prior to or following incarceration).
- These fees either assist departments with patching operational and programmatic deficits within the institution or support the General Fund of the Commonwealth.
- Monthly dollar average in the accounts of inmates are low, except for in the DOC. However, there are pronounced differences between the monthly dollar averages of DOC inmates organized by security level, with lower security inmates having much higher balances (as shown in Appendix G). The DOC stated that "the primary purpose for institutional savings is to insure that the inmate shall be released with enough funds to aid in acquiring a residence and to be able to afford the expenses related to reintegrating in a community upon discharge or parole" (Appendix G).

# Literature Review of Fee Impact

**Impact of Fees-**

Across the board, we found that states are introducing new user fees, raising the dollar amounts of existing fees, and intensifying the collection of fees and other forms of criminal justice debt such as fines and restitution. But in the rush to collect, made all the more intense by the fiscal crises in many states, no one is considering the ways in which the resulting debt can undermine reentry prospects, pave the way back to prison or jail, and result in yet more costs to the public.

*-from Criminal Justice Debt: A Barrier to Reentry* [6]

Background on *Criminal Justice Debt: A Barrier to Reentry*

- Released on October 4, 2010 by the Brennan Center for Justice
- Reviews practices in 15 states with highest prison populations
- California, Texas, Florida, New York, Georgia, Ohio, Pennsylvania, Michigan, Illinois, Arizona, North Carolina, Louisiana, Virginia, and Alabama, and Missouri
- Focuses primarily on the proliferation of "user fees," financial obligations imposed not for any traditional criminal justice purpose such as punishment, deterrence, or rehabilitation but rather to fund tight state budgets.

Background on *Collateral Costs: Incarceration's Effect on Economic Mobility*

- Released on September 28, 2010 by The Pew Charitable Trusts
- Focuses on individuals' ability to generate income post-release and the hidden costs of incarceration that are passed on to family members and society
- Advocates criminal justice policies that help former inmates maintain legitimate employment, which increases the likelihood that they are able to pay restitution to their victims, support their children, and avoid reoffending[7]

[6] Bannon, Alicia, Diller, Rebekah, Nagrecha, Mitali. "Criminal Justice Debt: A Barrier to Reentry." Brennan Center for Justice. 2010 (1).

[7] Western, Bruce, Pettit, Becky. "Collateral Costs: Incarceration's Effect on Economic Mobility" Pew Charitable Trusts. 2010 (3).

# Literature Review, continued

**Key Findings from Criminal Justice Debt: A Barrier to Reentry**

- "Fees, while often small in isolation, regularly total hundreds and even thousands of dollars of debt" (p. 1).
- "Inability to pay leads to more fees and an endless cycle of debt" (p. 1).
- "Although 'debtors' prison' is illegal in all states, re-incarcerating individuals for failure to pay debt is, in fact, common in some states – and in all states new paths back to prison are emerging for those who owe criminal justice debt" (p. 2).
- "As states increasingly structure their budgets around fee revenue, they only look at one side of the ledger." No tracking of material costs of collection and administering the system and no analysis of hidden cost (p. 2).
- "Criminal justice debt significantly hobbles a person's chances to reenter society successfully after a conviction" (p. 2).
- "Overdependence on fee revenue compromises the traditional functions of courts and correctional agencies" (p. 2).
- In addition to describing the many financial obligations for criminal defendants, the report argues that fees are levied on a population uniquely unable to make payments (p. 4):
    - Eighty to 90 percent qualify for indigent defense.
    - Fifteen to 27 percent expect to go to homeless shelters upon their release.
    - Up to 60 percent of former inmates are unemployed one year after release.

**Key Findings from Collateral Costs: Incarceration's Effect on Economic Mobility**

- Report recommends "capping percent of offenders' income subject to deductions for unpaid debts (such as court-ordered fines and fees) (p. 5)
- Highlights the many obligations facing an individual post-release, "including child support, restitution and other court-related fees" (p. 9).
- Suggests that "efforts to enforce these obligations can be self-defeating" and goes on to mention a Council of State Governments Justice Center report that "found that 12 percent of probation revocations – returns to incarceration for violations – were due in part to a probationer's failure to make required payments" (p. 23).
- Identifies that "financial liens and garnishments against future earnings can detract from the rewards of working for a living and undermine former inmates' efforts to regain their economic footing…" (p. 24).

# Summary of Interviews with New York and Pennsylvania Departments of Correction

The commission directed that additional phone interviews be conducted with two Northeast states that utilize inmate fees. The New York interviews did not provide much insight into the experience in that state, as the interview subjects declined to answer many of the questions. The interview with the Pennsylvania administrator revealed that his state is struggling with many of the same issues discussed by the commission. See Appendix F for a more detailed report on the interviews. Below are highlights of the two interviews.

### Summary of Interviews with Eileen Ners and Linda Foglia, New York Department of Correction

They indicated that the revenue they collect from fees was helpful. They collect 20 percent from inmate payroll for fees, but 60 percent is from outside receipts, which are comprised of the money sent by inmates' families. They cautioned that departments considering fees must be mindful about what fees to include in order to ensure that the facilities remain safe and secure and without disruption. They did not have an estimate of the total revenue generated. Regarding indigency, they advised to only collect a percentage of what an inmate has or to use a sliding scale, taking care to avoid imposing a debt obligation if the inmate does not have incoming funds.

# Summary of Interviews with New York and Pennsylvania Departments of Correction, con't.

**Summary of Interview with Timothy Ringler, Acting Deputy of Administration and Finance, Pennsylvania Department of Correction**

Overall, he believes the current limited fee structure his department utilizes strikes the right balance. He cautions against per diem and room and board fees, unless these fees are at the work release or community corrections levels, as then, the inmate is accruing income. He prefers fees that fall into the category of incentives and disincentives, such as the medical co-pay fee, which has driven down abuse of sick calls.

He believes if inmates are working and earning money, there should be some fee to pay. For someone otherwise doing a good job and succeeding in reentry, their fees should be negotiated as part of parole. In Pennsylvania, released inmates can go back to jail for not paying fees, but there is a concerted effort to reduce the prison population. Pennsylvania used to have the highest prison population in the country. In the last year, the prison population has gone down, but there is still a push to do more. Officials are trying not to put people back in jail, at least not for correctional debt. He believes that they should reserve prison for people who have committed real crimes. He believes in trying to help people get good jobs post release and that fees need to be considered in this light.

He cautioned several times about limiting fees and striking the right balance so that the safety and security of the institution is not upset. He states that it works well in Pennsylvania because there are not a lot of fees. Overall, he believes it costs more to keep people in prison for not paying a fee and would recommend against that practice, which he feels is not worth it.

## Room and Board Fees

*"Not many people are in favor of room and board – it would upset the balance in the institution. We wouldn't collect very much off of it. If inmates were required to pay it, it would impact an inmate's reentry into the community because of debt."*

Timothy Ringler,
PA Department of Correction

# Overview of Other Fees

### Inmate Fees in Context of other Court Ordered Fees and Victim Restitution

It is hard to determine the totality of expenses and fees confronting someone convicted of a crime before they even step foot into a facility. The entire judicial system relies heavily on fees as sources of revenue, such that increasing inmate fees puts Houses of Correction and the Department of Correction in competition for scarce resources. Here is one example of the costs confronting a typical first time OUI offender before any inmate or parole supervision fee ($80 a month).[8] Even without the probable additional costs (some of which would not apply to someone sentenced to jail, such as the probation fee) the expenses are still significant.

| **Fines, Fees, and Other Costs:** | |
|---|---|
| Towing Fee | $100 |
| Car Storage (per day) | $30 |
| Magistrate Nighttime Bail Fee | $50 |
| Defense Attorney Fee | $5,000 |
| Minimum Conviction Fine | $500 |
| Victim Witness Fee | $50 |
| License Reinstatement Fee | $500 |
| | |
| **Surcharges:** | |
| Head Injury Treatment Services | $125 |
| Drunk Driving Victims Trust Fund | $50 |
| | |
| Probable Additional Costs: | |
| Driver Alcohol Education Program | $574 |
| Court Costs | $250 |
| Probation Fee | $780 |
| **Total** | **$8,009**[9] |

[8] Source- 2009 Informational Brochure on Melanie's Law produced by Executive Office of Public Safety and Security and the Registry of Motor Vehicles

[9] Court costs, insurance surcharge, victim witness fee, and attorney fees will vary.

# Overview of Other Fees, continued

**Judicial System Reliance on Fees**

To illustrate the reliance the Commonwealth has on fees assessed court involved people and to defendants either sentenced to probation or to incarceration, below is a table produced by the State Auditor's office in its review of district courts management and collection of these funds:

| Revenue Source | 2005 | 2006 | 2007 | 2008 |
|---|---|---|---|---|
| General Revenue | 31,490,167 | 34,621,161 | 36,110,747 | 37,746,391 |
| Probation Fees | 16,484,678 | 18,214,139 | 18,766,141 | 19,335,234 |
| Indigent Counsel Fees | 6,309,767 | 6,393,010 | 6,634,205 | 7,088,134 |
| Victim Witness Fees | 3,294,909 | 3,189,071 | 3,033,415 | 2,994,960 |
| Civil Surcharges | 2,268,430 | 2,468,156 | 2,620,719 | 2,893,583 |
| Alcohol Fees | 1,970,116 | 1,834,424 | 1,801,824 | 1,991,220 |
| Head Injury Fees | 1,730,014 | 1,636,350 | 1,602,282 | 1,633,554 |
| All Other | 1,213,469 | 1,213,994 | 1,169,648 | 1,226,720 |
| Total | 64,761,550 | 69,570,305 | 71,738,981 | 74,909,796 |

**Description of Fees in Auditor's report:**

General Revenue consists of a wide variety of items, including state fines, costs, surcharges, civil entry fees, copy fees, etc., which are deposited into the Commonwealth's General Fund. The next five revenue sources (Probation fees through Alcohol fees) are separately identified in the Commonwealth's accounting system, but are all deposited into the Commonwealth's General Fund.

# Summary Analysis

Viewed through the framework of the statutory requirements of the Commission, the surveys and subsequent discussion reveal the following **(statutory language set off in blue):**

The types and amount of fees to be charged, including a daily room and board fee and medical co-pays;

Currently, the amount of fees varies widely- some are flat fees under $10, some are $50 and over, many are percentage-based deductions from the inmates' accounts. According to the survey results, no department charges a fee in every single possible category.

The following represents the universe of fees and revenue generation currently in place at the various departments:

- Booking
- Release escort
- Drug testing
- Telephones
- Haircuts
- Bonding
- Clothing
- Commissary (general)
- Commissary (debit card transaction fee)
- Detoxification
- Laundry
- Meals
- Notary service
- Property damage
- Recreational clothing/gear
- Sheriff's fee, criminal court clerk
- Transportation
- Vending machines
- Work release (room and board)
- Weekender programs
- Medical Co-pays

# Summary Analysis, continued

### Revenue that could be generated from the fees;

Through survey responses and follow-up interviews, the following departments estimated their annual revenue from *existing* fees (See Appendix C for original responses and Appendix G for amended and clarified responses) :

- Berkshire: $2,500
- Bristol: $4,200
- Worcester: $60,215
- Hampden: $60,000
- Norfolk: $1,000
- Barnstable and Nantucket: $5,000
- Suffolk: $2,949
- Essex: $133,229
- DOC: $544,966

### The cost of administering the fees; method and sources of collecting the fees;

The survey captured the administrative cost of current fee collection. The following systems are already in place for the collection of revenue from inmates:

Berkshire: Canteen Manager Program Version 5.0 by Compass Group, USA. One canteen manager/correction officer: Salary $50,000.

Worcester: Keefe Financial system; Access Corrections internet and phone deposit system; Kiosk

Plymouth: Staff enters debt into inmate's canteen account

Bristol: The cost for initial set-up for automatic withdrawal from inmate accounts was a one time fee of $4,000. Their current canteen vendor advises that if the daily fee program is reinstituted, there would be no cost associated with the program set-up as they already have a program in place in two other states

## Systems for Collecting Fees

*The surveys and commission discussion indicate every department has a system for managing inmate commissary/canteen funds and personal savings and to deduct fees currently being charged.*

# Summary Analysis, continued

### The impact on the affected population; impact on the prisoner work programs;

Increasing the current fees may lead to fewer funds being placed in inmates' accounts by family members or place additional hardships on an inmates family. Additional fees will decrease money in the inmates' accounts, which will likely increase inmate indigency.[10] Further, the commission agreed that an incentive for good behavior and participation in programming and work release is the maintenance of savings and accrual of funds, not elimination or reduction to debt related to fees.

### Use of the collected fees by the respective sheriff's office;

Many responding departments specify that fees go to inmate programs and services, or to restitution. Allocating fee revenue for replacement of missing or damaged items is also mentioned. (See Appendix C for further detail regarding the use of currently collected fees by individual departments).

### Waiver of the fees for indigents;

Survey responses reveal it is standard practice across departments to waive fees for indigent inmates. Some are evaluated for indigency upon application for waiver of a fee or for a service while others are evaluated upon commitment. Indigency criteria in several agencies are balances of $10 or less in inmate accounts for a specified amount of time. Please see Appendix A for full responses on indigency and fee waivers.

[10] The Massachusetts Supreme Judicial Court decision that invalidated Bristol County's "cost-of-care" and other fees found it undisputed that "[i]nmates have no earned funds while incarcerated, that is, they are not given paid jobs," and that "[s]ince the program's implementation, the number of indigent inmates has increased." Souza v. Sheriff of Bristol County, 455 Mass. 573, 576 (2010). (See Appendix I.)

# Summary Analysis, continued

### Exemptions from the fees for certain medical services;

Survey responses and commission discussion indicate that medical co-pays, even of a few dollars, are a standard practice to limit the abuse of sick privileges and maintain officer and inmate safety. Interview with Pennsylvania's DOC affirms the value of this industry practice.

### Forgiveness of the balance due for good behavior;

Survey results indicate that many departments do not allow for negative debt to be incurred, and those that do only pursue payment if there is a change to non-indigent status. The commission believes a standardized policy for forgiveness of balance due for good behavior should be considered.

# Appendix

# Appendix A- Authorizing Language

**CHAPTER 131 of the Acts of 2010**
AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2011 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS AND FOR CERTAIN PERMANENT IMPROVEMENTS. (see House, No. 4800) Approved (in part) by the Governor, June 30, 2010

**SECTION 177.** There shall be a special commission to study the feasibility of establishing inmate fees. The commission shall consist of the secretary of public safety and security or a designee, who shall be the chair; the president of the Massachusetts Sheriffs' Association or a designee; 2 sheriffs to be designated by the president of the Massachusetts Sheriffs' Association, each of whom shall be from a different political party; the chief counsel of the committee for public counsel services or a designee; a correctional system union representative; and a representative from prisoners' legal services. The commission shall convene its first official meeting no later than September 1, 2010. The commission shall make a comprehensive study of the feasibility of establishing inmate fees within the correctional system of the commonwealth. The study shall include, but not be limited to, the types and amount of fees to be charged, including a daily room and board fee and medical co-pays; revenue that could be generated from the fees; the cost of administering the fees; the impact on the affected population; use of the collected fees by the respective sheriff's office; method and sources of collecting the fees; impact on the prisoner work programs; waiver of the fees for indigents; exemptions from the fees for certain medical services; and forgiveness of the balance due for good behavior.
The commission shall report to the general court the results of its investigation and study, and recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect by filing the same with the clerks of the senate and the house of representatives, who shall forward the same to the chairs of the house and senate ways and means committees and the senate and house chairs of the joint committee on public safety on or before March 1, 2011.

# Appendix B- Summary of October 15th Survey

This memo contains the individual responses that each department gave for the Inmate Fee Survey, which was distributed on October 15, 2010. The following is a summary of the main findings from this survey:

- Different departments' definitions of indigency were fairly similar.
- 79% of respondents indicated that they used an inmate's commissary and/or account balance to determine indigency.
- 64% deemed an inmate indigent if the account had a balance of less than $10.
- 57% determine indigency at the time an inmate requests services.
- 79% evaluate inmates on pre-trial status for indigency.
- 43% of agencies do not allow negative balances on inmate accounts, and of those that do, 36% require debts to be repaid if there is a change from indigent to non–indigent.
- Given the high number of missing responses, it is difficult to draw conclusions about the number and percentage of indigent inmates across agencies. However, in 6 of the 9 agencies that responded, this percentage hovered between 7 and 10%.

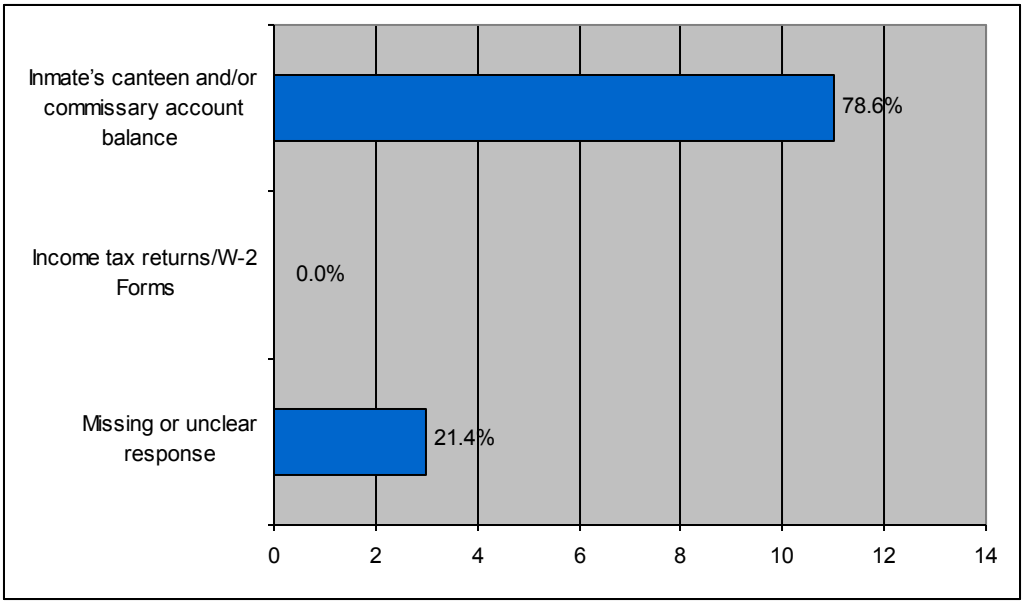
# Appendix B- Summary of October 15th Survey

1. How does your department define indigency?

| | |
|---|---|
| Barnstable / Nantucket | Zero balance in account |
| Berkshire | (1) At time inmate requests waiver of fees, balance of $10 or less (plus cost of fees sought to be waived)<br>(2) Balance of $10 or less (plus cost of fees sought to be waived) for 60 days immediately preceding request<br>(3) Balance of less than $2 or other circumstance, as per superintendent's discretion |
| Bristol | Balance of $10 or less for 60 days |
| Dukes | Balance of less than $10 for more than 30 days |
| Essex | Balance of $10 or less for 60 days |
| Franklin | NO RESPONSE |
| Hampden | (1) During first 60 days of incarceration, balance of less than $10 at time of each separate request<br>(2) If incarcerated for more than 60 days, balance of $10 or less (plus cost of fees sought to be waived) for 60 days immediately preceding request |
| Hampshire | (1) For the purpose of mail, balance of $10 or less (plus cost of fees sought to be waived) for 60 days immediately preceding request<br>(2) For canteen purposes, balance of $5 or less for 10 days immediately preceding request<br>(3) Balance of less than $2 or other circumstance, as per superintendent's discretion |
| Middlesex | (1) Zero balance in account upon commitment<br>(2) No deposits for first 30 days after |
| Norfolk | Balance of less than $10 for 60 days |
| Plymouth | Balance of $10 or less (plus cost of fees sought to be waived) for 60 days immediately preceding request |
| Suffolk | Balance of less than $5 for 30 days |
| Worcester | Balance of $10 or less (plus cost of fees sought to be waived) for 60 days immediately preceding request |

# Appendix B- Summary of October 15th Survey

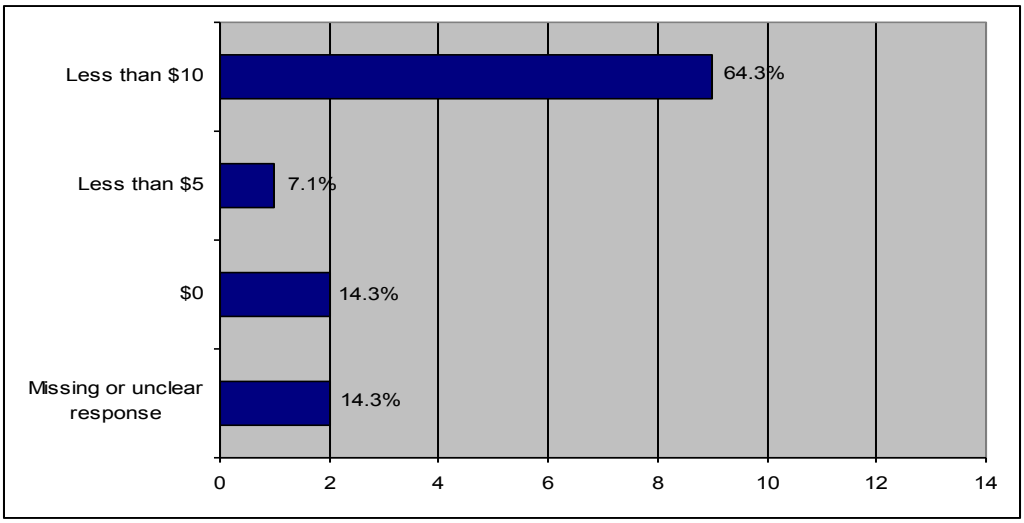
**2. What criteria do you use to determine indigency?**



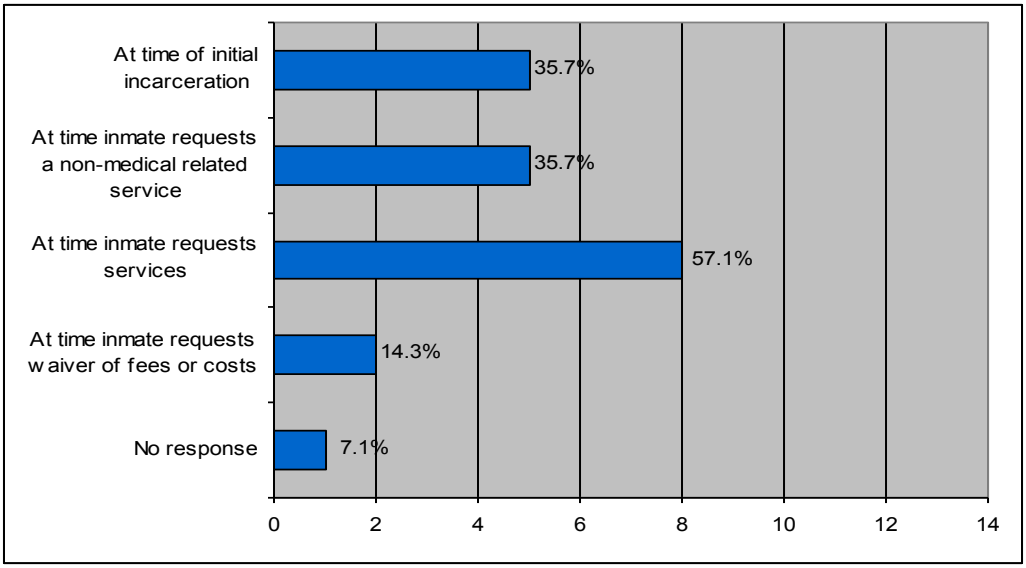

Barnstable, Nantucket, Berkshire, Bristol, Dukes, Essex, Hampden, Middlesex, Norfolk, Suffolk, Worcester all used an inmate's canteen and/or commissary account balance to determine indigency.
Missing or unclear answers: Franklin, Hampshire, and Plymouth.

# Appendix B- Summary of October 15th Survey

**3. If an inmate's canteen and/or commissary account balance is used to determine indigency, at which level would an inmate qualify as indigent?**

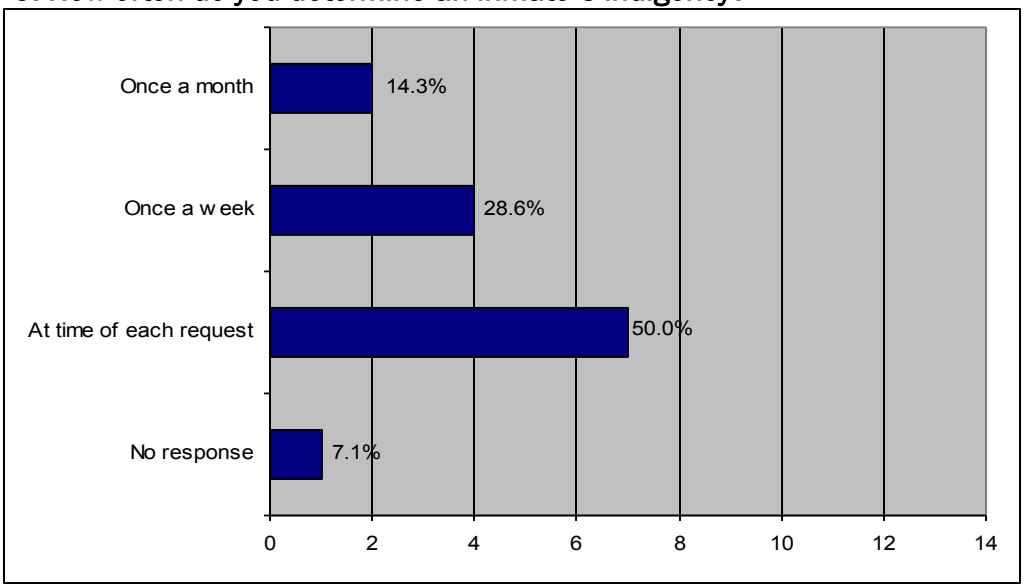



**4. At what point do you initially determine the indigency of an inmate?**

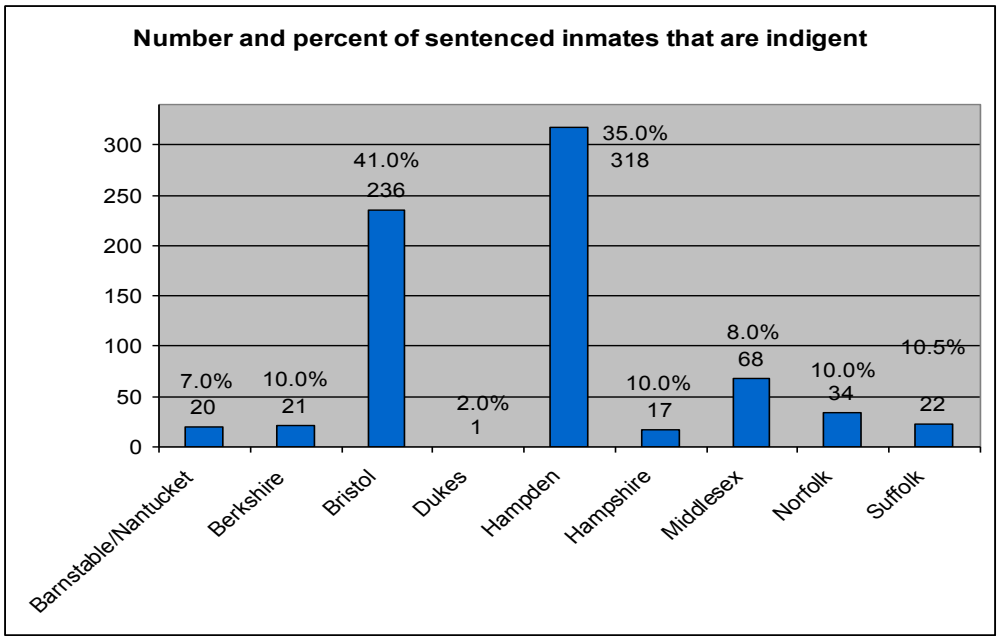


# Appendix B- Summary of October 15th Survey

5. How often do you determine an inmate's indigency?

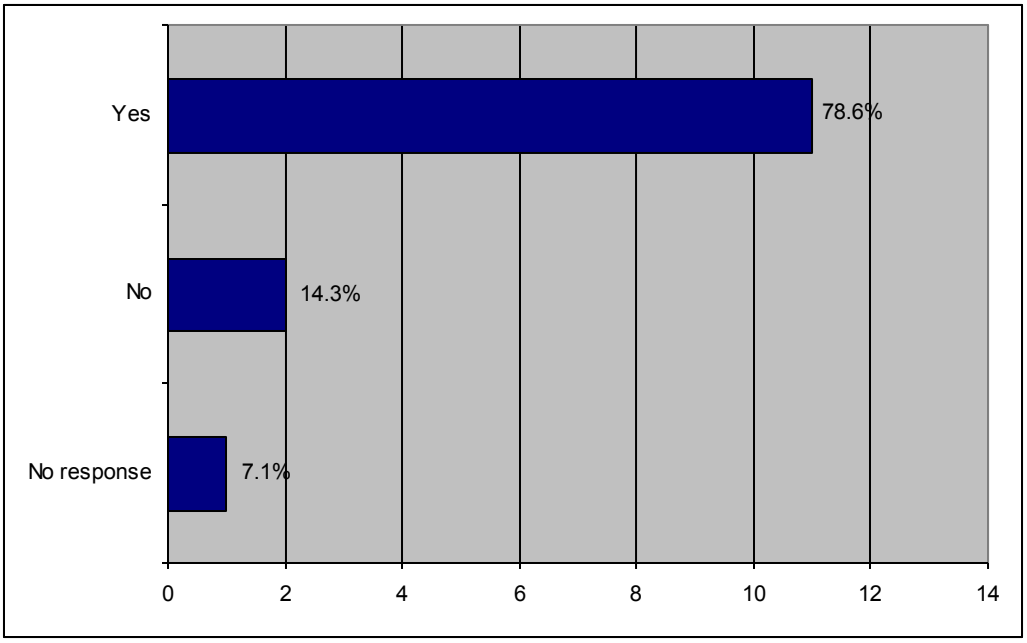



6. We understand that your average daily count fluctuates, but on average, what is the number of your agency's sentenced inmates, and of this population (on average), what percentage of inmates are indigent?



# Appendix B- Summary of October 15th Survey

**7. Are inmates on pre-trial status evaluated for indigency?**

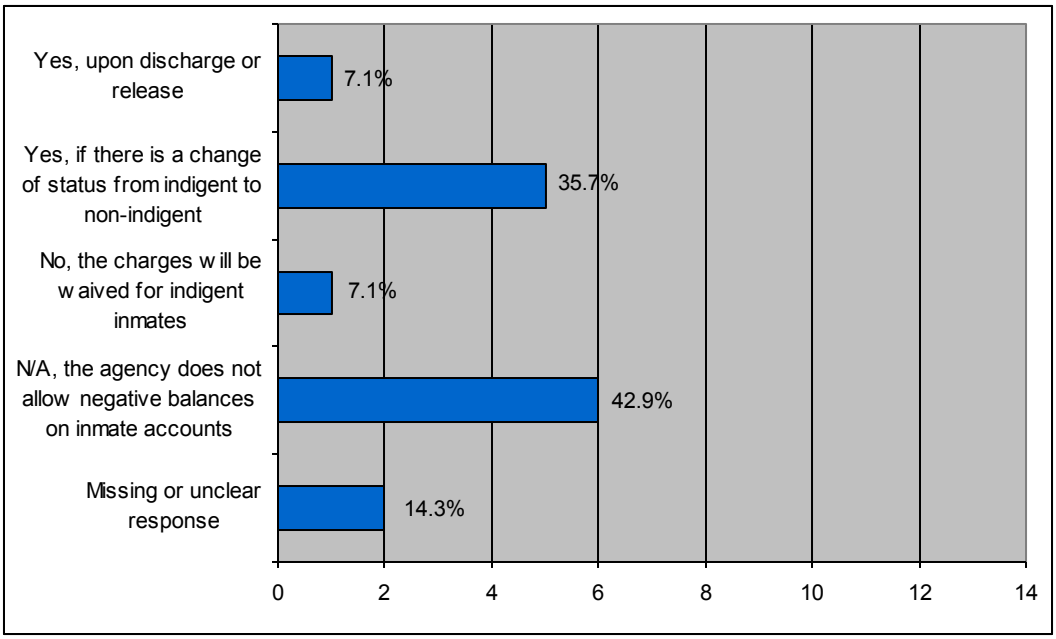



**8. Do you evaluate 52A inmates or does the DOC? ICE?**

| | |
|---|---|
| Barnstable/Nantucket | N/A |
| Berkshire | DOC |
| Bristol | Yes, and DOC for next 30 days |
| Dukes | Yes |
| Essex | N/A |
| Franklin | NO RESPONSE |
| Hampden | N/A |
| Hampshire | No |
| Middlesex | No |
| Norfolk | N/A |
| Plymouth | No |
| Suffolk | 52A – No. ICE – Yes. |
| Worcester | Yes |

# Appendix B- Summary of October 15th Survey

**9. If you allow 'negative balances' (e.g. accrual of debt) on inmate accounts, are indigent inmates required to pay back this debt at a later date?**



# Appendix B- Summary of October 15th Survey

**10. Do you have a system in place to track inmates who owe debt upon release, and if so please elaborate on this system. Do you use staff personnel, a third party, or any specific tracking software? Please specify which system(s) you use and include the following details as they apply to you: the number of full-time employees hired, their wages, the use of a third party, fees associated with this service, specific computer programs used, and costs associated with these programs.**

Yes:

- Berkshire: Canteen Manager Program Version 5.0 by Compass Group, USA. One canteen manager/correction officer. Salary $50,000.
- Worcester: Keefe Financial system; Access Corrections internet and phone deposit system; Kiosk
- Plymouth: Staff enters debt into inmate's canteen account

- No: Barnstable, Nantucket, Bristol, Dukes, Essex, Hampden, Hampshire, Middlesex, Norfolk, Suffolk
- Barnstable, Nantucket, and Dukes indicated that there is no formal system for debt retrieval and that there has been no recent need for such a system.
- Norfolk indicated that their system which tracks commissary accounts can be used to track debt retrieval as well.
    - This raises a question about the aforementioned counties that answered that they have a system to track debt. Is this system currently in place? Or can this system be implemented to track debt if the need arises?

No response: Franklin

# Appendix C- Summary of February 10th Survey

| Amount of Fees Currently Charged | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Berkshire | Bristol | Worcester | Hampden | Norfolk | Barnstable/ Nantucket | Suffolk | Essex | Middlesex | DOC |
| Per diem | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Booking | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Release escort | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Drug testing | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0&&& |
| Telephones | 0 | 0 | 0 | $3# | ** | 59.75% ** | ## | # | ** ## | 0 |
| Haircuts | 0 | 0 | 0 | 0 | 5 | 0 | 0 | $3 | 0 | $1.50 & |
| Bonding | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Clothing | 0 | 0 | $67.29 #### | 0 | 0 | $40 - $47^ | 0 | 0 | 0 | 0 |
| Commissary (general) | 0 | 0 | 0 | 0 | 33% ** | 0 | 31.1%** | | 0 | 14.8% ** |
| Commissary (debit card transaction fee) | 0 | 0 | 0 | N/A | 0 | 0 | 0 | | 0 | N/A |
| Detoxification | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Laundry | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Meals | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Notary service | 0 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Property damage | 0 | | $10### | $0.50 - $25 | 0 | | $5### | **** | 0 | && |
| Recreational clothing/ gear | 0 | 0 | 0 | 0 | 0 | $6 - $16.25 ^^ | 0 | 0 | 0 | 0 |
| Sheriff's fee, criminal court clerk | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Transportation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vending machines | 0 | 0 | 0 | 0 | 0 | 0 | N/A | | 0 | 21.2% ** |
| Work release | $10* | 0 | $10* | 15%*** | 0 | $25*** | ^^^ | 0 | $125 | 15% *** |
| Weekender programs | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

*Table Legend on Next Page*

# Appendix C- Summary of February 10th Survey

*Legend to Table on Page 32*

Unknown Percentage

Room and board

The cost to replace or repair the damage

*Per day

**Commission-based

***Percentage of gross pay

****Restitution

#Usage fee per call

##Collect call

###Replacement ID fee

####Deposit if property is not returned upon release

^Men's sneakers: $40; Women's sneakers: $47

^^Sweatshirts: $11.25 Sizes S-XL; $16.25 Sizes 2XL+; Shorts: $6 Sizes S-XL; $8 Sizes 2XL+

^^^The SCSD gets money off of the bill from the half way house when inmates work

&If earned funds are available (MGL c.124 sec. 1)

&&When found guilty of a disciplinary infraction and ordered to pay restitution, inmate is charged the cost of the item destroyed. Funds are collected if/when available in the inmates account

&&&If imposed as a disciplinary sanction, the inmate's account is charged restitution in the amount of the testing materials, which is currently $144.00 a year for urinalysis materials. Funds are collected if and when they are available in the inmate's account.

# Appendix C- Summary of February 10th Survey

**2. Please describe how the fees you currently collect are being used by your department (e.g. general operations, inmate services, programming).**
Many responding departments specify that fees go to inmate programs and services. Restitution and missing or damaged items are also mentioned.

- **Berkshire:** The fees collected for Work Release are deposited into the General Fund.
- **Bristol:** Any fee that is collected is used towards all inmate programs and services.
- **Worcester:** Room and Board is deposited to the Sweep account. Property fees are used to replace the missing or damaged items.
- **Hampden:** The work release fees are deposited into the Commonwealth's General Fund.
- **Norfolk:** Due to ongoing litigation, the only statutory fees that are charged are for haircuts (103CMR 978.08(4) Fees go to inmates' services.
- **Barnstable and Nantucket:** Deposited in the Canteen account to fund specific inmate services and programming upon approval by the Superintendent.
- **Suffolk:** The fees collected are used to pay for inmate programs and services. The only fee charged is a $5.00 replacement fee for lost inmate IDs.
- **Essex:** The fees are used for inmate services and restitution.
- **Middlesex:** The work release fee is used to offset the cost of transportation to and from work, Room and Board, drug/ alcohol testing.
- **DOC:** Commissary and Vending commissions are retained by the department and utilized for inmate benefit (services). Collected restitution is retained and utilized to offset the cost of destroyed equipment. Court ordered assessments are returned to the ordering court. All other fees are returned to the General Fund.

# Appendix C- Summary of February 10th Survey

**3. How does your department use the interest on inmate accounts?**
When inmate accounts are interest-bearing, many departments use the interest for inmate programs and services.

- **Berkshire:** Interest is not earned on inmate accounts.
- **Bristol:** It is part of the inmate accounts and is used for all inmates' programs and services.
- **Worcester:** Inmate benefit
- **Hampden:** Interest is not earned on inmate accounts.
- **Norfolk:** Interest used goes to inmate master account- can be used for inmate services/programs
- **Barnstable and Nantucket:** The interest remains in the Canteen account to be spent on specific inmate services and programming upon the approval of the Superintendent.
- **Suffolk:** Interest is not earned on inmate accounts.
- **Essex:** Interest is not earned on inmate accounts.
- **Middlesex:** Interest from the commissary must be used for the benefit of the inmates.
- **DOC:** The Department credits each active inmate's saving and personal account with interest earned by those accounts on a monthly basis based on the account share of the net average daily balance.

# Appendix C- Summary of February 10th Survey

**4. Please estimate the total revenue that your department currently generates from fees. (See Appendix G for interviews amending and clarifying these responses)**

- **Berkshire:** $2500.00
- **Bristol:** $4200 per year (350 per month)
- **Worcester:** $5000.00 per year (excluding Room & Board)
- **Hampden:** $60,000
- **Norfolk:** $ 1,000
- **Barnstable and Nantucket:** $350,000 per year
- **Suffolk:** $ 1,902,000 annually (Jail and HOC combined). The SCSD collected $1,320,000 from the commission on the inmate phone calls. The HOC figure was $865,000 and the Jail figure was $455,000. The SCSD receives a 31.1% commission on canteen items. Last year, the canteen income for the HOC was $392,000 and $190,000 for the Jail (for a total of $582,000). The interest earned on the canteen account is deposited into the inmate benefit fund.
- **Essex:** $100,000 per month
- **Middlesex:** No response
- **DOC:** Inmate Haircuts- $29,632 (General fund), Medical Co-pay - $21,142 (General fund), Room and Board - $392,760 (General fund), Inmate Maintenance and Admin - $101,432 (General fund)

**5. Please provide an estimate of the average monthly balance in an inmate account.**
9/10 departments that responded to this question indicated an average monthly balance of less than or equal to $200 in an inmate account.

- **Berkshire:** $114
- **Bristol:** $50
- **Worcester:** $160
- **Hampden:** $55
- **Norfolk:** $100
- **Barnstable and Nantucket:** $137.41
- **Suffolk:** $63. $3,174,778 (Jail and HOC combined)
- **Essex:** $200
- **Middlesex:** No response
- **DOC:** $500.00 Personal and savings combined

# Appendix D- Sample Docket from Pennsylvania

## COURT OF COMMON PLEAS OF CAMBRIA COUNTY

**DOCKET**

**Docket Number:** [redacted]

**CRIMINAL DOCKET**

**Court Case**

Commonwealth of Pennsylvania
v.
[redacted]



**CASE FINANCIAL INFORMATION**

Last Payment Date: Total of Last Payment: $0.00

| [redacted] Defendant | Assessment | Payments | Adjustments | Non Monetary Payments | Total |
|---|---|---|---|---|---|
| **Costs/Fees** | | | | | |
| Automation Fee (Cambria) | $5.00 | $0.00 | $0.00 | $0.00 | $5.00 |
| Sheriff Costs (Cambria) | $50.00 | $0.00 | $0.00 | $0.00 | $50.00 |
| Postage Fee (Cambria) | $8.00 | $0.00 | $0.00 | $0.00 | $8.00 |
| Police Transport (Cambria) | $100.00 | $0.00 | $0.00 | $0.00 | $100.00 |
| CO/Drug Fee (Cambria) | $200.00 | $0.00 | $0.00 | $0.00 | $200.00 |
| Plea (Cambria) | $94.71 | $0.00 | $0.00 | $0.00 | $94.71 |
| CO/Drug Fee (Cambria) | $200.00 | $0.00 | $0.00 | $0.00 | $200.00 |
| Special Adm. (Cambria) | $200.00 | $0.00 | $0.00 | $0.00 | $200.00 |
| OSP (Cambria/State) (Act 35 of 1991) | $345.00 | $0.00 | $0.00 | $0.00 | $345.00 |
| OSP (Cambria/State) (Act 35 of 1991) | $345.00 | $0.00 | $0.00 | $0.00 | $345.00 |
| Service Charge (Cambria) | $230.00 | $0.00 | $0.00 | $0.00 | $230.00 |
| Judgment Fee (Cambria) | $24.50 | $0.00 | $0.00 | $0.00 | $24.50 |
| State Court Costs (Act 204 of 1976) | $12.30 | $0.00 | $0.00 | $0.00 | $12.30 |
| Commonwealth Cost - HB627 (Act 167 of 1992) | $18.40 | $0.00 | $0.00 | $0.00 | $18.40 |
| County Court Cost (Act 204 of 1976) | $26.80 | $0.00 | $0.00 | $0.00 | $26.80 |
| Crime Victims Compensation (Act 96 of 1984) | $35.00 | $0.00 | $0.00 | $0.00 | $35.00 |
| Domestic Violence Compensation (Act 44 of 1988) | $10.00 | $0.00 | $0.00 | $0.00 | $10.00 |
| Victim Witness Service (Act 111 of 1998) | $25.00 | $0.00 | $0.00 | $0.00 | $25.00 |
| Firearm Education and Training Fund (158 of 1994) | $5.00 | $0.00 | $0.00 | $0.00 | $5.00 |
| Substance Abuse Education (Cam) (Act 198 of 2002) | $50.00 | $0.00 | $0.00 | $0.00 | $50.00 |
| Substance Abuse Education (Cam) (Act 198 of 2002) | $50.00 | $0.00 | $0.00 | $0.00 | $50.00 |
| Judicial Computer Project | $8.00 | $0.00 | $0.00 | $0.00 | $8.00 |
| ATJ | $2.00 | $0.00 | $0.00 | $0.00 | $2.00 |
| Police Drug Fee (Cambria) | $150.00 | $0.00 | $0.00 | $0.00 | $150.00 |
| DNA Detection Fund (Act 185-2004) | $250.00 | $0.00 | $0.00 | $0.00 | $250.00 |
| Certification (Cambria) | $20.20 | $0.00 | $0.00 | $0.00 | $20.20 |

# Appendix E- Minutes of Commission Meetings

## Minutes of the August 26, 2010 Commission Meeting

| | |
|---|---|
| To: | Inmate Fee Commission Members |
| From: | Undersecretary Sandra M. McCroom, Chairwoman |
| Re: | Minutes of the August 26, 2010 Commission Meeting |
| Date: | September 8, 2010 |

The first meeting of the Inmate Fee Commission was held on Thursday, August 26, 2010 at 1pm in the main conference room of the Executive Office of Public Safety and Security, located at One Ashburton Place, 21st Floor, Boston, MA.

**Board Member Attendees:**

Undersecretary Sandra M. McCroom- Chairwoman- Undersecretary of Criminal Justice, EOPSS
Sheriff Michael Bellotti- President Massachusetts Sheriffs' Association
Sheriff Thomas Hodgson- Republican Sheriff Designee
Sheriff Michael Ashe- Democrat Sheriff Designee
Attorney Leslie Walker- Representative from Prisoners' Legal Services
Brian Jansen- Correctional System Union Representative
Attorney Radha Natarajan- Chief Counsel of CPCS designee

**Executive Office of Public Safety Staff Attendees:**

Marc Germain- Director of Research and Policy Analysis Division, Office of Grants and Research, EOPSS
Catherine Bailey- Assistant General Counsel, EOPSS
Michelle Goldman- Senior Policy Advisor, EOPSS
Bob Kearney, Office and Grants and Research, EOPSS

**Visitor Attendees:**

Harold Clarke- Commissioner, Department of Correction
Mark Conrad- Chairman, Massachusetts Parole Board
Donald Giancioppo- Executive Director, Parole Board
Kira Silva- Budget Director, Department of Correction
John O' Malley- Director of Legislative Affairs, Department of Correction
Kenneth Gorman- President SEIU Local 509
Attorney Nancy Bennett- CPCS
Brock Cordeiro- Bristol County Sheriff's Office
Sherri Viera- Communication Access Realtime Translation (CART) Interpreter

# Appendix E- Minutes of Commission Meetings

## Minutes of the August 26, 2010 Commission Meeting, continued

**Board Business:**

At approximately 1:15pm, Undersecretary and Chairwoman McCroom called the meeting to order. Undersecretary McCroom introduced herself and gave a brief overview of Outside Section 177 of the FY2011 Massachusetts Budget. She then asked others present to introduce themselves.

The full membership of the Commission, either personally or by the presence of permitted designees, was present, along with a number the EOPSS staff and visitor attendees.

After introductions were completed, Undersecretary McCroom presented the first section of a three-part overview presentation (attached). Undersecretary McCroom provided an overview of the composition of the Commission, discussed what was expected of the members, and detailed deadlines required within the statute.

Marc Germain presented the next portion of the presentation. He discussed the history of inmate fees in Massachusetts and current trends occurring across the country. Attorney Catherine Bailey concluded the presentation, providing a brief overview of some of the legal challenges, successes and failures relating to the inmate fee issues from around the country.

After the presentation, Undersecretary McCroom opened the meeting up to discussion. A request was made that CPCS be provided with (1) the percentage of indigent inmates in the DOC and individual Sheriffs' custody, (2) a tracking of all the canteen accounts, if possible and (3) specifically from Bristol County, what percentage of inmates were deemed to be indigent over the two years that the Sheriff was charging fees and wanted to know where the canteen money came from, and what revenue was actually generated.

There was a brief discussion between Commission members surrounding the different definitions of indigency which are used by the different Sheriffs' Departments and DOC. Sheriff Bellotti then offered to have the Massachusetts Sheriffs Association coordinate with Undersecretary McCroom to create a survey which will be sent to the different departments to establish a common understanding of the different definitions used by each agency.

There was a general consensus among members that the survey would be both productive and helpful.

# Appendix E- Minutes of Commission Meetings

## Minutes of the August 26, 2010 Commission Meeting, continued

This was followed up by a conversation centered on the balance of funds normally kept in an inmate's account, the generally low levels of education amongst this population, and the unemployment rates of the individuals typically in custody. Also discussed was the fact that the work crews in which inmates participate are a form of community restitution (municipal aid) and that the inmates also do a significant amount of work within institutions, helping with cleaning, cooking and other tasks. A number of members expressed concern that involvement in these work-related activities might be significantly decreased if inmates were forced to pay to participate.

Next, there was a brief conversation about the cost of telephone calls in the institutions, and a question as to why the rates to call were so high.

The conversation returned back to the issue of fees, and there was a discussion among members who agreed that the report this Commission produces should include all of the variables and that this may, ultimately, be more helpful and educational to the legislature.

The discussion then turned to how the money which is currently collected in the various institutions for phone calls and other commissary items is accounted for, where it is required to be spent, and what percentage is reverted back to the Commonwealth's general fund.

A question was posed as to whether there was a way to total up all the inmate fees currently being collected in the Commonwealth, to show that the perception that inmates are not paying for anything while incarcerated is untrue.

It was noted that the Commission needs to be careful about looking at this just from the public prospective, and that it is the Commission's responsibility to recognize that the money in the accounts comes from other outside sources, and often the burden will fall on family members on the outside, who are struggling as well.

This led to a conversation about whether the fees were supposed to be imposed as a deterrent and it was acknowledged generally, that it will be important to discuss all sides of this issue in the report, not just those that might be publicly more popular.

The discussion turned to the cost of collecting fees and the administrative infrastructure necessary to ensure that the collection was done within the confines of any applicable laws. A suggestion was made to include a representative from the Office of the Comptroller, to ensure that any Commission recommendations abide by appropriate laws and regulations surrounding collection of fees owed to the Commonwealth, and to address audit concerns.

# Appendix E- Minutes of Commission Meetings

## Minutes of the August 26, 2010 Commission Meeting, continued

Next, members discussed generally who the fees would apply to, conversing over whether it would just be sentenced inmates or also include pre-trial detainees and those being held during the preliminary stages of parole revocation and probation violation hearings.

Undersecretary McCroom pointed out that it was time to end the meeting and that her office would work with the MA Sheriffs' Association to create the survey discussed and begin to compile the information collected in anticipation of the next meeting.

A request was made that CPCS be provided with the breakdown of how much things cost in the canteens, in addition to the information on indigent populations.

At approximately 2:40pm, it was agreed that a second meeting would be scheduled for early October 2010.

# Appendix E- Minutes of Commission Meetings

## Minutes of the October 21, 2010 Commission Meeting

| | |
|---|---|
| To: | Inmate Fee Commission Members |
| From: | Undersecretary Sandra M. McCroom, Chairwoman |
| Re: | Minutes of the October 21, 2010 Commission Meeting |
| Date: | October 26, 2010 |

The most recent meeting of the Inmate Fee Commission was held on Thursday, October 21, 2010 at 10am, in the main conference room of the Executive Office of Public Safety and Security, located at One Ashburton Place, 21st Floor, Boston, MA.

**Board Member Attendees:**

Undersecretary Sandra M. McCroom- Chairwoman- Undersecretary of Criminal Justice, EOPSS
Brian Jansen- Correctional System Union Representative
Attorney Radha Natarajan- Chief Counsel of CPCS designee

**Executive Office of Public Safety Staff Attendees:**

Catherine Bailey- Assistant General Counsel, EOPSS
Marc Germain- Director of Research and Policy Analysis Division, Office of Grants and Research, EOPSS
Michelle Goldman- Senior Policy Advisor, EOPSS
Bob Kearney- Office and Grants and Research, EOPSS
Drei Munar- Office and Grants and Research, EOPSS

**Visitor Attendees:**

Michael Coelho- Former EOPSS Chief of Staff
Donald Giancioppo- Executive Director, Parole Board
Kenneth Gorman- President SEIU Local 509
Larry Lajoie- Hampden County Sheriff's Department
Ann Lambert- ACLU
John O'Malley- Director of Legislative Affairs, Department of Correction
Jim Pingeon- Prisoner Legal Services
Kira Silva- Budget Director, Department of Correction

# Appendix E- Minutes of Commission Meetings

## Minutes of the October 21, 2010 Commission Meeting, continued

**Board Business:**

At approximately 10am, Undersecretary and Chairwoman McCroom called the meeting to order. Undersecretary McCroom introduced herself and then asked others present to introduce themselves.

It was determined that there were only three voting members present, and therefore, the Commission did not have the full quorum of four members necessary to vote on the minutes of the August 26, 2010 meeting.

After introductions were completed, Undersecretary McCroom introduced Michael Coelho, and explained that he was the former Chief of Staff of EOPSS and that he was now a student at Harvard's Kennedy School of Government, and would be assisting the Commission with the drafting of the final study.

Marc Germain then gave a brief update regarding the status of the survey which was created in response to a request at the last meeting. Marc explained that the survey had been recently distributed to the sheriffs' via Survey Monkey, and that the Office of Grants and Research had received five responses to date. Marc explained that there was not enough information yet to analyze and that there would be a summary prepared in time for the next meeting.

A number of people requested a copy of the questions which were on the survey and Undersecretary McCroom agreed to provide that information.

To continue the dialog from the August 2010 meeting, Undersecretary McCroom asked that Michael Coelho present a literature review picking up from Marc Germain's presentation in August. The Commission was made aware of the fact that a couple of national reports would be released after our August meeting but before this meeting. Mr. Coelho's drew his review from a number of reports including Brennan Institute report released at the end of September which focused on different states and the impact of fees on re-entry (see attached PowerPoint).

After the presentation, Undersecretary McCroom opened the meeting up to discussion. A request was made for copies of the reports to be emailed out to Commission members. Undersecretary McCroom agreed to provide those materials.

# Appendix E- Minutes of Commission Meetings

## Minutes of the October 21, 2010 Commission Meeting, continued

There was a brief discussion regarding the costs vs. benefits of these types of fees. Based on the discussion, there was a consensus amongst the group that we had a general idea of what should be included in our report. Undersecretary McCroom then asked if Mr. Coelho felt like he had enough feedback from the group and information from the discussion to draft an outline of what the final Commission report might look like. Mr. Coelho agreed that he did and would bring it to the next meeting for discussion.

At approximately 11:15am, it was agreed that a second meeting would be scheduled for early December 2010 and the meeting concluded.

# Appendix E- Minutes of Commission Meetings

## Minutes of the December 7, 2010 Commission Meeting

| | |
|---|---|
| To: | Inmate Fee Commission Members |
| From: | Undersecretary Sandra M. McCroom, Chairwoman |
| Re: | Minutes of the December 7, 2010 Commission Meeting |
| Date: | January 12, 2011 |

The most recent meeting of the Inmate Fee Commission was held on Tuesday, December 7, 2010 at 10am, in the main conference room of the Executive Office of Public Safety and Security, located at One Ashburton Place, 21st Floor, Boston, MA.

**Board Member Attendees:**

Undersecretary Sandra M. McCroom- Chairwoman- Undersecretary of Criminal Justice, EOPSS
Sheriff Michael Bellotti- President Massachusetts Sheriffs' Association
Attorney Leslie Walker- Representative from Prisoners' Legal Services
Brian Jansen- Correctional System Union Representative
Attorney Radha Natarajan- Chief Counsel of CPCS designee

**Executive Office of Public Safety Staff Attendees:**

Catherine Bailey- Assistant General Counsel, EOPSS
Marc Germain- Director of Research and Policy Analysis Division, Office of Grants and Research, EOPSS
Michelle Goldman- Senior Policy Advisor, EOPSS
Drei Munar- Office and Grants and Research, EOPSS

**Visitor Attendees:**

Michael Coelho- Former EOPSS Chief of Staff
Timothy Dooling- Acting Executive Director, Parole Board
Kenneth Gorman- President SEIU Local 509
John O' Malley- Director of Legislative Affairs, Department of Correction
Kira Silva- Budget Director, Department of Correction

**Board Business:**

At approximately 4pm, Undersecretary and Chairwoman McCroom called the meeting to order.

# Appendix E- Minutes of Commission Meetings

## Minutes of the December 7, 2010 Commission Meeting, continued

After calling the meeting to order, Undersecretary McCroom asked if anyone wanted to make a motion to approve the minutes from the August meeting of the Commission. Attorney Radha Natarajan made a motion to approve, which was seconded by Attorney Leslie Walker. At that point, the Board voted unanimously to approve the minutes. Next, Sheriff Bellotti made a motion to approve the minutes from the October Commission meeting, which was seconded by Attorney Natarajan. The Board then voted unanimously to approve the minutes.

Next there was a brief overview given about the Open Meeting Laws, as well as confirmation that all members had copies of the law, the regulations, and the guide by the Office of the Attorney General. Additionally, certificates of receipt were collected from Commission members.

After the Open Meeting Law discussion, Undersecretary McCroom did a brief overview of the survey conducted by the Office of Grants and Research, which was followed by a more, in depth PowerPoint of the results by Mark Germain.

There was a lengthy discussion by members on the commonalities between the Sheriffs' on what account they each base indigency on. Additionally, the Commission members agreed that, despite its usefulness in general, the numbers from the survey were too non-responsive and incomplete to draw any significant conclusions. However, at the request of Commission Members, Undersecretary McCroom agreed to send the survey to the Department of Correction, so that data from that agency could be added as well.

Michael Coelho then gave an overview of what he envisioned the report would look like, including a significant section on deliverables.

# Appendix E- Minutes of Commission Meetings

## Minutes of the March 25, 2011 Commission Meeting

| | |
|---|---|
| To: | Inmate Fee Commission Members |
| From: | Undersecretary Sandra M. McCroom, Chairwoman |
| Re: | Minutes of the March 25, 2011 Commission Meeting |
| Date: | March 25, 2011 |

The most recent meeting of the Inmate Fee Commission was held on Friday, March 25, 2011 at 11am, in the main conference room of the Executive Office of Public Safety and Security, located at One Ashburton Place, 21st Floor, Boston, MA.

**Board Member Attendees:**

Undersecretary Sandra M. McCroom- Chairwoman- Undersecretary of Criminal Justice, EOPSS
Sheriff Thomas Hodgson- Bristol County Sheriff's Department
Attorney Leslie Walker- Representative from Prisoners' Legal Services
Brian Jansen- Correctional System Union Representative
Attorney Radha Natarajan- Chief Counsel of CPCS designee

**Board Members Absent:**

Sheriff Belotti, Norfolk County
Sheriff Ashe, Hampden County

**Executive Office of Public Safety Staff Attendees:**

Michelle Goldman- Legislative Director, EOPSS
James Stark- Office and Grants and Research, EOPSS
Drei Munar- Office and Grants and Research, EOPSS
Michael Christopher – Legislative Liaison, EOPSS

**Visitor Attendees:**

Larry Lajoie- Hampden County Sheriff's Department
Kenneth Gorman- President SEIU Local 509
Michael Reedy – Bristol County Sheriffs Office

**Board Business:**

At approximately 11am, Undersecretary and Chairwoman McCroom called the meeting to order. After calling the meeting to order, Undersecretary McCroom indicated that the conversation today

# Appendix E- Minutes of Commission Meetings

## Minutes of the March 25, 2011 Commission Meeting, continued

would primarily center on the draft report. The Commission had a discussion about the potential of asking for another extension to allow for additional research. There was concern expressed by some Commission members that they did not want to feel rushed and produce a less than thorough report due to time restraints. Chairwoman McCroom expressed her strong desire to honor the requested extension. The Commission reviewed the language of the outside section 177 citing the research that the Commission has done to date. After a lengthy discussion the Commission decided to move forward as they already have been given one extension and based on the requirements of the budgetary language, the Commission had enough to move forward. The Commission then began to go through the draft report page by page.

Sheriff Thomas Hodgson mentioned that there is no reference to the model in Bristol County. He wanted to make sure his model was mentioned to provide a balanced report. The discussion which followed focused on how to interpret the revenue that Bristol County made from the $5-per-day fee. Attorney Leslie Walker referred to figures which suggested that the majority of revenue gained over two years came in quickly by depleting inmate accounts at the beginning of this process. She indicated that court documents based on the subsequent litigation would help clarify. In light of this, she stated that the model was short-lived and had little predictability. Undersecretary McCroom asked Sheriff Hodgson and Attorney Walker to submit the information they cited to the Commission to be considered for inclusion as an addendum to the draft report.

Attorney Radha Natarajan asked Sheriff Hodgson to submit data on the amount of money inmates had in their canteens before and after they entered prison. There was agreement to include this data if it was available, provided that the final report noted that the amount of money inmates held outside of their canteens could not be determined.

The discussion turned to the survey results section of the draft report. Attorney Leslie Walker questioned the appropriateness of including the survey results, which she noted were called ‘‘non-responsive and incomplete’’ in the minutes from the December meeting. The Commission agreed on including a footnote to the results, which would emphasize that due to the sheriffs’ divergent definitions of indigency, comparison of the estimated indigent inmate population across counties would not be reliable.

Attorney Leslie Walker suggested that the first survey’s revenue figures of existing inmate fees were inconsistent and needed to be broken down by year and type of fee. Undersecretary McCroom suggested that EOPSS will contact each sheriff that responded to the survey to clarify these numbers. The Commission agreed that phone revenue and canteen income should not be included in the breakdown of fees.

# Appendix E- Minutes of Commission Meetings

## Minutes of the March 25, 2011 Commission Meeting, continued

Undersecretary McCroom asked if anyone wanted to make a motion to approve the minutes from the December meeting of the Commission. Attorney Leslie Walker made a motion to approve, which was seconded by Attorney Radha Natarajan. At that point, a quorum of the Board voted unanimously to approve the minutes. Sheriff Thomas Hodgson then made a motion to accept the edits up until page seven, which was seconded by Brian Jansen. In discussion, Attorney Walker stressed that she was uncomfortable with printing the survey results and thought more information must be obtained from the sheriffs. She voted to oppose accepting the edits. The vote was heard and accepted by a vote of 4 to 1.

The Commission continued a brief discussion of the literature reviews, provided minor edits on pages 8-12 that must be reviewed, discussed and voted on by a quorum of the Commission at its next meeting. The Commission agreed to meet again early next week. Undersecretary McCroom agreed to notify the Commission about the Open Meeting Law rules of editing the document electronically.

Meeting adjourned at approximately 1:30pm.

# Appendix E- Minutes of Commission Meetings

## Minutes of the March 31, 2011 Commission Meeting

| | |
|---|---|
| To: | Inmate Fee Commission Members |
| From: | Undersecretary Sandra M. McCroom, Chairwoman |
| Re: | Minutes of the March 31, 2011 Commission Meeting |
| Date: | April 1, 2011 |

The most recent meeting of the Inmate Fee Commission was held on Friday, March 31, 2011 at 2pm, in the main conference room of the Executive Office of Public Safety and Security, located at One Ashburton Place, 21st Floor, Boston, MA.

**Commission Member Attendees:**

Undersecretary Sandra M. McCroom- Chairwoman- Undersecretary of Criminal Justice, EOPSS
Sheriff Michael Bellotti- President Massachusetts Sheriffs' Association
Sheriff Thomas Hodgson- Bristol County Sheriff's Department
Attorney Leslie Walker- Representative from Prisoners' Legal Services
Brian Jansen- Correctional System Union Representative
Attorney Radha Natarajan- Chief Counsel of CPCS designee

**Executive Office of Public Safety Staff Attendees:**

Michelle Goldman- Legislative Director, EOPSS
James Stark- Office and Grants and Research, EOPSS
Drei Munar- Office and Grants and Research, EOPSS

**Visitor Attendees:**

Michael Coelho- Former EOPSS Chief of Staff
Larry Lajoie- Hampden County Sheriff's Department
Kenneth Gorman- President SEIU Local 509
Michael Reedy- Bristol County Sheriffs Office
Charles Dwyer

**Board Business:**

At approximately 11am, Undersecretary and Chairwoman McCroom called the meeting to order. After calling the meeting to order, Undersecretary McCroom indicated that the conversation today

# Appendix E- Minutes of Commission Meetings

## Minutes of the March 31, 2011 Commission Meeting, continued

After calling the meeting to order, Undersecretary McCroom asked James Stark to give an overview of a Pew Charitable Trust report on the economic impact of incarceration on families. Afterwards, Drei Munar reviewed details from the Brennan Center report that Michael Coelho presented in a previous meeting.

Sheriff Hodgson offered the Commission a summary of the Bristol County model of inmate fees, presented at the request of Undersecretary McCroom, per the suggestion of Sheriff Hodgson, as a potential addition to the report. This summary highlighted the costs incurred for setting up the fees, and the revenue breakdowns resulting from the fee collections. The participants in this discussion were interested in hearing from the Office of the Comptroller regarding whether there were consequences to carrying debt on state books, as well as getting the requested feedback from Attorney Walker regarding the lawsuit stemming from the Bristol County cost of care fee model. Undersecretary McCroom suggested that Sheriff Hodgson and Attorney Walker cooperatively draft an addition to the report which could be offered at the next commission meeting.

The Commission began to edit the draft report. The Commission decided to condense the survey section into briefer summaries, with more detailed results maintained in the appendix. Sheriff Michael Bellotti said he would ask non-responding departments to participate in previous surveys. The Commission asked for inmate revenue breakdowns from the departments which participated in the second inmate fee survey. Members were given the results from recent follow-up interviews conducted for this purpose. The Commission asked to include total revenue in addition to revenue generated from inmate fees.

The Commission began to edit the literature review section of the report and agreed to include all reports in the appendix. After reaching the interview section of the report, there was discussion about conducting additional interviews of states and county sheriffs departments that do not use inmate fees to offer an alternative point of view to the states that do charge inmate fees. There was discussion as to whether the commission had time to complete another area of research given the date.

Sheriff Michael Bellotti voted to approve the minutes from last meeting. Sheriff Thomas Hodgson seconded the vote. After some discussion, the minutes were edited. There was a unanimous vote to approve.

The meeting adjourned after editing the full report. The last component will be the joint language from Sheriff Hodgson and Attorney Walker. Undersecretary McCroom said the edits would be completed, draft vetted internally and circulated again to the committee for final review of the Bristol County language and approval.

# Appendix E- Minutes of Commission Meetings

## Minutes of the June 2, 2011 Commission Meeting

| | |
|---|---|
| To: | Inmate Fee Commission Members |
| From: | Undersecretary Sandra M. McCroom, Chairwoman |
| Re: | Minutes of the June 2, 2011 Commission Meeting |
| Date: | June 21, 2011 |

The most recent meeting of the Inmate Fee Commission was held on Thursday, June 2, 2011 at 9:30am in the main conference room of the Executive Office of Public Safety and Security, located at One Ashburton Place, 21st Floor, Boston, MA.

**Commission Member Attendees:**

Undersecretary Sandra M. McCroom- Chairwoman- Undersecretary of Criminal Justice, EOPSS
Sheriff Michael Bellotti- President Massachusetts Sheriffs' Association
Sheriff Thomas Hodgson- Republican Sheriff Designee
Attorney Leslie Walker- Representative from Prisoners' Legal Services
Brian Jansen- Correctional System Union Representative
Attorney Radha Natarajan- Chief Counsel of CPCS designee

**Executive Office of Public Safety Staff Attendees:**

James Stark- Office and Grants and Research, EOPSS

**Visitor Attendees:**

Kenneth Gorman- President SEIU Local 509
Michael Reedy – Bristol County Sheriffs Office

**Board Business:**

At approximately 9:35am, Undersecretary and Chairwoman McCroom called the meeting to order, updated Commission members on the status of the Commissions' work and discussed the agenda of the current meeting. She then asked the Commission members to review the minutes of the March 31, 2011 Commission meeting. Minor changes to headings of the minutes and language clarifications on page two were requested. Sheriff Bellotti then made a motion to accept the March 31, 2011 minutes with changes, Attorney Natarajan seconded the motion, and the Commission unanimously approved the March 31, 2011 minutes with changes.

# Appendix E- Minutes of Commission Meetings

## Minutes of the June 2, 2011 Commission Meeting, continued

Undersecretary McCroom then began to highlight the edits approved by the Commission at the last meeting that had been made to the Commission report. Sheriff Hodgson indicated he wanted further discussion on the summary section of the Executive Summary. During this discussion, Sheriff Hodgson said the summary does not reflect his beliefs. At the previous Commission meeting, Sheriff Hodgson and Attorney Walker had agreed to cooperatively draft a brief summary reflecting on their experience with the Bristol County "pay-to-stay" inmate fee system that could be included in the Executive Summary section of the report. Their efforts produced two separate letters addressing the topic, which were circulated to the Commission prior to the meeting. Undersecretary McCroom reminded Sheriff Hodgson and the Commission that the primary purpose of this meeting was to finalize the Executive Summary to include the Bristol County experience.

Discussion moved to the question of how to integrate the Bristol County letters from Sheriff Hodgson and Attorney Walker. Chairwoman McCroom had prepared a brief document integrating views and facts from both letters as an option to be included in the executive summary, while the letters in whole would be attached in appendix H. Sherriff Hodgson did not approve of the presented summary. Sheriff Bellotti suggested giving Sheriff Hodgson the same space as the out-of-state sheriffs included in the methodology section as discussed at the April 25, 2011 meeting. Sherriff Hodgson agreed to having the same space in the report as other sheriffs, but preferred to include his letter as a whole in the Executive Summary. Commission members reiterated that it was agreed upon by the Commission at the last meeting that any data or opinions about the Bristol County system would be included as an appendix to the Executive Summary to be consistent with the rest of the report. Brian Jansen made a motion to keep the Bristol County letters as an appendix to the Executive Summary and the motion was seconded by Attorney Walker. The motion passed 4-2 with Sheriff Hodgson and Sheriff Bellotti voting against.

Further discussion took place regarding the language in the summary section of the Executive Summary. While the summary prepared by Undersecretary McCroom was received positively by the Commission, because it presented a synopsis of facts from each letter, Sheriff Hodgson needed to leave around 11:30 am and another member of the Commission indicated that they needed to leave shortly thereafter, the remaining members of the Commission did not want to make changes without them. Motion was made to approve the draft as final, as is, with only punctuation/grammatical edits to be made by Attorney Natarajan; the motion was seconded and passed 5-1 with Sheriff Hodgson voting against. After final discussions on how to approve minutes from this final meeting, the Commission adjourned at 12:45pm.

# Appendix F- Interviews

Background on New York

•New York State Department of Correction has a sophisticated system for automatically drawing down fees from inmate funds. Prioritize DOC fees.
•Fee collection very low for Department of Correction -$2 million to $2.7 million a year, $22 million from 1995-2003)
•Inmate fees created in 1990's in response to fiscal issues
•$5 misbehavior fee; sliding scale fee for inmates in work release and day reporting ("furloughing to the community"); do collect court and restitution as well; do not charge commissary, no charge for GEDs
•No medical fees – constantly been brought up but never been passed by legislature

Summary of Interviews with Eileen Ners and Linda Foglia, New York Department of Correction*

•Revenue helpful – collect 60% outside receipts (money their family sends in), 20% inmate payroll for fees
•Must be mindful about what fees you're going to include in order to ensure that the facilities remain safe and secure and without disruption
•No estimate of total revenue generated. Goes to general fund
•Not aware of any penalties for non-payment of fees
•Keeping in mind cost for extra staffing/hourly pay to recover funds or software for keeping track of debt in inmate accounts. Not sure about total costs of the system.
•Very positive about the benefits of the system
•Regarding indigency, advises to only collect a percent of what they have; if there's less collect less. Collect what you can, if no money coming in don't collect any money

**Interview subjects declined to answer a number of questions.*

# Appendix F- Interviews

**Summary of Interview with Timothy Ringler, Acting Deputy Secretary for Administration , Pennsylvania Department of Correction**

*What do you think are the benefits of inmate fees?*

- Depends on fees
- Not in favor of a room and board fee – many inmates have no money to pay them
- In favor of incentive/disincentive type of fees
    - Co-pay for sick call and pharmacy – we have seen a large drop in number of sick calls
- Incentive to work – 18-52 cents/hr pay to work. Allows inmates to manage their budget
- Feels it works well; Not a lot of fees key to this
- Parole fees – Mandatory $75 for all inmates – family often pays
- Automatically take fees out of prisoner work program for 1)parole fees 2)money they owe the court
- Court obligations – 20% taken out automatically – fines, restitution, court ordered costs; 10% taken out for parole fees until it's satisfied
- $.75 for cable tv, $.10 copying, copying med records $1.32 for 1st page
- There have been no pay raises for inmates in the last 10 yrs, so we try not to upset the balance; not sure how much we can feasibly collect anyways
- At the PA County level– inmates are charged room and board because inmates have income from work
- Community correction centers/halfway houses – inmates charged room and board also

# Appendix F- Interviews

**PA Department of Corrections, con't.**

*What are the drawbacks? Unintended or unforeseen consequences*

- Initially inmates would 'change things' for short period of time. No long term changes if fees aren't drastic
- After healthcare co-pay first implemented, had it gradually go up over a couple of years. So they're used to it

*Has there been a backlash among the prisoners? Has there been any impact on prisoner work programs?*

- No. Stopped going initially in order to protest, but they returned to medical services after a short time. We believe deterrent for unnecessary medical visits was successful

*Do you have an idea of the amount of revenue generated by inmate fees? Is this number significantly high?*

- $1 mil in medical co-pay
- $4.4 mil to county. Most goes back to victims
- Savings in not having to hire as many staff for sick calls
- Pharmacy costs – co-pay for pharmacy
- There can be money from fees if inmates can pay for them, whether state is paying inmates, profits from commissary
- PA has lowest commissary prices in country because no pay raise in such a long time
- Goes to general fund – even admin fee and restitution for victims

*What is your process of recovering fees? (bill as fees accrue; deduct money from inmate's account; bill inmates post-incarceration)*

- Cable – price of bill, computer program calculates it
- Sick call – fill out cash slip, processed after sick call. Don't really see abuse of services, and inmates are given a medical visit first. When they come back for a follow-up visit, don't have to pay fee. No fee if physician says come back. Fee to deter inmates who don't need to be there

# Appendix F- Interviews

**PA Department of Corrections, con't.**

*Has non-payment of fees been a problem for any of your facilities?*

- Some trouble. Easier to manage w short term offenders

*What are the penalties for non-payment of fees? (monetary, arrest, incarceration)*

- Suspend drivers' licenses for missed payments
- Probation or parole revoked, not granted, or extended (In Pennsylvania, persons in prison are ineligible for parole unless they pay a $60 fee that makes no exception for the indigent.)
- Can probation terms be extended? (PA yes)
- Income is taken automatically from accounts, but if there is debt left over upon release, parole is sent inmate balance
- If working, inmates are expected to pay obligations. For someone otherwise doing a good job and succeeding in reentry, that can negotiate fees as part of parole
- Released inmate can go back to jail for not paying fees, but we are trying to reduce our prison population. We used to have highest prison population in the country
- In the last yr prison population has gone down, but there is still a push to do more
- Trying not to put people back in jail, at least not for correctional debt. Reserve prison for people who have committed real crimes.
- We believe in trying to help people get good jobs post-prison

*What would you estimate the cost of collecting fees to be?*

- To implement fees, costs time for existing staff
- Automation has made their life a lot easier save time, but there was a cost to have that developed
- Inmate account staff works with Florida company JPAY- eases administrative costs and time

# Appendix F- Interviews

**PA Department of Corrections, con't.**

*Are fees waived for indigent inmates? How do you determine indigency?*

- No. Can go in negative balance
- Legal mail – negative up to $10. Sometimes inmates just say it's legal mail. 10 free letters (regular letters).
- No interest on prison acct

*Are there any exemptions for medical services?*

- Can go in negative balance

*Do you feel like there are any good alternatives to fees? Community service in lieu of fees?*

- No choice in corrections to do that
- Inmates don't really amass a whole lot of fees
- If an inmate leaves w ith a deficit, we wouldn't hold them in prison. Only non payment of the parole fee can keep them in jail
- It costs more to keep them in jail than to have them pay fee. It is not worth it, and I wouldn't recommend sending them back to prison

*Do you have any other suggestions for MA?*

- Consider a negative behavior fee – we haven't put it in but thought about it; also considered the following fees: cost of hearings, and misconduct (when they have to be put into segregation, which is more costly housing)
- Be careful with a general room and board fee
- If you implement fees, should try a system where you can collect in advance (automated)

# Appendix G- Feb. 10th Survey Clarification

The Commission asked that revenue breakdowns be obtained from departments that responded to the February 10th survey. These breakdowns provided more context for the sheriffs' responses to the question asking for the total revenue a department currently generates from fees. Because, in the second survey, the types of revenue categories reported by different departments tended to vary, these interviews were conducted to ensure consistency across departments as to a shared definition of 'total revenue generated from fees'.

**Barnstable/Nantucket**

CANTEEN ACCOUNT ANNUAL REVENUE – Estimated

| | |
|---|---|
| Inmate Phone System Commission: | $215,000 |
| Inmate Commissary Commission: | $129,000 |
| Inmate Fees: | $5,000** |
| Bank Account Interest: | $1,000 |
| TOTAL: | $350,000 |

**The Commission is not interested in commission-based phone and canteen revenue. Property damage was not discussed but poses a similar issue. If the Commission wishes to include property damage as an inmate fee, the total from fees is an estimated $5,000.*
***It really varies year-to-year, so $5K is actually a high estimate, but generally we collect the most from Property Damage*

INMATE FEE SCHEDULE

| | |
|---|---|
| Sweatshirts: | $11.25, $16.25 for Sizes 2XL+ |
| Shorts: | $6.00, $8.00 for Sizes 2XL+ |
| Sneakers | $40 Men's, $47 Women's |
| Vitamins: | At cost |
| Property Damage: | Cost to replace or repair item(s), including labor |
| Work Release: | 25% of paycheck. This revenue is not deposited into our Canteen Account. It is deposited into a state trust fund account. |

*Jennifer Sheehan, CFO*

# Appendix G- Feb. 10th Survey Clarification

**Berkshire**

ANNUAL REVENUE

| | |
|---|---|
| Work Release: | $2,500 |
| Phone: | $99,427 |
| Canteen (6%): | $20,856 |

INMATE FEE SCHEDULE

| | |
|---|---|
| Work Release: | $10/day |

*Brief chat with Superintendent Jack Quinn regarding Berkshire's prior experience with inmate fees. Notes included at the end of document.*

**Bristol**

ANNUAL REVENUE – Average

| | |
|---|---|
| Mail Fines: | $240 |
| Notary Services: | $240 |
| Restitution: | $1,800 |
| Library Copies/fees: | $1,920 |
| TOTAL: | $4,200 |

INMATE FEE SCHEDULE

| | |
|---|---|
| Mail Fines: | Rates are charged based on the going rate of postage. |
| Notary Services: | $5 |

# Appendix G- Feb. 10th Survey Clarification

**Bristol, continued**

Restitution:

| | |
|---|---|
| Replace lost ID Card | $ 30 |
| Replace Inmate Computer desk | $1,000 |
| Replace inmate computer (cpu only) | $ 850 |
| Replace inmate computer monitor | $ 150 |
| Replace inmate computer keyboard | $ 30 |
| Replace inmate computer mouse | $ 20 |
| Replace inmate comp system | $1,050 |
| Replace toilet | Cost is determined by vendor and services rendered |
| Replace sink | Cost is determined by vendor and services rendered |
| Unclog toilet | $ 18 |
| Broken Sprinkler | $ 69 |
| Intentional damage to electr. outlet | $ 26 |
| Intentional damage to light fixture | $136 |
| Replace ceiling light bulb | $ 2 |
| Broken smoke detector (incl. labor) | $ 186 |
| Broken carbon mon. detector | Cost is determined by vendor and services rendered |
| Replace broken housing t.v. | $2,300 |

# Appendix G- Feb. 10th Survey Clarification

**Bristol, continued**

| | |
|---|---|
| Replace cell window | $ 30 |
| Repair cell door window | $ 90 |
| Repair cell desk | $ 30.50 |
| Repair cell desk stool | $ 63.71 |
| Replace mattress | $ 39 |
| Replace blanket | $ 6 |
| Replace pillow | $ 5.75 |
| Replace staff uniform/equip | Cost determined as billed by vendor and what article is damaged |
| Replace issued inmate t-shirt | $ 2 |
| Replace issued inmate uniform top | $ 3.79 |
| Replace issued inmate uniform pant | $ 4.84 |
| Replace Inmate telephone | |
| Phone | $225 + 3.5hrs labor |
| Handset | $27.00 + 2.5hrs labor |
| Labor | $65.00 per hour (includes outside vendor travel time) |
| Library Copies/fees: | $0.20 per page and for a library book that is not returned the inmate is charged a fee of $5.00 |

*Steve Souza, Assistant Superintendent; Rebecca Ouellette, Assistant to Finance Administration*

# Appendix G- Feb. 10th Survey Clarification

**Essex**

ANNUAL REVENUE - Jan 1, 2010 to Dec 31, 2010

| | |
|---|---|
| Care kits (indigent kits): | $8,668.27 |
| Dentist's call: | $88.22 |
| Doctor calls: | $3,438.75 |
| Haircuts: | $15,506.58 |
| Medical process fees: | $100,231.21 |
| Medication (e.g. requests for aspirin): | $155.31 |
| Sick call: | $921.24 |
| Urinalysis: | $67.05 |
| Work release: | $4,152.00* |
| TOTAL: | $129,076.63 |

INMATE FEE SCHEDULE

| | |
|---|---|
| Care kit: | $5 |
| Dentist's call: | $5 |
| Doctor call: | $5 |
| Haircut: | $3 |
| Medical process fee (co-pay): | $30 |
| Medication: | $2 per prescription |
| Sick call: | $5 |
| Urinalysis: | $2 |
| Work release*: | $3 per 8hr shift or $15 per week maximum |

**Work release goes to state, not included in total for consistency (Barnstable/ Nantucket did not provide work release revenue because it went to the state). Chris Farnham. No money from indigent inmates. Everything goes into one inmate account for inmate services and restitution.*

# Appendix G- Feb. 10th Survey Clarification

**Hampden**

ANNUAL REVENUE

| | |
|---|---|
| Work Release: | $60,000 |

INMATE FEE SCHEDULE

| | |
|---|---|
| Work Release: | 15% gross wages |

*Larry Lajoie*

**Middlesex**

No response.

**Norfolk**

ANNUAL REVENUE

| | |
|---|---|
| Haircut: | $1,000 |

INMATE FEE SCHEDULE

| | |
|---|---|
| Haircut: | $5 |

*Used to charge fees, but since the BCS lawsuit, they have stopped collecting most fees.*

**Suffolk**

ANNUAL REVENUE

| | |
|---|---|
| Replacement fee for lost inmate ID: | $100* |
| Work release: | $1,849 |

# Appendix G- Feb. 10th Survey Clarification

**Suffolk, continued**

| | |
|---|---|
| Inmate Phone Call Commission: | $1,320,000<br>(HOC: $865,000;<br>Jail: $455,000) |
| Canteen commission: | $582,000<br>(HOC: $392,000;<br>Jail: $190,000) |
| Property damage: | $1,000** |
| TOTAL: | $1,904,949 |

INMATE FEE SCHEDULE

| | |
|---|---|
| Replacement fee for lost inmate ID: | $5 |
| Work release: | Percentage of salary |
| Canteen commission: | 31.1% commission on canteen items |

**They charge a $5.00 replacement fee for lost inmate IDs. They estimated they receive less than $100 per year.*
***Property damage is collected if inmates have money in their canteen. They estimated they receive less than $1000/yr.*
*The interest earned on the canteen account is deposited into the inmate benefit fund.*

**Worcester**

ANNUAL REVENUE

| | |
|---|---|
| Work release: | $56,680 |
| Failure to return clothing: | $3,534.66 |
| TOTAL: | $60,214.66 |

# Appendix G- Feb. 10th Survey Clarification

Worcester, continued

INMATE FEE SCHEDULE

| | |
|---|---|
| Work release: | $10/day |
| Failure to return clothing: | $67.29 |

*R&B is $10/day per inmate on work release and they raised $56,680 in FY10. The clothing fee for failure to return clothing (They also mentioned they charged the fee if the clothing is destroyed) is $67.29 and they have raised $3,534.66 from Feb 10 through Feb 11.*

Department of Correction

Drug Testing - $0 unless imposed as a disciplinary sanction, if imposed as a sanction the inmates account is charged restitution in the amount of the testing materials which is currently 144.00 a year for urinalysis materials. Funds are collected if/when available in the inmates account.

Telephones - $0 fee, Inmate pays for cost of call as determined by departments contract with providing vendor (currently GTL). Contract generates commissions which are returned to the general fund

Commissary (general) - $0 fees. Inmate pays selling price for items, Department earns commissions @ a rate of 14.8% of gross sales.

Property damage - $0 fee. Unless found guilty of a disciplinary infraction and ordered to pay restitution. If charged restitution inmate is charged the cost of the item destroyed. Funds are collected if/when available in the inmates account

Sheriff's fee, criminal court clerk - $0, unless this refers to court assessments, i.e., victims witness, drug assessment etc. In which case the amount charged is as ordered by the court. Funds are collected if/when available in the inmates account and are sent to the court ordering them.

# Appendix G- Feb. 10th Survey Clarification

Department of Correction, continued

Vending machines - $0 fees. Inmate pays selling price for items, Department earns commissions @ a rate of 21.2% of gross sales. Except no commissions are earned for fresh food and water.

Annual Revenue Generation -

Inmate Haircuts- $29,632 (General fund)
Medical Co-pay - $21,142 (General fund)
Room and Board - $392,760 (General fund)
Inmate Maintenance and Admin - $101,432 (General fund)

# Appendix G- Feb. 10th Survey Clarification

## ADDITIONAL NOTES

### Jack Quinn, Superintendent – Berkshire

- 2002-04 experience with inmate fees: $5 medical co-pay, excluding mandated physicals
- From his experience, inmates will discontinue put depositing money in their accounts. Most of the debt will be paid by mothers and fathers
- It is difficult to estimate who has the capacity to pay
- After working in probation, he would guess that only 10% of inmate population enters jail because this is the first time they had any encounter with the law. Most individuals didn't make it out of probation because they have been paying probation fees. A lot of people in here are here because they can't pay fees
- In the last 8 years, he has seen only two individuals with over $1,000 in their accounts. Obviously drug money, which is now going back to state.
- What he believes the Inmate Fee Commission should address is the public perception that being against inmate fees makes you soft on crime
- If we're gonna keep taking, it's tough to correct and have them have a chance when they come out. If inmates are earning money, they should have to pay something back, like a tax. It's when you work visits and see mothers and grandmothers with little kids, and now I'm gonna take money out of their mouths? Many other ways to be more progressive. Sees inmate fees as a poor man's tax.

### Superintendent – Norfolk

- Thought that we made an error in only speaking to other states corrections departments that charge inmate fees. Thought we would have been better served by looking at other large city jail systems.
- NCS used to have more fees, but because of the BCS lawsuit, it is their understanding of the general laws that the only fee that can be collected are for haircuts and notary public unless they have inmates on work release.

# Appendix G- Feb. 10th Survey Clarification

ADDITIONAL NOTES, continued

Kyra Silva, Director of Administrative Services – Department of Correction
The combined average including inmate personal and savings (earned and unearned) by security level is as follows:

Maximum - $295.97
Medium - $605.32
Minimum - $662.29
Minimum/Pre-release - $1,568.93 (Please note that 15% of gross wages are accessed for room/board and returned to the General Fund.

It is the goal of the Department to have inmates maintain a respectable balance in their savings accounts at all times. This becomes increasingly important as inmates move toward lower custody status where they shall eventually be required to expend their own funds for transportation, clothing, and food while they are establishing their work-release employment program.

The primary purpose for institutional savings is to insure that the inmate shall be released with enough funds to aid in acquiring a residence and to be able to afford the expenses related to reintegrating in a community upon discharge or parole.

In accordance with M.G.L. c. 127, §48A, and with the exception of inmates serving a life sentence (1st or 2nd degree) or those declared sexually dangerous, at least 50 percent of an inmate's earned income received from the Department or any other state agency shall be credited to the inmate's savings account, the balance shall be credited to the inmate's personal account. Excluding Pre-Release where at least 25 percent of an inmate's earned income received from the Department or any other state agency shall be credited to the inmate's savings account due to the 15% of gross wages are accessed for room/board.

All inmates shall maintain a balance of at least $100 in their savings account unless the aforementioned lifer or sexually dangerous exclusion applies.

# Appendix H- Bristol County

PRISONERS' LEGAL SERVICES
formerly known as
Massachusetts Correctional Legal Services
8 WINTER STREET, BOSTON, MA 02108-4705

617-482-2773; WATS 800-882-1413
FAX 617-451-6383
State Prisoner Speed Dial *9004#
County Collect Calls 617-482-4124

MEMO

To: Sheriff Tom Hodgson, Bristol County
From: Leslie Walker, Executive Director, Prisoners' Legal Services
Re: Fees Commission Joint Report on the "Bristol Model"
Date: April 6, 2011

Hello Tom. Below is my effort at creating a factual, non-inflammatory piece re: Bristol County's fee program on 2002-2003. I look forward to working with you on our joint submission to the Fees Commission.

The $5.00 'cost of care' (often referred to as 'pay to stay') program that was implemented by the Bristol County Sheriff's Office in 2002 generated nearly $750,000 in gross revenue over a two-year period. Although commissary receipts dropped by $101,033.50 from FY'02 to FY'03, net revenues increased by $248,995.37. The following year, commissary receipts dropped by $84,942.30, while net revenues from the inmate daily fee rose by nearly $30,000 for a total of $278,202.33. There was a one-time fee of $4,000 to set up an automatic withdrawal system from inmate accounts. Thus, the overall net revenue over two years was $523,197.67.

Additional offsets to the fees recovered from the cost of care program have not been calculated. These would include decreases in collection of court costs, victim witness assessments, and child support payments because (a) less money was deposited in inmate accounts and (b) those funds were taken to pay the 'cost of care' fees. In addition, there were increased costs for providing of "indigent kits" (soap, toothpaste, stamps, etc.) to inmates rendered indigent by the deduction of daily payments from their accounts.

The correlation between 'cost of care' and other fees and the recidivism rates of Bristol County inmates is unknown. However, more than half of former inmates who paid the fees during 2002-04 while they were in effect have since that time been re-incarcerated in Bristol County or elsewhere. More than ten percent of current Bristol County inmates paid the fees while they were in effect in 2002-04.

# Appendix H- Bristol County

MEMO, continued

The effect of the 'cost of care' fees on inmate conduct and facility operations are controversial. You have stated that there was a 'dramatic shift' in attitudes about incarceration, and that inmates began discussing being accountable for the choices that landed them in the House of Correction and the ramifications of incarceration in the future. However, interviews with over 500 prisoners who paid fees conducted by Prisoners' Legal Services suggest that there was an increased incidence of 'strong arming' and inmate scams during the operation of the program. Inmates also did not believe the fees taught them individual responsibility since the fees were paid by family and friends in the community.

# Appendix H- Bristol County

April 12, 2011

Leslie Walker, Executive Director
Prisoners Legal Services
8 Winter Street
Boston, MA 02108-4705

Dear Leslie:

The $5.00 "cost of care" (often referred to as "pay to stay") program that was implemented by the Bristol County Sheriff's Office in 2002 generated nearly $750,000 in gross revenue over a two-year period. Although commissary receipts dropped by $101,033.50 from FY'02 to FY'03, net revenues increased by $248,995.37. The following year, commissary receipts dropped by $84,942.30, while net revenues from the inmate daily fee rose by nearly $30,000 for a total of $278,202.33. There was a one-time fee of $4,000 to set up an automatic withdrawal system from inmate accounts. Thus, the overall net revenue over two years was $523,197.67.

It is important to note that payment of court-ordered fees were not adversely impacted by the collection of the $5.00 daily fee, as court ordered fees are the first payment obligation under the Bristol County model. Since child support payments are not the responsibility of the Sheriff's Office for collection, there is no adverse impact on that obligation.

While payment of the cost of care fee did create an increase (33%) in the need for "indigent hygiene kits" for inmates, there was no negative impact on our budget. The cost for these kits was paid from commissary revenues. If the additional kits were funded through our cost of care revenues our average net gain over the two year period would still be approximately $250,000.

During the period the cost of care fee was in effect, we saw no increase in "strong arming". Shortly after the program began some inmates attempted to avoid the daily fee by having commissary funds deposited in other inmate accounts. This problem was rectified by security and administrative staff monitoring purchases, inmate balances and quantities of products purchased.

While some inmates serving time during the period of the cost of care fee have returned to prison, many of our inmate population have expressed a different attitude about doing time in Bristol County and have a more clear understanding about their responsibility to pay basic costs before purchasing luxury products.

Sincerely,

Thomas M. Hodgson
Sheriff

# Appendix I- Souza v. Sheriff of Bristol County

Westlaw



455 Mass. 573, 918 N.E.2d 823

**(Cite as: 455 Mass. 573, 918 N.E.2d 823)**

Supreme Judicial Court of Massachusetts,
Bristol.
Richard SOUZA & others[FN1]
FN1. Wayne Soares; Barry Booker; Richard Centeno; Antone Cruz; William Perry; William Statkiewitz; and Jerome Wieczorek, Jr., on their own behalf and on behalf of others similarly situated. The plaintiffs brought their action on behalf of themselves and a putative class of similarly situated inmates confined at both the Bristol County jail and house of correction in Dartmouth, and the Ash Street jail in New Bedford. After the proceedings involving this appeal took place, class certification was permitted.
v.
SHERIFF OF BRISTOL COUNTY.
SJC-10508
Argued Nov. 2, 2009.
Decided Jan. 5, 2010.

**Background:** Inmates in county jail and house of correction sued for declaratory and injunctive relief, challenging practice of county sheriff in charging certain fees to inmates in attempt to defray costs of their incarceration. The Superior Court, Bristol County, Richard T. Moses, J., 2004 WL 5540569, granted inmates' motion for summary judgment, and denied cross-motion filed by sheriff, and sheriff appealed. Following certification that there was no just reason for delay, 2008 WL 6085022, case was transferred from the Appeals Court.

**Holdings:** The Supreme Judicial Court, Ireland, J., held that:
(1) county sheriff lacked authority to set haircut fee for inmates in county jail in excess of $1.50 fee approved by the Commissioner of Correction, and
(2) sheriff acted in excess of authority, and contrary to intent of legislature, in imposing cost-of-care, medical care, and general education development (GED) testing fees that were not among fees that sheriff was statutorily authorized to impose.

Affirmed.

West Headnotes

**[1] Sheriffs and Constables 353 77**
353 Sheriffs and Constables
353III Powers, Duties, and Liabilities
353k77 k. Nature and extent of authority in general. Most Cited Cases
Duties of sheriff may be defined or regulated by legislature.

# Appendix I- Souza v. Sheriff of Bristol County



**[2] Prisons 310 417**
310 Prisons
310VI Costs of Incarceration
310k412 Persons and Entities Liable
310k417 k. Prisoners. Most Cited Cases
While sheriff's authority to manage and control county jails may derive from common law, his ability to impose fees on county jail inmates for costs of their care is distinct function, which is not subsumed in sheriff's custodial duties.
**[3] Prisons 310 390**
310 Prisons
310V Officers and Employees
310k390 k. In general. Most Cited Cases
As general rule, powers, duties, rights, and responsibilities of sheriff as jailer are prescribed by statute.
**[4] Prisons 310 417**
310 Prisons
310VI Costs of Incarceration
310k412 Persons and Entities Liable
310k417 k. Prisoners. Most Cited Cases

# Appendix I- Souza v. Sheriff of Bristol County



By auditing manner in which county sheriff administered inmate funds, solely for purpose of determining whether requisite fiscal controls were in place, the Commissioner of Correction did not thereby approve sheriff's policy of imposing certain fees on inmates to defray costs of their incarceration.

**[5] Prisons 310 313**

310 Prisons

310II Prisoners and Inmates

310II(H) Proceedings

310k307 Actions and Litigation

310k313 k. Trial. Most Cited Cases

Whether county sheriff was statutorily authorized to impose certain fees on inmates in attempt to defray costs of their incarceration was question for court, and not for Commissioner of Correction.

**[6] Prisons 310 417**

310 Prisons

310VI Costs of Incarceration

310k412 Persons and Entities Liable

310k417 k. Prisoners. Most Cited Cases

Under statute authorizing the Commissioner of Correction to adopt policies and procedures, in consultation with county sheriffs, establishing reasonable fees for haircuts provided to inmates at any county or state correctional facility, county sheriff lacked authority to set haircut fee for inmates in county jail in excess of $1.50 fee approved by the Commissioner. M.G.L.A. c. 124, § 1(r).

**[7] Prisons 310 417**

310 Prisons

# Appendix I- Souza v. Sheriff of Bristol County



310VI Costs of Incarceration

310k412 Persons and Entities Liable

310k417 k. Prisoners. Most Cited Cases

**Prisons 310 419**

310 Prisons

310VI Costs of Incarceration

310k419 k. Health and medical care. Most Cited Cases

County sheriff acted in excess of authority, and contrary to intent of legislature, in imposing cost-of-care, medical care, and general education development (GED) testing fees that were not among fees that sheriff was statutorily authorized to impose, on inmates in county jail; given that legislature had expressly authorized sheriff to charge certain fees, and to use inmate funds in particular ways, only in circumscribed circumstances, broad authority that sheriff possessed over county jail did not allow him to impose these challenged fees. M.G.L.A. c. 126, § 16.

**[8] Administrative Law and Procedure 15A 387**

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(C) Rules and Regulations

15Ak385 Power to Make

15Ak387 k. Statutory limitation. Most Cited Cases

**Officers and Public Employees 283 103**

283 Officers and Public Employees

283III Rights, Powers, Duties, and Liabilities

283k102 Authority and Powers

283k103 k. In general. Most Cited Cases

# Appendix I- Souza v. Sheriff of Bristol County



Government agency or officer does not have authority to issue regulations, promulgate rules, or create programs that conflict with or exceed authority of enabling statutes.

**[9] Administrative Law and Procedure 15A 387**

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(C) Rules and Regulations

15Ak385 Power to Make

15Ak387 k. Statutory limitation. Most Cited Cases

**Officers and Public Employees 283 103**

283 Officers and Public Employees

# Appendix I- Souza v. Sheriff of Bristol County



283III Rights, Powers, Duties, and Liabilities

283k102 Authority and Powers

283k103 k. In general. Most Cited Cases

When legislature has fully regulated a subject by statute, government agency or officer cannot further regulate that subject by establishing policy inconsistent with statutory scheme.

****825** Bruce A. Assad & Gary W. Smith, Boston, for the defendant.

James R. Pingeon for the plaintiffs.

Present: MARSHALL, C.J., IRELAND, SPINA, CORDY, BOTSFORD, & GANTS, JJ.

IRELAND, J.

***573** The plaintiffs are inmates at the Bristol County jail and house of correction in Dartmouth. In July, 2002, they ***574** commenced an action in the Superior Court for declaratory and injunctive relief, raising numerous challenges to the imposition of certain fees on them and other inmates by the defendant, the sheriff of Bristol County (sheriff), pursuant to an "Inmate Financial Responsibility Program" (program).[FN2] The fees include a five dollar per day "cost of care" fee, as well as fees for a number of services, including medical care, haircuts, and general education development (GED) testing. After various proceedings, the parties filed cross motions for summary judgment. A Superior Court judge allowed the plaintiffs' motion and denied the sheriff's motion, concluding that the sheriff lacked authority to impose the cost of care fee, the medical care fee, the haircut fee in excess of $1.50, and the GED fee. He ordered the entry of a declaration stating that those fees "are invalid and unauthorized by law," and permanently enjoined the sheriff and his agents "from imposing the aforesaid fees." Pursuant to Mass. R. Civ. P. 54(b), 365 Mass. 820 (1974), a separate and final judgment entered consistent with his order and from which the sheriff appeals. [FN3] We transferred the case here on our own initiative. We affirm.

FN2. The plaintiffs alleged, as relevant here, that the sheriff lacked authority to impose the fees and that the fees violated several of their State and Federal constitutional rights.

# Appendix I- Souza v. Sheriff of Bristol County



FN3. In the separate and final judgment, the judge ordered the sheriff, in his official capacity, to reimburse the plaintiffs in various specified amounts, together with interests and costs.

*Background.* The material facts of the case are undisputed. The sheriff implemented the program, which is set forth in a written policy, in July, 2002. By its terms, the program serves "to encourage inmates [FN4] to be financially responsible," which will "assist [them] in preparing for their transition back [into the community on release]," and helps to "defray[ ] the cost of incarceration, while still maintaining quality programs and services." As has been stated, under the program the sheriff established and imposed various fees on inmates for their cost of care, medical care, haircut services, and GED testing.

FN4. Under the "Inmate Financial Responsibility Program" (program), an "[i]nmate" is "any adult individual confined or committed to a Bristol County correctional facility, or otherwise within the care and custody of the Bristol County Sheriff's Office, including male or female pretrial detainees or sentenced inmates."

***575** The cost-of-care component of the program imposes on inmates a charge of five dollars for each day of incarceration "for administrative services rendered and to assist in defraying the costs of incarceration." The fee is deducted directly from an inmate's "Inmate Money Account" (IMA).[FN5] The fee is not assessed against ****826** "[i]ndigent" inmates [FN6] and exempts certain inmates.[FN7] Inmates having "insufficient funds in their IMA to satisfy the [cost-of-care fee] shall have an automatic debit made to their IMA daily, creating a debt owed by the inmate." Where an outstanding balance exists on an inmate's IMA, and funds are sent to the inmate, the amount owed is deducted from the funds sent to the inmate. Inmates who are awaiting trial who are later found not guilty or have the charges against them dismissed "shall have the collected fees reimbursed in full by the [sheriff] upon presentation of certified Docket Entries, or other acceptable court document, indicating these dispositions."

FN5. An "Inmate Money Account" (IMA) is an account "established within the Canteen

# Appendix I- Souza v. Sheriff of Bristol County



Manager System for an individual inmate for the depositing of all monies received by the inmate and for the payment of fees for goods purchased and/or services provided." The "Canteen Manager System" is "[t]he computer program system which manages the funds deposited into [IMAs] established for each individual inmate upon his/her admission, and the deductions posted for purchases, fees and other debits. The Canteen Manager System is utilized by Commissary staff and Inmate Accounts staff of the Finance Division."

FN6. Under the program, an inmate qualifies as "indigent" if he or she has five dollars or less in her IMA for a period of thirty days.

FN7. Exempted from the cost-of-care fee are "Federal (INS) inmates (who are NOT being held concurrently on a mittimus issued by a Court of Bristol County)"; "[t]ransfer inmates (who are NOT being held concurrently on a mittimus issued by a Court of Bristol County)"; and "Regional Lockup Inmates."

Another component of the program imposes certain charges for medical care and services, including five dollars for medical appointments, three dollars for pharmaceutical prescriptions, and five dollars for eyeglass prescriptions. The fee for medical appointments applies to "[a]ny medical visit initiated by an inmate/detainee through a written request or unscheduled walk-in performed by [the health services unit] not related to a known chronic disease list problem." Several exemptions apply, including medical services for admission health screening, emergency care, prenatal care, laboratory and diagnostic care, contagious disease care, and chronic disease care. Medical care fees are ***576** deducted from an inmate's IMA. No inmate is to be denied access to medical care due to an inability to pay the applicable fee. Indigent inmates receiving medical services "shall be assessed the applicable co-payment fee, which shall be debited against the [inmate's IMA] and creating a debt which shall remain due and payable."

There is also a five dollar fee imposed on inmates who request a haircut or beard trim under the program. The fee is deducted from the inmate's IMA. Indigent inmates are allowed one haircut every month free of charge.

The last fee challenged under the program pertains to GED testing and provides that "[i]nmates who participate in the [GED] testing program shall be charged $12.50 for registration and the battery of tests required." The fee is deducted from the inmate's IMA.

# Appendix I- Souza v. Sheriff of Bristol County



Pursuant to the "general operational procedures" of the program, if an inmate is released with an outstanding debt balance in his IMA (such as debt incurred from cost of service or health care fees), "the Canteen Manager System shall freeze the Inmate's [IMA] and all such outstanding debts shall remain active for a period of two (2) years from the date of release. Should the inmate become incarcerated again within this two (2) year period, all outstanding debts shall become active and the inmate shall be required to pay off these existing debts prior to being allowed to purchase any items." Inmates have no earned funds while incarcerated, that is, they are not given paid jobs. Inmates without funds in their IMAs are unable to purchase items at the jail commissary, such as personal hygiene products, snacks, candy, and playing cards. Indigent inmates are given a hygiene kit free of ****827** charge. The kit contains some basic items such as toothpaste, a toothbrush, soap, shampoo, and a disposable razor. Since the program's implementation, the number of indigent inmates has increased.

*Discussion.* The judge concluded that the plaintiffs were entitled to summary judgment on the ground that the sheriff lacked authority to impose the cost of care, medical care, haircut, and GED fees. He did so after thoroughly examining the numerous statutes cited by the parties. We review the entry of summary judgment under well-established standards, to determine whether the successful party has demonstrated that there is no genuine ***577** issue as to any material fact and that it is entitled to a judgment as a matter of law. See *Morrison v. Toys "R" Us, Inc.*, 441 Mass. 451, 454, 806 N.E.2d 388 (2004); *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716, 575 N.E.2d 734 (1991).

[1] As an initial matter, we reject the sheriff's suggestion made during oral argument that, because a sheriff holds a constitutional office, a sheriff may carry out all the functions of his office (putting aside

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the question of what those functions include) without any statutory authority. While the sheriff correctly acknowledges that there is no enumeration of the duties or functions of the office of the sheriff in the Constitution of the Commonwealth, he overlooks that the office of the sheriff is not *created by* our Constitution. Rather, under our Constitution, as originally established, it was provided that sheriffs in each county were to be appointed by the Governor. Part 2, c. 2, § 1, art. 9, of the Constitution of the Commonwealth. This provision was superseded in 1855 by art. 19 of the Amendments to the Constitution, which states that the Legislature "shall prescribe, by general law, for the election of sheriffs [and other officials]." The constitutional provisions concerning the office of the sheriff do no more than recognize the office and require (currently) an election of sheriffs. Consequently, the duties of the sheriff may be further defined or regulated by the Legislature. Cf. *Attorney Gen. v. Pelletier,* 240 Mass. 264, 294, 134 N.E. 407 (1922); *Opinion of the Justices,* 117 Mass. 603, 604 (1875). See 1 W.H. Anderson, Sheriffs, Coroners and Constables § 42 (1941) (Anderson) ("The powers and duties of a sheriff ... are still the same today as they were at common law, except, insofar as [the office] has been modified by constitutional and statutory provision").

The sheriff asserts that his power to impose the challenged fees derives from his common-law duties "to operate and administer" the county correctional facilities. Because the Legislature may not "effect[ ] a material change in or a repeal of the common law unless the intent to do so is clearly expressed," *Riley v. Davison Constr. Co.,* 381 Mass. 432, 438, 409 N.E.2d 1279 (1980), quoting *Pineo v. White,* 320 Mass. 487, 491, 70 N.E.2d 294 (1946), the sheriff asserts that the judge's decision (and the resulting judgment) is "derogatory of the common law" and therefore erroneous. The argument lacks support and we reject it.

***578** The office of the sheriff is one of considerable antiquity. The origin and earliest duties of the office is set forth in L.E. Hitchcock, Powers and Duties of Sheriffs, Constables, Tax Collectors, and Other Officers in the New England States § 4 (2d ed. 1904), as follows:

"The office of Sheriff dates back to the early days of English history. Indeed it is sometimes claimed that it became a part of the government of England from the Roman law. As the people of England came gradually under one government the territory became divided, more or less arbitrarily, ****828** into counties; over each of which was placed an Earl, or Alderman; and this Earl, or Alderman, was supposed to be the ruler-subject of course to

# Appendix I- Souza v. Sheriff of Bristol County



the King-over his county. But this Earl, from the privileges which he possessed and the duties which he was under in reference to his attendance upon the King, gradually ceased to exercise his powers himself, and they were in time delegated to an under-officer, called, in the Roman law, Vicecomes; in the Saxon tongue, Shire-reeve; or in the more modern terms, Sheriff. At first this under-officer, or Sheriff, was to administer the affairs of the county as the representative of the Earl; but in time his duties became more defined, and seem to have been fourfold,-as a Judge, as a Keeper of the Peace, as a Ministerial Officer, and as the King's Bailiff.

"First, as a Judge. He held court and determined causes between parties wherein the value in dispute was not more than forty shillings, and also heard certain other civil causes. He was also the Judge of certain elections, and of the qualifications of voters.

"Second, as the Keeper of the Peace. Both by common consent and by special commission he became the first man in the county, and superior to all others while he continued in office. He had authority to apprehend persons for the commission of crimes or for breach of the peace, and it was his duty also to defend the county against all enemies of the King, and for this purpose he had power to summon all the people of the county to attend him. This summons every person over fifteen years old and not a peer was bound to obey upon warning.

***579** "Third, as a Ministerial Officer. He was bound to execute all processes issuing from the King's courts of justice. In the commencement of civil proceedings he had power to serve the writ, arrest and take bail, and, when the cause came to trial, to summon and return the Jury, and after the judgment to see that the same was carried into effect. In criminal matters, he had authority to arrest and imprison, to return the Jury, to have custody of the delinquent, and to execute the sentence.

# Appendix I- Souza v. Sheriff of Bristol County



"Fourth, as the King's Bailiff. He was required to see that the rights of the King were preserved in his county, or bailiwick."

With respect to criminal matters, "under the common law the sheriff was ex officio jailer, and that by virtue of his position as such he was the official custodian and in charge of all prisoners confined therein." 1 Anderson, *supra* at § 263.

[2][3] While the sheriff provides support for the proposition that his authority to manage and control county jails derived from common law,[FN8] he does not cite to any ****829** authority providing that, *under common law,* sheriffs were permitted to *charge fees,* which we conclude is a distinct function not subsumed in his custodial duties. To the contrary, it has been recognized that, "[a]s a general ***580** rule[,] the powers, duties, rights and responsibilities of a sheriff as jailer are prescribed by statute, and as his powers and duties, rights and liabilities, are thus circumscribed by the legislative enactments of the particular jurisdiction...." 1 Anderson, *supra* at § 266. Indeed, in support of his position that, under the common law, he may impose the challenged fees, the sheriff cites only to statutes.[FN9] Thus, in the absence of any support that imposition of the challenged fees was part of a sheriff's common-law duty, the extensive collection of historical statutes submitted by the parties has no bearing on the issue before us. Rather, we must examine the *current* statutory scheme to determine whether the sheriff is authorized to impose the challenged fees.

FN8. The sheriff asserts that, under the common law, he possessed authority to manage and control not only county jails, but also houses of correction. It appears, however, that his authority did not originally extend to houses of correction. The Colonial Legislature gave the sheriff authority over local jails under c. 9 of the Province Laws (1699-1700) ("It is enacted ... [t]hat the sheriff of each several county within this province have the custody, rule, keeping and charge of every of the king's common goals, prisons and prisoners in the same ... "). See St. 1783, c. 44 ("the Sheriff of each county shall have the custody, rule, and charge of the goal or goals therein, and of all the prisoners within such goal or goals"). See generally Black's Law Dictionary 748-749, 910-911 (9th ed. 2009) (defining "gaol" as term of English origin meaning jail and "gaoler" as jailer). (The parties do not dispute that the term "gaol" refers to "jail"). In 1846, in circumstances when a jail and house of correction were "united in one and the same building or establishment," the sheriff (except in Suffolk County) was given "the custody, rule and charge" over both facilities. St. 1846, c. 11, § 1. In 1859, the Legislature provided that, in all counties except Suffolk, "the jails and houses of correction ... shall be considered one and

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the same institution, and the sheriff shall have the custody, rule and charge of the same." St. 1859, c. 249, § 1. Prior thereto, at various times, houses of correction had been run by appointed "masters." See St. 1836, c. 143, § 4; St. 1787, c. 54, § 2.

FN9. There is no dispute that, by *statutory authorization*, sheriffs, at various time, were authorized to charge certain fees. See, e.g., Province Laws 1692-1693, c. 37, § 1 (authorizing "gaoler" to charge fees "[f]or turning of the key" on commitment and discharge, and "[f]or diet") , § 2 (prohibiting charge of any fees additional to that prescribed). This statutory authorization, however, has not always been extended to sheriffs. For example, in 1663, the Colonial Legislature authorized the criminal court having jurisdiction over a prisoner, and not a sheriff, to decide whether and how much a prisoner might have to pay for the costs of his "maintenance." General Laws and Liberties of the Massachusetts Colony 128 (1672 ed.). Further, there is also no dispute that, by *statute*, measures were taken, at various times, to prohibit sheriffs from charging and collecting different fees. See, e.g., St. 1859, c. 249, § 2 ("county commissioners ... establish fixed salaries for all officers, assistants and employees of jails and houses of correction, which shall be the full compensation of said officers, assistants and employees, in lieu of all sums now received by them in their office, for board, turnkey fees, perquisites or otherwise").

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Under the current statutory scheme, jails and houses of correction FN10 are county correctional institutions; custody and control over jails and houses of correction lie with each county's ***581** elected sheriff. See G.L. c. 126, § 16 FN11; G.L. c. 37, § 1; ****830**G.L. c. 54, § 159. Prisons are State correctional institutions; custody and control over State prisons and other State correctional institutions lie with a superintendent "[s]ubject to rules and regulations" established by the Commissioner of Correction (commissioner). G.L. c. 125, §§ 1, 14. The commissioner is charged with the establishment, maintenance, and administration of all State correctional institutions, and must "establish and enforce standards for all [S]tate correctional facilities." G.L. c. 124, § 1 (*a* ), (*c* ). The commissioner is an appointed member of the Commonwealth's executive branch. Superintendents are appointed by the commissioner. G.L. c. 125, § 2.

FN10. Generally, criminal defendants who are charged with a crime are detained in a "jail." G.L. c. 126, § 4. Criminal defendants who are sentenced to a term of two and one-half years *or less* serve that sentence in a "jail" or "house of correction," and criminal defendants who are sentenced to a term of two and one-half years *or more* serve that sentence in a State correctional institution, or prison. See G.L. c. 279, §§ 15, 23, 24; G.L. c. 125, § 1. See *DuPont v. Commissioner of Correction,* 448 Mass. 389, 394-395 & nn.12-13, 861 N.E.2d 744 (2007) (explaining that sentences to house of correction are imposed for misdemeanors or less serious felonies while State prison sentences are imposed for felony convictions and involve serious crimes of violence that do not permit sentence to house of correction). Absent exceptional circumstances justifying the exercise of inherent judicial authority, criminal defendants sentenced to a term of more than two and one-half years in a State correctional institution may not be incarcerated in a county jail or house of correction without the approval of the county sheriff. *Sheriff of Middlesex County v. Commissioner of Correction,* 383 Mass. 631, 634, 421 N.E.2d 75 (1981).

FN11. General Laws c. 126, § 16, provides, in relevant part:

"The sheriff shall have custody and control of the jails in his county, and ... of the houses of correction therein, and of all prisoners committed thereto, and shall keep the same himself or by his deputy as jailer, superintendent or keeper, and ... shall appoint subordinate assistants, employees and officers and shall be responsible for them...."

In addition to the responsibilities concerning all State correctional institutions, the commissioner has various statutory obligations with respect to *county* correctional institutions.

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For instance, the commissioner is charged with preparing an annual report for the Legislature in which he must, among other obligations, state the "actual condition" of the county correctional institutions and provide the number of inmates in each institution. G.L. c. 124, § 6. The commissioner also must establish "minimum standards for the care and custody of all persons committed to county correctional facilities." G.L. c. 127, § 1A. See G.L. c. 124, § 1 (*d* ). Before doing so, the commissioner "shall visit, consult with and receive the recommendations of the sheriffs." G.L. c. 127, § 1A. The commissioner "shall require from the sheriffs ... periodic reports on the population, operation and conditions of all county correctional facilities." *Id.* In addition, the commissioner is required, "[a]t least once each six months[,] ... [to] inspect each county correctional facility to determine compliance with minimum standards." G.L. c. 127, § 1B. Inspection results are to be summarized in the commissioner's annual report to the Legislature. *Id.* ***582** With regard to violations of the minimum standards, the commissioner must give notice of said violations to the sheriff and county commissioners, and afford "a reasonable period of time to remedy" any violation. *Id.* If compliance is not met within a reasonable time, the commissioner may "petition the Superior Court in equity ... for an order to close the facility or for other appropriate relief." *Id.*

[4][5] The sheriff contends that, by auditing the program pursuant to the statutory authority under G.L. c. 127, §§ 1A and 1B, and the regulatory authority concerning budget and fiscal management in county correctional facilities, 103 Code Mass. Regs. § 911.03 (2009) FN12

# Appendix I- Souza v. Sheriff of Bristol County



and by finding the program to be in "compliance" with the regulations, the commissioner "approved" and "adopt[ed]" the program and the challenged fees therein. This argument ignores the confines of the regulation and the purposes of the commissioner's inspections or audits. Pursuant to **831103 Code Mass. Regs. § 911.03, sheriffs must establish written policies and procedures that comply with accepted accounting procedures "for the collection, safeguarding and disbursement of monies," including "inmate funds." See note 12, *supra.* The commissioner's role in the audit of the program is to determine whether those fiscal controls are in place. See 103 Code Mass. Regs. § 901.02 (2009) (purpose of commissioner's inspections is to determine compliance with 103 Code Mass. Regs. §§ 900.00-979.00 [2009] ). See also G.L. c. 127, § 1B (commissioner's inspections are to determine compliance with "minimum standards"). Neither the regulations nor the statutory provisions authorizing inspections provide an authorization to impose the challenged fees, nor do they address the challenged fees in particular or the sheriff's authority to impose the challenged fees. ***583** Even if the commissioner were to authorize the challenged fees (in the absence of express regulation), the question implicated here-whether the sheriff was statutorily authorized to impose the fees-is a question for the court, not the commissioner.

FN12. Title 103 Code Mass. Regs. § 911.03 (2009) provides as follows:

"Written policy and procedure [of county correctional facilities] shall specify that methods used for the collection, safeguarding and disbursement of monies that comply with accepted accounting procedures established by the parent agency or other authority having jurisdiction. Procedures shall include, but not be limited to: (1) internal controls; (2) petty cash procedures; (3) bonding of appropriate staff; (4) signature control on checks; (5) handling of inmate funds, including accrual of interest; (6) employee expense reimbursement; (7) requisition and purchase of supplies and equipment; [and] (8) issuance or use of vouchers."

[6] There is no merit to the sheriff's argument that his imposition of the haircut fee is expressly authorized by statute. With respect to the haircut fee, G.L. c. 124, § 1 (*r* ), provides, in relevant part, that:

"[T]he commissioner ... shall ... adopt policies and procedures, in consultation with the county sheriffs, establishing reasonable fees for haircuts that are provided to inmates at any county or [S]tate correctional facility. Except as otherwise provided, the commissioner or county sheriff may charge each inmate a reasonable fee for any haircut provided...."

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Pursuant to § 1 (*r* ), the commissioner established a haircut fee of $1.50 for inmates in State correctional facilities. The sheriff asserts that, where the commissioner had not established a specific haircut fee for county correctional inmates, § 1 (*r* ) authorized the sheriff to charge a fee greater than the one established by the commissioner for State correctional inmates. In support of his argument, the sheriff relies on the "[e]xcept as otherwise provided" clause of § 1 (*r* ). That clause, however, does not authorize the sheriff to establish a haircut fee; rather, it prevents him from charging the already established fee if doing so would conflict with some other statutory provision. Pursuant to the plain language of § 1 (*r* ), only the commissioner may establish the haircut fees for inmates at both State and county correctional institutions. The commissioner may consult with county sheriffs in establishing the fee, but a sheriff's role in this regard is merely advisory.[FN13] The Superior Court judge did not err in concluding that the sheriff lacked authority to impose a haircut fee in excess of $1.50 on county inmates.

FN13. On May 15, 2009, the commissioner amended the regulations expressly to authorize sheriffs to charge county inmates a haircut fee not to exceed ten dollars. See 103 Code Mass. Regs. § 974.08(4) (2009). The amended regulation was not cited or mentioned by the parties. Because it occurred after the judgment entered in this case, the amended regulation is not implicated. We express no view on whether any fee charged pursuant to this amended regulation is "reasonable" pursuant to G.L. c. 124, § 1 (*r* ).

[7] ***584** Turning to the remaining challenged fees (the cost of care, medical care, and GED fees), the sheriff contends that he is authorized to impose

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them because nothing in the statutory scheme proscribes them. He also asserts that he may charge these fees pursuant to his broad authority under G.L. c. 126, § 16, see note 11, *supra,* to operate and administer the county correctional institutions. We reject these arguments, noting that they ignore the ****832** necessary implications of the over-all statutory scheme concerning the fees that may be imposed by sheriffs and the use of inmate funds in county correctional institutions.

[8][9] A government agency or officer does not have authority to issue regulations, promulgate rules, or, as in the instant case, create programs that conflict with or exceed the authority of the enabling statutes. *Massachusetts Hosp. Ass'n v. Department of Med. Sec.,* 412 Mass. 340, 342, 588 N.E.2d 679 (1992). Where the Legislature has fully regulated a subject by statute, a government agency or officer cannot further regulate that subject by establishing a policy inconsistent with the statutory scheme. *Id.* at 347, 588 N.E.2d 679. By imposing the remaining challenged fees, the sheriff acted in excess of his authority and contrary to the intent of the Legislature.

The Legislature has expressly authorized sheriffs to charge certain fees in the performance of their duties. For example, a sheriff may charge certain enumerated fees relative to serving civil and criminal process. See G.L. c. 262, § 8. In connection with a sheriff's service of process function, the Legislature permits a sheriff to "charge for each copy at [a certain prescribed] rate." G.L. c. 262, § 11. In supplementary process proceedings, a sheriff may charge certain fees for copies, travel, and, "[f]or each day's attendance at court on the examination of a defendant or debtor in his custody, ... [a fee of] five dollars." G.L. c. 262, § 14. In addition, the sheriff is allowed a mileage allowance at a specified rate for the costs associated with transporting inmates to or from court, see G.L. c. 262, § 21, and is allowed "his actual traveling expenses incurred in the performance of his official duties." G.L. c. 37, § 21.

Concerning inmate funds, the Legislature has specifically authorized sheriffs to deduct victim and witness assessments from the noninterest portion of IMAs (and to spend the interest in such accounts for the general welfare of all inmates). See ***585** G.L. c. 127, § 3.[FN14] In connection with work-release programs for committed inmates of county correctional institutions, the Legislature has authorized sheriffs to make certain deductions from the inmate's earnings. G.L. c. 127, § 86F. Those earnings, "minus tax and similar deductions," are first delivered to the sheriff. *Id.* Then, the sheriff:

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FN14. General Laws c. 127, § 3, provides, in pertinent part:

"[T]he ... keepers of jails, houses of correction and of all other penal or reformatory institutions shall, upon receipt of an outstanding victim and witness assessment, transmit to the court any part or all of the monies earned or received by any inmate and held by the correctional facility, except monies derived from interest earned upon said deposits and revenues generated by the sale or purchase of goods or services to persons in correctional facilities, to satisfy the victim witness assessment ordered.... Any monies derived from interest earned upon the deposit of such money and revenue generated by the sale or purchase of goods or services to persons in the correctional facilities may be expended for the general welfare of all the inmates at the discretion of the superintendent."

"shall deduct from the earnings delivered to him the following:-First, an amount necessary to satisfy the victim and witness assessment ordered by a court ...; second, an amount determined by the sheriff for substantial reimbursement to the county for providing food, lodging and clothing for such inmate; third, the actual and necessary food, travel and other expenses of such inmate when released for employment under the program; fourth, the amount ****833** ordered by any court for support of such inmate's spouse or children; fifth, the amount arrived at with public welfare departments; sixth, sums voluntarily agreed to for family allotments and for personal necessities while confined. Any balance shall be credited to the account of the inmate and shall be paid by him upon his final release."

*Id.*

Where the Legislature expressly authorized the sheriff to charge certain fees and to use inmate funds

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in particular ways and only in circumscribed circumstances, as is the case here, we conclude that the broad authority to have control and custody of county correctional institutions under G.L. c. 126, § 16, does not confer authority to the sheriff to impose the challenged fees. ***586** See *Harborview Residents' Comm., Inc. v. Quincy Hous. Auth.,* 368 Mass. 425, 432, 332 N.E.2d 891 (1975) (statutory expression of one thing is implied exclusion of other things omitted from statute). Had the Legislature intended to authorize the sheriff to impose the challenged fees, it would have said so expressly as it had done with other fees, such as fees for service of process, and as it had done by authorizing particular deductions from inmate funds. Our decision in *Commonwealth v. Donohue,* 452 Mass. 256, 892 N.E.2d 718 (2008), does not require a contrary result.[FN15] Thus, in the absence of specific legislative authority for the challenged fees, they are invalid.

FN15. The case of *Commonwealth v. Donohue,* 452 Mass. 256, 892 N.E.2d 718 (2008), is inapposite. It did not involve the imposition of fees but, rather, the validity of a global position satellite monitoring program (GPS program) that permitted certain county inmates who had not fully served the committed portions of their sentences to be placed in home confinement. *Id.* at 257, 892 N.E.2d 718. We concluded that G.L. c. 127, §§ 48, 49, and 49A (which gave the sheriff authority and discretion to implement a variety of inmate programs outside a correctional facility), provided specific legislative authorization for the GPS program. *Commonwealth v. Donohue, supra* at 265, 267, 892 N.E.2d 718. While we took note of G.L. c. 126, § 16, it did not form the basis of our conclusion. *Commonwealth v. Donohue, supra* at 264, 892 N.E.2d 718.

A contrary conclusion would frustrate the Legislature's intent, as reflected in the statutory scheme, to recoup or offset the costs associated with incarcerating inmates only in circumstances where an inmate is actually earning income in connection with a work-release program. See G.L. c. 127, § 86F (under work release program, after satisfying victim and witness assessments, sheriff shall deduct "an amount determined by the sheriff for substantial reimbursement to the county for providing food, lodging and clothing for such inmate").[FN16] It would also, in the case of the GED fee, contravene the clear import of G.L. c. 127, § 92A,[FN17] to provide inmates with free access to GED testing. We note that, while G.L. c. 127, § 92A, prohibits only the ***587** Department of Education from charging GED application or testing fees, it is significant that the statute was included in the provisions relating to penal and reformatory institutions (not under the ****834** provisions pertaining to the Department of Education), and, by its terms, applies to both State and county inmates. Last, with regard to the fees for medical

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care,[FN18] to adopt the sheriff's position would render G.L. c. 124, § 1 (*t* ), superfluous. See *Banushi v. Dorfman,* 438 Mass. 242, 245, 780 N.E.2d 20 (2002) ("We do not read a statute so as to render any of its terms meaningless or superfluous"). Under § 1 (*t* ), the commissioner "shall as part of the rules and regulations on payments for medical services, require the department of correction[ ] or the *county correctional facility* to ascertain whether any inmate seeking medical services has health insurance coverage and if said inmate does have health insurance coverage, said health insurance plan *shall be* billed for any services provided" (emphasis added). In view of this provision and the statutory authorization under G.L. c. 124, § 1 (*s* ), afforded only to the commissioner to establish medical care fees, ***588** it is evident that the Legislature intended that billing insurers would be the exclusive manner of seeking reimbursement for medical care given to *county* inmates. See *Habeeb v. Retirement Bd. of Quincy,* 389 Mass. 634, 640, 451 N.E.2d 704 (1983) (individual statutory provisions related to same subject matter must be read as whole to effectuate consistent legislative program); *Board of Educ. v. Assessor of Worcester,* 368 Mass. 511, 513-514, 333 N.E.2d 450 (1975) ("where two or more statutes relate to the same subject matter, they should be construed together so as to constitute a harmonious whole consistent with the legislative purpose").

FN16. The sheriff's concerns of a worsening economy, and his desire to "relieve the burden from taxpayers for prison administrative costs," are matters that involve policy considerations that fall within the province of the Legislature.

FN17. General Laws c. 127, § 92A, provides:

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"The department of education shall permit an inmate of a correctional institution of the commonwealth who is eighteen years of age or over to take the general education development tests, and said department shall not charge an application or testing fee to any inmate desiring to take said tests."

FN18. There is no dispute that only *the commissioner* is expressly authorized to charge medical service fees. General Laws c. 124, § 1 (*s* ), provides:

"[T]he commissioner ... shall ... adopt policies and procedures establishing reasonable medical and health service fees for the medical services that are provided to inmates at any [S]tate jail or correctional facility. Except as otherwise provided, the commissioner may charge each inmate a reasonable fee for any medical and mental health services provided, including prescriptions, medication, or prosthetic devices. The fee shall be deducted from the inmate's account as provided for in [G.L. c. 127, § 48A]. The commissioner shall exempt the following inmates from payment of medical and health services fees: medical visits initiated by the medical or mental health staff, consultants, or contract personnel of the [Department of Correction], prisoners determined to be terminally ill, pregnant, or otherwise hospitalized for more than 30 days successively during the term of incarceration and juvenile inmates and inmates who are undergoing follow-up medical treatment for chronic diseases. Notwithstanding any other provision of this section, an inmate shall not be refused medical treatment for financial reasons. The commissioner shall also establish criteria for reasonable deductions from moneys credited to the inmate's account as provided for in [ G.L. c. 127, § 48A,] to repay the cost of medical treatment for injuries that were self-inflicted or inflicted by the inmate on others."

General Laws c. 127, § 48A, pertains to work programs in State correctional institutions and to compensation provided to inmates participating in those programs, as well as deductions authorized from inmate earnings.

We reject the sheriff's argument that our decision in *Ciampi v. Commissioner of Correction,* 452 Mass. 162, 892 N.E.2d 270 (2008), requires a different result. The plaintiff in *Ciampi,* a prison inmate, challenged the Department of Correction's (department's) regulations and policy that allowed it to withdraw funds from his savings and personal account to satisfy a restitution sanction in a disciplinary action. *Id.* at 163, 892 N.E.2d 270. Although we concluded that "restitution as a disciplinary sanction is a part of the [commissioner's] broad grant of statutory authority to maintain prison discipline," *id.*, the commissioner acted pursuant to a

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*regulation* ****835** that expressly authorized her action, *id.* at 165, 892 N.E.2d 270. In determining that the commissioner did not exceed her authority in enacting the challenged regulations, we noted the well-settled principle that a "highly deferential standard of review governs a facial challenge to regulations promulgated by a government agency." *Id.* at 166, 892 N.E.2d 270, quoting *Massachusetts Fed'n of Teachers v. Board of Educ.*, 436 Mass. 763, 771, 767 N.E.2d 549 (2002). We were also guided by the familiar standard that, when the Legislature vests an agency with "broad authority to effectuate the purposes of an act, 'the validity of a regulation promulgated thereunder will be sustained so long as it is "reasonably related to the purposes of the enabling legislation." ' " *Ciampi v. Commissioner of Correction, supra* at 168, 892 N.E.2d 270, quoting *Levy v. Board of Registration & Discipline in Med.*, 378 Mass. 519, 524, 392 N.E.2d 1036 (1979). We concluded that the challenged regulations and policy were consistent with the commissioner's broad grant of authority and with the Legislature's intent. *Ciampi v. Commissioner of Correction, supra.* This case, however, involves an action taken by the sheriff, not the commissioner, and does not involve an action that was expressly authorized by regulation.

***589** Finally, we note that there is no merit to the sheriff's contention that, concerning the medical care fee, the judge ignored precedent that this fee is authorized. The sheriff's contention is based on a Superior Court decision that carries no precedential value. See *id.* at 169 n. 11, 892 N.E.2d 270.

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*Conclusion.* For the reasons stated, we affirm the judge's decision allowing the plaintiffs' motion for summary judgment and denying the sheriff's motion. The judgment entered pursuant to Mass. R. Civ. P. 54(b) is affirmed.

*So ordered.*

Mass.,2010.

Souza v. Sheriff of Bristol County

455 Mass. 573, 918 N.E.2d 823

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# Appendix J- August 26th Presentation

## Fee Commission Task

- Commission was established in Outside Section 177 of the FY2011 Budget.
- The Commission is tasked with creating a comprehensive study of the feasibility of establishing inmate fees within the correctional system of the Commonwealth.
- The study shall include, but not be limited to:
  - The types and amount of fees to be charged, including a daily room and board fee and medical co-pays;
  - Revenue that could be generated from the fees;
  - The cost of administering the fees;
  - The impact on the affected population;
  - Use of the collected fees by the departments;
  - Method and sources of collecting the fees;
  - Impact on the prisoner work programs;
  - Waiver of the fees for indigents;
  - Exemptions from the fees for certain medical services; and
  - Forgiveness of the balance due for good behavior.
- The study must be generated by March 1, 2011 and presented to the Chairs of the House and Senate Ways and Means Committees and the Chairs of the Joint Committee on Public Safety.

# Appendix J- August 26th Presentation

## Fee Commission Composition

- Commission consists of:
  - The Secretary of Public Safety and Security or a designee, who shall be the chair (Undersecretary McCroom);
  - The President of the Massachusetts Sheriffs' Association or a designee (Sheriff Bellotti);
  - Republican Sheriff to be designated by the President of the Massachusetts Sheriffs' Association (Sheriff Hodgson);
  - Democrat Sheriff to be designated by the President of the Massachusetts Sheriffs' Association (Sheriff Ashe);
  - The Chief Counsel of the Committee for Public Counsel Services or a designee (Anthony Benedetti);
  - A correctional system union representative (Brian Jansen); and
  - A representative from Prisoners' Legal Services (Leslie Walker).

# Appendix J- August 26th Presentation

## Fee Commission Meetings

- Non-members may participate with the permission/ invitation of the Chairperson.

- Minutes will be kept and distributed to members so they may be approved by the Commission at the following meeting.

- Any substantive discussions between voting members (including those over email) should be reserved for formal commission meetings.

# Appendix J- August 26th Presentation

## Massachusetts Chronology: How we got here

- From 2002 – 2004, Bristol County charged inmates at its HOC five dollars ($5) for each day they were incarcerated.

- Additional fees were levied for medical, haircuts, etc.

- During this two year period, $750,000 was generated through fees.

- The program was halted in 2004 when a class action lawsuit filed by prisoners reached the Massachusetts Supreme Judicial Court.

- Superior Court ruled that a fee system could only be imposed by the State legislature.

- Inmate Fee Schedule Commission was established in Outside Section 177 of the FY2011 budget by the Massachusetts Legislature, requiring the Commission to reach a recommendation and present findings by or before March 1, 2011.

# Appendix J- August 26th Presentation

## History of Inmate Fees

- In 1982, Michigan passes the first law in the nation, allowing inmates to be charged a medical co-payment.

- By 1997, 41 states had been authorized to collect inmate fees in four major categories:
    1. Medical services,
    2. Per diem,
    3. Non-program functions, and
    4. Program participation.

- By 2004, according to an article by Institute for Southern Studies, approximately one-third of county jails and more than 50% of state correctional systems had instituted “pay-to-stay” fees, charging inmates for their own incarceration.

# Appendix J- August 26th Presentation

## What are facilities currently charging for?

1. Medical services;

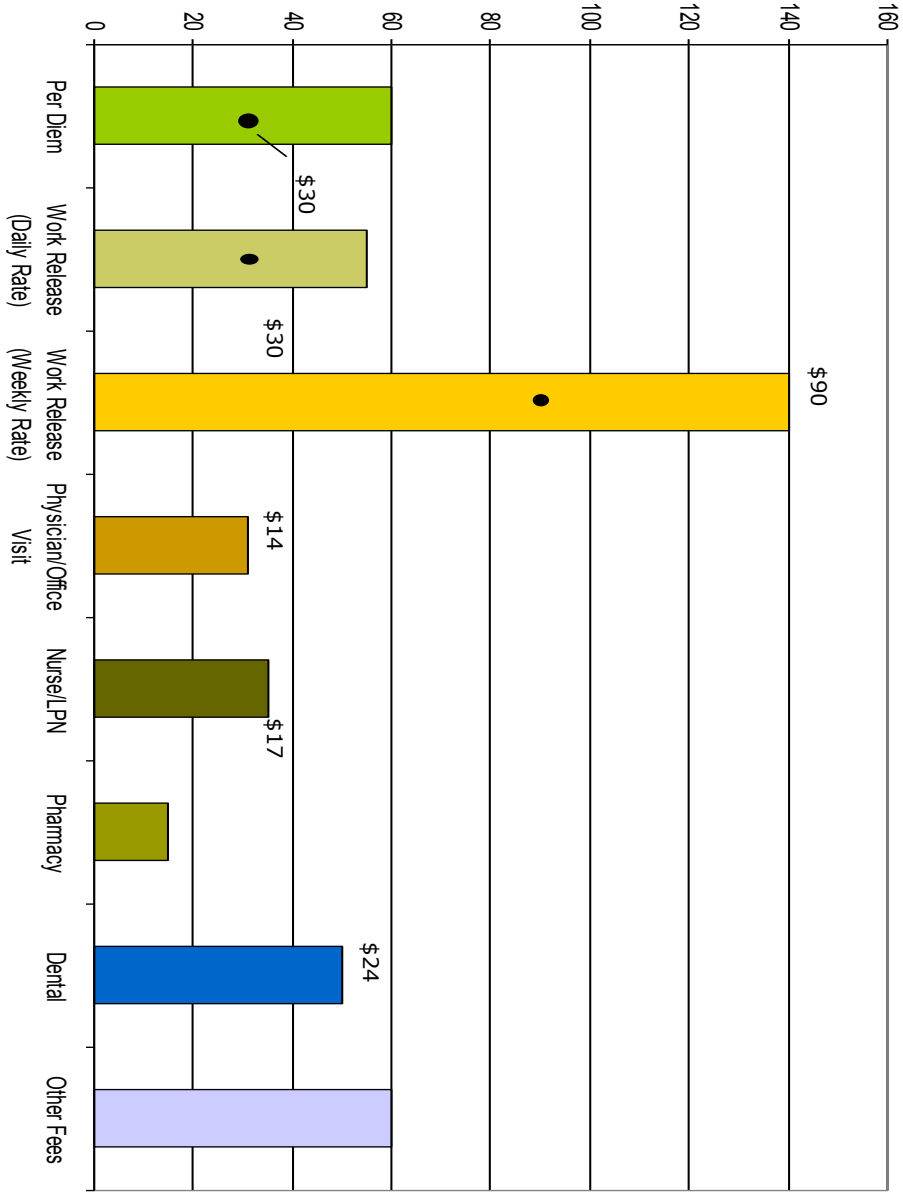
2. Per diem – includes "pay-to-stay," food, and basic programs ;

3. Other non-program functions – includes services such as telephone usage, haircuts, release/parole escort, and drug testing; and

4. Program participation – includes work release, electronic monitoring, substance abuse treatment, and medical costs.

# Appendix J- August 26th Presentation

## Examples of how much facilities are charging




Other examples: One-Time Administration Fee - $30; Hygiene Kit - $9; Meals - $1.25/day

# Appendix J- August 26th Presentation

## Collection Process and Considerations

- Most agencies have 3 ways to recover fees from inmates:
  1. Bill the inmate as fees accrue;
  2. Deduct money from the inmate's account, usually the commissary funds; and
  3. Bill inmates post-incarceration.

- Other considerations:
  - Methods to track/locate inmates post-incarceration to garnish wages, etc. requires additional staffing/man-hours;
  - Cost for extra staffing and/or hourly pay to recover funds;
  - Priority of institution-related fees to be paid by an inmate (where does this fall in the list of priorities, i.e. child care, court fees, victim restitution fees, etc.);
  - Percentage of indigent inmates that would not be required to pay fee;
  - Question as to collection of fees applies to pre-trial inmates;
  - Understanding the sources where funds would be drawn;
  - Consequence(s) to inmates for non-payment of fees; and
  - Enforcement.

# Appendix J- August 26th Presentation

| Pros | Cons |
|---|---|
| The amount of revenue generated can be significant, although this varies from institution to institution. | Low rate of return on investment when collections costs/system are incorporated into model. |
| Supplies municipalities new revenue streams to defray administration and operations costs. | Extra staffing, man-hours needed to track fees/payments. |
| Helps defray taxpayer cost. | Fees for medical services has shown to create a 'two-tiered' system favoring the 'affluent' inmates. |
| Provides political leadership "opportunities to demonstrate equitable treatment" towards inmates. | Prisoner may opt to do without hygienic items or medical treatment rather than have families deposit funds into their commissary account. This may subsequently contribute to future medical complications. |

# Appendix J- August 26th Presentation

## States that Have Faced Challenges to Statutes Regarding Inmate Fees

- Arizona
- Arkansas
- Florida
- Iowa
- Massachusetts
- Michigan
- Missouri
- Ohio
- Oklahoma
- Pennsylvania
- South Dakota
- Washington

# Appendix J- August 26th Presentation

## Challenges to Inmate Fees Laws

- Of the challenges listed, inmate fees have been found unconstitutional twice.
  1. In 1988, the Supreme Court held that the state of Arkansas could not seize an inmate's federal Social Security benefits and certain pension or retirement benefits because they are exempted from "legal process" by federal law. *Bennett v. Arkansas,* 485 U.S. 395 (1988).

  2. In 1991, the state of Missouri was enjoined by the Supremacy Clause from attaching funds received by an inmate as damages in a civil rights action against a corrections employee. *Hankins v. Finnel*, 759 F. Supp. 569 (1991).

# Appendix K- October 21st Presentation

## Background on *Criminal Justice Debt: A Barrier to Reentry*

- Released on October 4, 2010
- Reviews practices in 15 states with highest prison populations
  - California, Texas, Florida, New York, Georgia, Ohio, Pennsylvania, Michigan, Illinois, Arizona, North Carolina, Louisiana, Virginia, Alabama
- Focused primarily on the proliferation of "user fees," financial obligations imposed not for any traditional criminal justice purpose such as punishment, deterrence, or rehabilitation but rather to fund tight state budgets.

# Appendix K- October 21st Presentation

## Key Findings from *Criminal Justice Debt*

- Fees, while often small in isolation, regularly total hundreds and even thousands of dollars of debt.
- Inability to pay leads to more fees and an endless cycle of debt.
- Although "debtors' prison" is illegal in all states, reincarcerating individuals for failure to pay debt is, in fact, common in some – and in all states new paths back to prison are emerging for those who owe criminal justice debt.
- As states increasingly structure their budgets around fee revenue, they only look at one side of the ledger. No tracking of material costs of collection and administering system. No analysis of hidden cost.
- Criminal justice debt significantly hobbles a person's chances to reenter society successfully after a conviction.
- Overdependence on fee revenue compromises the traditional functions of courts and correctional agencies.

# Appendix K- October 21st Presentation

## Recommendations

- Lawmakers should evaluate the total debt burden of existing fees before adding new fees or increasing fee amounts. (MA Inmate Fee Commission cited as a good model)
- Indigent defendants should be exempt from user fees, and payment plans and other debt collection efforts should be tailored to an individual's ability to pay.
- States should immediately cease arresting and incarcerating individuals for failure to pay criminal justice debt, particularly before a court has made an ability-to-pay determination.
- Public defender fees should be eliminated, to reduce pressures that can lead to conviction of the innocent, over-incarceration, and violations of the Constitution.
- States should eliminate "poverty penalties" that impose additional costs on individuals who are unable to pay criminal justice debt all at once, such as payment plan fees, late fees, collection fees, and interest.

# Appendix K- October 21st Presentation

## Recommendations, continued

- Policymakers should evaluate the costs of popular debt collection methods such as arrests, in-carceration, and driver's license suspensions – including the salary and time spent by employees involved in collection and the effect of these methods on reentry and recidivism.
- Agencies involved in debt collection should extend probation terms or suspend driver's licenses only in those cases where an individual can afford to repay criminal justice debt but refuses to do so.
- Legislatures should eliminate poll taxes that deny individuals the right to vote when they are un-able to pay criminal justice debt.
- Courts should offer community service programs that build job skills for individuals unable to afford criminal justice debt.

# Appendix K- October 21st Presentation

## Application of Fees – All Stages

- Pre-conviction
- -Application fee to obtain public defender
- -Jail fee for pretrial incarceration
- Sentencing
- -Fines, with accompanying surcharges
- -Restitution
- -Fees for court administrative costs
- -Fees for designated funds (e.g. libraries, prison construction, etc.)
- -Public defender reimbursement fees
- -Prosecution reimbursement fees

# Appendix K- October 21st Presentation

## Application of Fees – All Stages, continued

- Incarceration
- -Prison fees
- -Jail fees
- Probation, Parole, or Other Supervision
- -Probation and parole supervision fees
- -Drug testing fees
- -Vehicle interlock device fees (DUIs)
- -Mandatory treatment, therapy, and class fees
- Poverty Penalties
- -Interest
- -Late fees
- -Payment plan fees
- -Collection fees

# Appendix K- October 21st Presentation

## Takeaways for commission

- Center has a clear agenda
- Report provides a template for areas of investigation
- MA Report should provide context of inmate fees in light of other fees
- Report does not capture how much is actually collected by states (benefits)

# Appendix K- October 21st Presentation

## Background on *Sentencing For Dollars-Financial Consequences of a Criminal Conviction*

- Issued in February 2007
- Focus on practices of New York State
- Analysis of Fee Structures
- Findings similar to Criminal Justice Debt-Barrier to Reentry

# Appendix K- October 21st Presentation

## Recommendations

- Consolidate all financial penalties into one fee
- Amend New York law to allow for waiver of certain financial penalties
- Impose a moratorium on all new financial penalties and the increase of existing ones
- Repeal the supervision fees (waivers already exist)
- Prohibit the reference to any judgment that is the result of a financial penalty arising from a criminal conviction in a credit history report

# Appendix K- October 21st Presentation

## Recommendations, continued

- Consider the filing of a re-entry impact statement for any new legislation imposing financial penalties
- Prohibit retaliation for failure to pay financial penalty
- Consolidate all financial penalties into one article in the Penal Law
- Require disclosure to defendant prior to plea
- Provide comprehensive training for defense counsel, judges, and prosecutors about the financial consequences of criminal convictions

# Appendix K- October 21st Presentation

## Key Takeaways

- New York State Department of Correction has a sophisticated system for automatically drawing down fees from inmate funds.  Prioritize DOC fees.
- Fee collection very low for Department of Correction -$2 million to $2.7 million a year, $22 million from 1995-2003)
- Also very low for Parole -$179K from 2000-2001 from a caseload of 50,000 ($30 a month supervision fee), less than 1%.
- What is actual burden versus potential burden?

# Appendix L- Additional Resources

## Publications

*Criminal Justice Debt: A Barrier to Reentry* from the Brennan Center for Justice
Full report - http://brennan.3cdn.net/c610802495d901dac3_76m6vqhpy.pdf

*Collateral Costs: Incarceration's Effect on Economic Mobility* from the Pew Charitable Trusts
Full report - http://www.pewcenteronthestates.org/uploadedFiles/Collateral_Costs.pdf?n=8653

*In for a Penny: The Rise of America's New Debtors' Prisons* from the ACLU
Full report - http://www.aclu.org/files/assets/InForAPenny_web.pdf