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An Act to Reduce the Criminalization of Poverty

By [Will Brownsberger](#), on [January 20th, 2017](#) in: [Collateral Consequences](#).

The criminal justice system often makes it unreasonably difficult for people to recover from mistakes whether small or large. This is especially true for people of limited means — the system often drags people deeper in by exacting unaffordable fees and fines and by creating civil disabilities that prevent people from working. An Act to Reduce the Criminalization of Poverty combines ideas from a number of sources, notably including the Senate Post-Audit Committee, into a single bill designed to address this phenomenon.

Motor vehicle violations constitute a high proportion of the district court case load and the most common offense is operating after suspension of a license. The majority of license suspensions do not derive from underlying driving offenses, like speeding too often or driving drunk. Rather, the majority are imposed for non-payment of monies or for offenses not related to driving. The bill makes no changes as to suspensions pertaining to driving offenses, but to reduce the volume of prosecutions for non-driving-related license suspensions, the bill proposes the following changes:

- Eliminate license suspension as an additional penalty for court defaults (Sections 7, 42)
- Eliminate the general \$100 statutory license reinstatement fee (Section 12)
- Decriminalize operating an uninsured motor vehicle (Sections 13, 14)
- Require the Registrar to develop regulations allowing ability-based payment plans for traffic fines (Section 16)
- Prevent the Department of Revenue from suspending licenses for non-payment of child support if the amount in question is less than \$500 (Section 19)
- Eliminate loss of license as a penalty for tagging (graffiti) or vandalism (Sections 39, 40)

On of the most troubling and destructive features of our criminal justice system is the exaction of fees from people who are indigent. These exactions contribute greatly to alienation of people from criminal justice system officials and from the criminal justice system itself. The bill would:

- Eliminate fees charged for parole supervision (Sections 1 and 20)
- Make court fees and fines waivable under a single common standard in cases where they would constitute a substantial financial hardship for a person or their family or dependents (Sections 8, 9, 10, 11, 15, 23, 25, 26, 43, 44, 45, 60)
- Triple the rate at which fines are worked off by incarceration from \$30/day to \$90/day (Section 21)
- Provide procedural protections to assure that a person's ability to pay is considered before jailing them for non-payment of a fine and prohibiting the commitment of juveniles for non-payment of fines (Section 22)
- Eliminate the \$150 counsel fee that is imposed on persons who are deemed indigent (Section 24)
- Lower monthly fees for supervised probation from \$60 to \$45, making them the same as for administrative probation (Section 45)
- Eliminate monthly probation fees for persons on probation after release from prison or a house of correction (Section 45)
- Eliminate the requirement that finding of hardship supporting a waiver of probation fees be in writing (Section 45)
- Limit the amount of community service time courts may impose upon waiver of a probation fee (Section 45)
- Make payment of financial restitution in a criminal case an automatic civil obligation to be enforced like any other civil obligation rather than enforced through threat of incarceration (Section 46)
- Require that courts notify defendants at sentencing of the risk of commitment for non-payment of fees or fines and also that the fees or fines may be waived in case of inability to pay (Section 59)

Finally, the bill seeks to reduce instances where minor or long-past offenses might prevent a person from obtaining jobs or housing:

- Prevent offenses that never make it to the arraignment stage from becoming part of a persons criminal record (Section 2).
- Exclude juvenile cases from an adult criminal record unless a case was tried in adult court or transferred from juvenile court to an adult court. (Section 3)
- Prevent juvenile cases that are sealed from impacting a persons ability to become a foster parent (Section 4)
- Prevent juvenile cases that are sealed from impacting a persons ability to work in the early education field (Section 5)
- Allow municipal police officers to treat certain misdemeanors as non-criminal (Section 6)
- Seal police department records of drug possession charges in cases of first offense or dismissal (Sections 17, 18) — court records are already sealed; this just fills out the sealing to provide greater privacy
- Raise the felony larceny threshold from \$250 to \$1500 so that smaller larcenies are treated as misdemeanors (Sections 27-38, 41)
- Make clear that once a case has been sealed its existence need not be acknowledged in applications related to housing or licensure, not just in applications related to employment (Sections 47-52)

- Allow sealing of adult records after 3 years of good conduct for a misdemeanor and 7 for a felony, down from 5/10 (Sections 54, 55).
- Allow the sealing of juvenile records after 1 year of good conduct rather than 3 years (Section 56)
- Raise the financial threshold for motor vehicle violations that would interrupt a period of clean time and prevent the sealing of juvenile records from \$50 to \$550 (Section 56)
- Require that juveniles be notified of the possibility that their records could be sealed (Section 56)
- Extend the effect of juvenile and adult sealing orders to police department records (Section 56, 57)
- In a substantial change that will require information system improvements, require that the courts transmit adult and juvenile case dispositions, sealing orders and expungement orders through the state police to the FBI so that FBI records appropriately reflect case outcomes and are sealed (or expunged) according to the orders of Massachusetts courts (Sections 56, 57) — other states already communicate this information to the FBI and their court orders are honored pursuant to standing FBI and interstate agreements.
- Allow complete expungement from all local, state and federal records of cases in of mistaken identity or other serious error or mis carriage of justice (Section 58).

We look forward to working with all the agencies and advocates for people affected by this bill to perfect it and move it forward to the Governor's desk in the coming session.

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