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FINAL REPORT
OF THE COMMITTEE ON THE COLLECTION OF FINES
TO THE JUDICIAL COUNCIL OF MAINE

AUGUST 23, 1985

INTRODUCTION

In May of 1985, the Chief Justice, pursuant to a direction of the Judicial Council, appointed the Committee on the Collection of Fines, for the purpose of studying and making recommendations concerning the growing dilemma facing Maine's judicial system as a result of individuals failing to pay fines imposed in civil violation and traffic infraction proceedings or as part of criminal sentences. A second aspect of the problem is the significant number of individuals who simply fail to appear before a Maine court in response to a lawful summons to answer for a civil violation or traffic infraction.

The Committee approached its mandate from various perspectives. First, it was necessary to identify the scope of the problem both in terms of the number of individuals involved and the amount of revenue being lost to the State through unpaid fines and failure to appear. Next, the Committee

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attempted to ascertain what efforts are now being made to deal with this problem by the courts, the prosecutors and appropriate law enforcement personnel. Of particular concern to the Committee was whether there were practices in existence now which are contributing to the difficulty in collecting fines and/or dealing with those individuals who defy a summons of a law enforcement officer. Throughout the course of its work, however, the Committee was ultimately searching for the answer to two basic questions: Who is responsible and what can be done.

To the dismay of many members, the Committee discovered that the answer to the first question appears to be that no one has ultimate responsibility for the collection of unpaid fines. With respect to the second question, the Committee believes that the problem is solvable to a great extent, provided that all elements of the judicial system (that is, judges, clerks, prosecutors, and administrators) and all branches of state government, renew the commitment to insure that those who have violated the law in this State pay the appropriate penalty.

In the Committee's initial report to the Judicial Council submitted on May 22, 1985, it was noted that the problem of uncollected fines and failure to appear, while significant in terms of the loss of revenue to the State, transcends the issue of money and goes to the very heart of the integrity of our law

enforcement system. Throughout the course of its work, the Committee has been guided by this principle as well as the belief that, with the appropriate commitment of resources, the State can substantially improve its collection techniques, resulting in greater revenues and fuller compliance with the law.

The problem, however, will not be solved unless affirmative action is taken coupled with persistent follow through by all appropriate agencies and branches of state government. Nor is there only one solution to this problem. Rather, the Committee believes that there are a variety of tools which should be made available to the appropriate agencies and personnel to significantly increase the return to the State through unpaid fines. Moreover, from its review of the collection mechanisms available under present law, the Committee has concluded that in the context of the collection of fines, the existing collection procedures are not sufficiently effective or efficient to deal with the problem in the straightforward manner which is necessary if significant results are to be achieved. As will be discussed in greater detail later in this report, the Committee rejects the notion that a fine should be treated as any other civil money judgment. On the contrary, a fine, imposed by a court for a civil violation or traffic infraction, is a penalty for a public wrong, and should be treated as a court order to pay, not as simply another judgment which a private litigant may enforce.

It is for these reasons that the Committee has prepared and is presenting the draft legislation attached to this report. That draft legislation proposes a new approach to the procedure whereby fines are imposed and collected. The Committee's proposal is designed to be a streamlined approach to the collection of fines while at the same time legislatively mandating a renewed commitment by all appropriate agencies and departments of state government to this previously neglected problem. The proposed legislation, which this report will discuss in detail, may appear to represent a dramatic departure from the practices which exist in our District Courts today regarding the imposition and collection of fines. If that is the impression caused by a review of this proposed legislation, it is precisely that impression which the Committee had hoped for. We do not believe that it makes sense to attempt to solve the problem of uncollected fines by utilizing the existing disclosure procedures which are now available to all litigants seeking to enforce a money judgment. Rather, the Committee is convinced that a new attitude and a new procedure is called for in the context of this problem. This is so not only because we believe this procedure will work, but because we believe that this problem deserves special attention by all appropriate components of the law enforcement system of the State.

Whether the proposed legislation submitted by the Committee is the appropriate path to follow is, of course, up to the

Judicial Council and, ultimately, the Legislature of this State. Whichever way the Council and the Legislature choose to address this problem, the Committee would emphasize that the problem simply will not cure itself. Something has to be done and someone has to do it. And that, quite simply, describes the problem with our present collection efforts in this area. Very little is being done by anybody, and there is certainly not a concerted effort among those who are doing something to address the problem. We say this not as a means of criticizing, but simply as a recognition of the fact that the collection of unpaid fines is not receiving priority attention from any single component of the law enforcement system.

Finally, whatever approach the Council and Legislature favor, the members of the Committee wish to indicate that we will continue to be available to assist the Council and/or the Legislature in coming to grips with and resolving the issue at hand.

THE COMMITTEE AND ITS WORK

The Committee on the Collection of Fines, as authorized by the Judicial Council and as appointed by the Chief Justice, is composed of the following individuals: Assistant Attorney General William R. Stokes, Chairman; State Court Administrator Dana R. Baggett; District Court Judge Roland A. Cole; State Controller Sandra Crockett; Attorney Matthew S. Goldfarb; District Attorney Gene Libby; District Attorney Janet T. Mills;

Mr. Robert W. Meskers, Director of Operations, Bureau of Taxation; Bangor Police Chief Francis P. Woodhead; and Attorney Murrough O'Brien, Secretary, Judicial Council. During the course of its work, the Committee, through its Chairman, invited Assistant Attorney General Raymond Ritchie to assist the Committee in its work. Moreover, as the Committee's discussions progressed, the Chairman invited Mr. George Storer of the Division of Motor Vehicles and a representative of the Maine State Police to participate in the Committee's work. The Department of Public Safety designated Trooper Wesley Hussey to work with the Committee. In addition, Michael Provencher, fiscal officer within the Administrative Office of the Courts, Ben Crites, the court's computer specialist, and Debra E. Olken, Director of Policy and Analysis, also participated in the Committee's work.

The Committee wishes to express its appreciation to Mr. Ritchie, Mr. Storer, Trooper Hussey, Mr. Provencher, Mr. Crites, and Ms. Olken for their assistance during the Committee's work and for the benefit of their thoughts on the issue of the collection of unpaid fines. The diverse makeup of the Committee has made it possible for it to draw upon the wide-ranging expertise and experience of many people throughout state government and outside of it. Moreover, because of the diversity of talent on the Committee, we believe we have avoided the danger of examining this rather complex problem from only a single perspective.

The Committee began its work shortly after its creation and held its first meeting in Augusta on May 15, 1985. A report of that initial meeting was prepared and presented to the Judicial Council at its meeting on May 22, 1985.

The Committee has met three additional times, on June 18, 1985, July 16, 1985 and August 19, 1985, in Portland. The discussions of the Committee have been intense and lengthy and reflect the complexity of the problem confronting the Committee, the Judicial Council, and ultimately, the Legislature. However, by the second meeting, the Committee began to develop a focus as to a possible approach to the creation of a new procedure for the collection of fines which remain unpaid following imposition. Gradually, the Committee began to arrive at a concensus that it was necessary to develop a collection process specifically designed for the collection of fines, to be separate and distinct from the disclosure process currently available to civil litigants seeking to enforce a money judgment. That focus continued at the Committee's third and final meetings and forms the basis of the proposed legislation which is attached to this report.

During the course of the Committee's work, the views of all of the District Court Judges and the District Attorneys within the State were solicited. Several Judges and District Attorneys responded and offered helpful views on the issues being studied by the Committee. Several of the suggestions are

embodied in the proposed legislation, and others are contained in the final section of this report dealing with additional recommendations which do not need legislative action.

One of the major points discussed by the Committee in its initial report to the Judicial Council was the lack of computer capability in the courts and the relationship between computer capability and the effective and efficient collection and enforcement of fines. Additionally, in its initial report, the Committee pointed out that the state income tax setoff procedure, which is available to all agencies and departments of state government, has not been utilized for the collection of unpaid fines, and that this avenue may be one of several tools available in the collection process. On both of these scores, progress has been made even during the life of the Committee. The Judicial Department has commenced its entry into the computer age, and the Committee anticipates that with full computerization the ultimate goal, the ability of the State to collect unpaid fines will increase dramatically. To highlight the importance of computerization, the Committee need only point out that in order to obtain accurate and reliable statistics as to the amount and number of unpaid fines and failure to appear, it was necessary for the State Court Administrator to instruct all Clerks of Courts to manually pull case files. While this was done, and while we believe we have reliable information upon which to pursue the collection of

unpaid fines and the enforcement of failure to appear cases, the expenditure of time and manpower was significant and should be greatly reduced over time with the utilization of computers. Moreover, the advent of computers within the Judicial Department, in the Committee's view, makes it even more logical that the streamlined collection approach outlined in the proposed legislation be pursued at this time.

On the issue of the State of Maine income tax setoff program, the Committee drafted and submitted to the Appropriations Committee of the 112th Legislature an amendment to 36 M.R.S.A. § 5276-A, which authorizes the court, in appropriate cases, to require a person to disclose his or her Social Security number and other financial information under oath in order to effectuate the income tax setoff procedure. This amendment was enacted by the Legislature as part of the Part II appropriations bill, which will take effect on September 19, 1985. Already the State Court Administrator and the Superior Court Criminal Forms Committee and the District Court Criminal Forms Committee have been informed of this amendment and are working on appropriate changes to existing forms and the creation of new forms to implement this law and to utilize the income tax setoff procedure for unpaid fines and the appointment of attorneys in indigent cases as promptly as possible after the law takes effect on September 19.

The Committee, through its Chairman, has also attempted to gather input from other states as to the procedures they employ in dealing with the problem of unpaid fines and failure to appear. It may come as no surprise that the problem Maine is facing is shared in the remaining 49 states. It was this very problem, in fact, that led to the creation of the Non-Resident Violators Compact of 1977, which will be discussed in greater detail later in this report. The bottom line, however, is that regardless of what procedure is in place in a particular state, it will not be effective unless and until there are vigorous and persistent follow-up efforts at collection. That is not being done at the present time in the State of Maine, and until it is, we cannot expect to see a significant improvement in this problem.

Finally, the Administrative Office of the Courts is presently pursuing discussions with a private collection agency to deal with the current backlog of unpaid fines. It is hoped that should a new statutory procedure be established for the collection of unpaid fines, that that procedure can be used in all future cases so that the process does not start off with a backlog of many thousands of cases. Consequently, the Committee's recommendation, as more fully discussed below, is that the existing backlog of cases be referred to a private collection agency for collection efforts while utilizing the provisions of the proposed legislation, if enacted, to prevent

such a backlog from developing again. Nevertheless, the procedures and the powers authorized by the proposed legislation would be applicable to pre-existing judgments and could be utilized to the extent practicable. Moreover, several District Attorneys have expressed an interest in performing collection services within their prosecutorial districts for a percentage of the amount collected. Such an arrangement would most likely require enabling legislation, and the proposal does contain a provision authorizing contracts between the State Fines Administrator and a District Attorney to perform collection work for a fee. It is anticipated that such contracts would be utilized to deal with the existing backlog of cases.

THE PROBLEM

The initial problem confronting the Committee was a to determine the extent of the problem facing the State in terms of the amount and number of uncollected and unpaid fines and the number of individuals who have failed to appear. Obtaining a reasonably exact figure proved to be somewhat difficult in that the court system itself does not have computer capability, and to a large extent the Administrative Office of the Courts needed to rely upon other agencies of state government for this type of information. Assistance was given by the Division of Motor Vehicles which did provide a breakdown of the number of unpaid fines both in and out of state and the number of failure

to appears both in and out of state and in both the Superior and District Courts for traffic infractions from the period 1976 through 1984. This information was previously presented to the Judicial Council at its May meeting, and indicated that 11,546 individuals have failed to pay outstanding fines and that 47,224 individuals have failed to appear during that period. Following up on that information, the Division of Motor Vehicles was able to produce the names and addresses of those individuals who have not paid a fine and whose licenses, therefore, have been suspended. The State Court Administrator was then able to direct the clerks of each court to manually pull the files and to determine the amount of the fine owed.

The fiscal officer of the Administrative Office of the Courts has compiled a breakdown by court for the period from 1980 through June 30, 1985 of the amount of unpaid fines which remain outstanding. That breakdown is attached to this report for convenient reference by the Council. It demonstrates that a total of \$1,566,595 in fines remain unpaid. Of that amount, approximately \$1.2 million consists of unpaid fines which were imposed in the District Courts. It is important to recognize that these figures do not include those individuals who have failed to appear, since no judgment has been entered against those individuals, and no fine has been imposed. Based upon statistics gathered earlier, we believe that there are approximately 47,000 individuals, for the period from 1976 through 1984 who have failed to appear.

These statistics make one thing clear. The problem is serious enough to warrant prompt and significant action by the State if for no other reason than there is a substantial source of revenue which is not being collected for the benefit of the General Fund. The statistics also indicate an unacceptably high level of non-payment of fines and non-compliance with the requirements of Maine's legal process. The statistics also confirm what everyone believed, that is, that there is much room for improvement in the way the State enforces the payment of fines by those individuals who have been determined to have violated the law. The Committee also believes that the figures described above justify the creation of a new system for the collection of fines, one that may involve an expenditure of funds, but one which will clearly bring in more than it spends.

We wish we could inform the Council that the problem is not severe. We wish we could inform the Council that enough is being done to deal with the problem. We wish that a simple and no-cost solution to this problem were readily available. Wishful thinking, however, is not what the Judicial Council asked for when it established the Committee on the Collection of Fines, and it is not what the Committee can honestly offer in terms of recommendations for potential resolution of the problem. The recommendations which the Committee proposes, and which we believe to be workable, comprise the remainder of this report.

RECOMMENDATIONS, AND LEGISLATIVE
SOLUTION FOR THE FUTURE.

The proposed draft legislation which is attached to this report, and which will be analyzed and discussed below, is designed to deal with the long-term problem in the collection of unpaid fines. It is not specifically designed to deal with the current backlog. Rather, the Committee believes that if any new statutory mechanism is to be used to deal with the collection of unpaid fines, utilization of the procedure should begin with a clean slate and not be burdened with a backlog in the thousands. That is not to say, however, that the Committee believes that the current backlog should simply be written off as uncollectible. On the contrary, the Committee believes that collection efforts should be pursued with respect to the existing caseload of unpaid fines and failure to appears. But in order to give any new procedure a reasonable chance of proving itself, the Committee recommends that the Administrative Office of the Courts, through its fiscal officers, and in cooperation with the Department of Finance and Administration, continue its discussions with private collection agencies to address these cases,^{1/} and that

^{1/} As noted earlier, some District Attorneys may be interested in performing collection services within their jurisdictions for a percentage fee. The proposed legislation contains language permitting the District Attorneys to enter into contracts to provide such services, and the Committee would recommend utilization of the District Attorneys in appropriate situations.

default judgments on all failure to appear cases be entered so that collection efforts with respect to these cases can begin. The Committee also recommends that after reasonable collection efforts have been exhausted, a well-publicized and vigorous prosecution of failure to appear cases be commenced.

Moreover, the proposed legislation is designed to deal with the collection of fines imposed on those defendants who are before the court and have been adjudicated to have committed a traffic infraction or a civil violation or criminal offense or those who have failed to appear and does not deal with the mechanisms that may be available to those individuals who do not wish to contest the charge and wish to simply make payment of the fine through some state administrative agency. The Committee notes that the 112th Legislature, through the Legislative Council, has approved a study order for the establishment of a commission to evaluate the feasibility of a procedure to allow direct payment of uncontested traffic fines to the Office of the Secretary of State and to avoid the court system altogether. The Committee understands that the commission, whose legislative membership has recently been appointed, will soon begin its study, and the Chairman of the Committee has been in contact with Secretary of State Rodney Quinn to discuss the role of the commission and to express the Committee's interest in following the commission's work and in providing the assistance of the Committee if requested. It is

important that both bodies studying this issue explore every meaningful way of increasing the payment of fines for traffic infractions, and thereby insure fuller compliance with the requirements of the law.

The proposed legislation that follows is premised upon the basic assumption that there must be a renewed effort on the part of the State to insist upon complying with the law through the payment of fines and seeks to provide, in a more efficient fashion, the availability of those legal tools on which the State's future collection efforts will be based. The Committee is convinced that a substantial majority of citizens will pay fines if there is sufficient awareness of the potential consequences, and that those consequences may be brought to bear through the efforts of a state officer or employee. If this report and the Committee's discussions make only one thing clear, it should be that no significant progress will be seen with respect to the problem under consideration until and unless greater attention is paid to the problem through the use of actual collection efforts by some person. The location of that person within the structure of state government is less important than that the position of responsibility, in fact, exist.

(1) Payment "Up Front."

One concern extensively discussed by the Committee was the perception that judges are too often not emphasizing to

defendants the obligation to make payment of a fine immediately and in full at the time of its imposition. This practice may possibly be explained by the fact that court rules treat a judgment in a civil violation or traffic infraction proceeding as a civil money judgment, to be collected as in any other civil action. Consequently, allowing the defendant a continuance within which to pay the fine or allowing the defendant to pay on an installment method appears to be quite common. The Committee believes that while a civil violation or traffic infraction is non-criminal, it nevertheless remains an unlawful act for which a penalty is imposed. The defendant owes the fine, not because he owes some duty to a private litigant, but because he has committed a public wrong. The collection of such a forfeiture or fine should receive special attention and respect from the defendant. Therefore, the proposed legislation embodies a provision stating the general rule that whenever a court has imposed a fine, the imposition of such a fine shall constitute "an order to pay," usually immediately and in full. This message should be communicated to the defendant and/or his attorney and throughout the prosecutorial and defense bar, so that a defendant should be on notice that when appearing in response to a charge of a traffic infraction or civil violation and if adjudicated and fined, satisfaction of the fine is expected at that time.

The Committee believes that if special emphasis is placed upon the obligation of the defendant to pay in full and immediately, fewer defendants will leave the courtroom with unpaid fines.

(2) Financial Disclosure Procedure.

If the defendant claims an inability to pay the fine, the proposed legislation would provide that there be an immediate disclosure hearing at that time through the use of a financial disclosure form which the defendant would be required to complete under oath and which would request information concerning a wide variety of information regarding the defendant's assets and liabilities. It would be anticipated that the financial disclosure form would, in essence, take the place of the civil disclosure procedure, whereby the creditor must subpoena the debtor at least ten days in advance to a hearing at which the debtor is subject to examination concerning his assets and liabilities. In the context of fines, which should be paid immediately, the cumbersome civil disclosure procedure simply does not make sense. It should be replaced by a requirement that a defendant claiming inability to pay the fine, either immediately or at all, should demonstrate and support that claim under oath at that time.

This procedure would obviously require a change in the way most District Courts operate at the present time, and some may argue that this procedure itself would be too cumbersome. The

Committee would anticipate that a District Court Judge using this procedure would advise the defendant that he will have to prepare such a financial disclosure form and swear to it before the Clerk of Courts, that the regular business of the court will continue, and that review of the financial disclosure statement will take place at the court's convenience following completion of its docket for the day. The view of the Committee is that it is likely that when faced with the prospect of having to complete a somewhat exhaustive disclosure form immediately, many defendants will be able to produce payment of the fine promptly. Moreover, in long term this procedure may save the court time since once that process is complete, collection efforts will be turned over to an administrative official.

If the court determines, based upon the financial disclosure statement, that the defendant does have the financial ability to pay the fine, but that immediate payment would cause a severe and undue hardship, the court may authorize installment payments for the fine, and for that purpose, the proposed legislation provides that, without a separate disclosure hearing, the court shall determine the amount of any immediate partial payment, issue an order directing the defendant to make specified installment payments to the State Fines Administrator, establish a fixed date on which the defendant shall make the final installment of any

fine, and, most significantly, refer the matter for further collection efforts to the State Fines Administrator. It is anticipated that further collection efforts will not be the responsibility of the court, except in the context of contempt proceedings. Rather, the proposed legislation envisions the creation of an official whose responsibility it will be to monitor, supervise and pursue collection of all fines which are payable on an installment basis pursuant to an order of the court.

The role of the State Fines Administrator will be discussed in greater detail immediately below. For present purposes, however, it is important to emphasize that the Committee has taken the view that the Judicial Department has the responsibility to pursue more vigorous efforts in attempting to make defendants pay fines immediately and in full before leaving the courtroom. In those situations where the court determines that an installment payment order is appropriate, the court system simply does not provide a very efficient and effective means of collection. Collection is essentially an administrative and executive task. The proposed legislation recognizes that the courts should not be a collection agency but should be a tribunal for the adjudication of disputes. The goal, of course, is to increase the number of defendants who pay immediately and in full. With respect to those individuals who would legitimately face a severe and undue hardship by a

requirement of immediate payment of the fine, the court may authorize an installment payment method, and it is the function of the State Fines Administrator to insure that the court's order is fulfilled.

(3) State Fines Administrator

The proposed legislation provides that a State Fines Administrator be established within either the Department of Finance and Administration or the Office of the Secretary of State. The State Fines Administrator's job would be to pursue collection efforts for fines throughout the State, and for that purpose would receive referrals from the courts which have imposed fines which have not been paid to the court in full at the time of imposition. Either the Department of Finance and Administration or the Office of the Secretary of State seem to be the most logical State departments within which to place the State Fines Administrator. The Department of Finance and Administration has recognized expertise in the area of collections, and the Office of the Secretary of State, of course, brings a wealth of experience and expertise in dealing with traffic infractions and license suspensions, and the placement of the State Fines Administrator's job in either of those two departments would appear to be a logical extension of the responsibilities those departments already fulfill. Nevertheless, the Committee chose not to make any specific recommendations as to which department should assume this

responsibility, believing that that is more appropriately decided by the Legislature upon consultation with the Commissioner of the Finance and Administration and the Secretary of State.

The proposed legislation details the actions which the State Fines Administrator can take to enforce collection, including referral back to the court in criminal cases, notification to the Secretary of State for suspension of the defendant's license to operate motor vehicles and/or motor vehicle registrations, issuing notice for the defendant's appearance in court to show cause why he should not be held in civil contempt, issuing a notice of levy upon employers, other payors of earnings, banks, etc. to withhold and deliver to the State Fines Administrator any installments on any installment payment order, all other civil collection tools and remedies available to civil litigants pursuant to other Maine statutory law, reporting to a national credit reporting agency, setoff against income tax returns from the State, referral to a private collection agency, and the assessment of costs and interest charges. The most significant power granted to the State Fines Administrator pursuant to the proposed legislation is the authority to issue a notice of levy upon banks, employers, financial institutions and other payors of earnings or holders of funds for the defendant to withhold such funds and pay them directly to the State Fines Administrator.

This procedure was believed to be the most effective administrative technique to insure collection of unpaid fines. The alternative was to leave this power in the court's hands and thereby burden the court with the preparation of numerous orders for garnishment, withholding, and payment to the State Fines Administrator. The goal of the Committee was to reduce the role of the court in financial collection procedures and to transfer those responsibilities to an administrative authority whose actions would be reviewable pursuant to the Maine Administrative Procedure Act.

The provision regarding the power of the State Fines Administrator to issue a notice of levy provides that the person or entity receiving such a notice of levy must honor it at the risk of assuming the liability of the defendant. This procedure is similar to the one utilized by the Internal Revenue Service concerning the collection of federal income taxes and is also under consideration by the Maine Bureau of Taxation. This procedure, the Committee believes, is a critical portion of the attempt to streamline the collection process for unpaid fines since it relieves the courts of the responsibility to act as a collection agency and clearly places the responsibility for collection in the hands of an administrative official who will be equipped with the necessary legal tools to accomplish his job.

The proposed legislation does contain a provision permitting an appeal by a defendant or a person or entity who has been served with a notice of levy by filing a petition for review in the Superior Court. The proposed legislation specifically limits the issues that may be considered in such a petition for review to whether the notice of levy was issued pursuant to the procedures of the Act, or whether the fine has been paid in full. The review procedure is not designed to allow the defendant to relitigate the underlying judgment. Moreover, the filing of a petition for review of a notice of levy does not stay the obligation to make payment pursuant to the notice, but there is a provision authorizing a refund in a case where the court determines that the notice was wrongfully issued.

(4) Contempt.

The proposed legislation contemplates, and therefore, authorizes the court to hold the defendant in civil contempt and to punish him by incarceration, where the financially able defendant fails or refuses to pay the fine. The proposed legislation also provides that where a defendant has been determined, due to changed circumstances, not to be financially able to pay the fine, the court is authorized to order the defendant to provide public service work in lieu of payment of the fine. In order to avoid a situation developing whereby the State Fines Administrator will constantly find himself

traveling to and from court, the proposed legislation provides that a State Fines Administrator's affidavit that the defendant has failed to pay shall be received by the court as prima facie evidence that the defendant has, in fact, failed to pay.

(5) Public Service Work in Lieu of Fine.

A major and perhaps controversial portion of the proposed legislation is a provision authorizing the court, where a defendant does not have the financial ability to pay the fine, to order the defendant to perform specified public service work for the benefit of a governmental entity, political subdivision, or charitable institution, under supervision. The statute specifically provides that such a person shall not be deemed an employee for any purpose and shall not be subject to the Workers Compensation Act, and further provides an immunity to the governmental entity, political subdivision or charitable institution except to the extent that the State has obtained insurance coverage. This portion of the legislation is based upon L.D. 1926 of 1984, which was rejected by the 111th Legislature. The Committee believes that this concept is worthy of reconsideration as part of an attempt to provide a comprehensive procedure for the collection of civil and criminal fines.

Throughout its work, the Committee was continuously reminded of the fact that there are individuals who simply do not have the financial ability to pay a fine, and therefore,

due to financial inability, escape penalty for a violation of the law. Several Committee members voiced frustration at the fact that the State, through its judicial system, was powerless; a situation which inherently breeds disrespect. A person adjudicated to have violated the law should be required to pay a penalty, and the availability of public service work as an alternative deserves a fresh look and a determination as to whether its time has finally come. The Committee was cognizant of the fact that during the last legislative consideration of this issue, concerns were raised about the potential liability of those governmental entities, or other institutions which accepted a person to perform public service work. The proposed legislation, while recognizing that there is the potential for an injury to go unredressed, draws the line at immunity from liability and damages, but provides that the State may obtain insurance, and, to the extent of insurance, the immunity is waived. Once again, the State Fines Administrator would play a role in the public service work order since it would be that office which would monitor whether the specified work has been performed and to report back to the court.

(6) Default Judgments.

Another aspect of the proposed legislation, which is based upon the views of nearly all of the Committee members as well as several District Court Judges who responded to the

Committee's solicitation of advice, was the importance of issuing default judgments on those defendants who have simply failed to appear. Once a default judgment is entered, as it should, a fine can be imposed pursuant to an administrative schedule, and collection efforts could immediately begin. License suspension and/or motor vehicle registration suspension would be imposed, as they are now pursuant to 29 M.R.S.A. § 2301-A.

(7) Out-of-State Violators.

Perhaps the most perplexing and frustrating aspect of the Committee's work has been how to deal with those non-resident motorists who fail to appear in response to a summons or order namely, those 47,000 individuals who, during the last 8 years, have simply ignored the judicial system in the State of Maine. Even more frustrating is the recognition that an effective remedy already exists to deal with this problem if it would be utilized in a uniform fashion and on a national basis. Although 35 states have become members of the Non-Resident Violator Compact of 1977, a couple of our New England neighbors are not. Most particularly the Commonwealth of Massachusetts is not a signatory to the Compact and therefore does not honor the State of Maine's license suspension of a Massachusetts motorist who has failed to appear.

The Committee has proposed what it considers to be a firm but necessary response to this problem. Briefly described, the

proposed legislation would require that whenever a non-resident motorist has been issued a citation to answer for a traffic infraction in this state and the motorist is from a home state which has not become a signatory to the Non-Resident Violator Compact of 1977, the motorist shall be required to surrender his motor vehicle operator's license to the law enforcement officer as collateral for his appearance on the day specified in the citation. The officer will be required to maintain possession of all licenses so surrendered and will give to the motorist a pre-printed notice which will advise him that his license has been surrendered to insure his appearance, that surrender of the license is required because his home state has not become a member of the Non-Resident Violator Compact of 1977, that he may regain possession of his license by posting a cash security deposit, and that surrender of his license does not constitute a suspension of his right to operate a motor vehicle.

The proposed legislation then provides that the non-resident motorist may regain possession of his license by posting a cash security deposit with the clerk of court. For this purpose the officer will be required to make arrangements to file all licenses so surrendered, together with the traffic citation, with the clerk of the court of appropriate jurisdiction by the next court day so that the motorist can regain possession of his license by posting the require cash

security deposit which will be equal to the fine for the infraction as determined by an administrative list of fines prepared by the Chief Judge of the District Court. It would be anticipated that each law enforcement officer would have in his possession a current list of those states which have become members of the Non-Resident Violator Compact of 1977. In the event that a defendant who has posted a cash security deposit has failed to appear, as required, the court shall enter a default judgment, impose a fine, and declare a forfeiture of the cash deposit which will then be applied to payment of the fine.

The Committee believes that this is a reasonable approach to deal with this situation. Indeed, an examination of the Non-Resident Violator Compact of 1977 reveals that the very reason why it was proposed was to deal with the situation whereby out-of-state motorists were essentially free to disregard a traffic citation in another state. Where a home state has chosen not to join the Non-Resident Violator Compact of 1977, the Committee believes it is reasonable for the State of Maine to take legitimate and rational steps to assure that those persons who have been ordered to appear in the State of Maine for allegedly violating its laws, provide reasonable assurance that they will in fact appear. While there might be some argument that this constitutes unequal treatment to certain motorists, the Committee believes that such unequal

treatment is rationally related to the State's legitimate interest in assuring compliance with its laws and its legal process. Moreover, this mechanism will only be used with respect to those motorists whose states have failed to become a signatory to the Non-Resident Violator Compact of 1977, and we believe that it is narrowly drawn so as to reach those non-resident motorists whom the state has a legitimate right to believe will leaving its jurisdiction and not returning as required.

We also believe that this procedure will be workable since it does not involve any impoundment of a vehicle and will not result in removing a law enforcement officer from his patrol duties. The law enforcement officer will have to take some type of reasonable steps to file the licenses and the citations with the clerk as soon as possible, and ideally by the next court day so that the non-resident motorist can regain possession of his license by posting the cash security deposit. The Committee recognizes that this procedure may not be entirely foolproof, but it does impose an obligation on those non-resident motorists most likely not to appear, to either post a security cash deposit or suffer the physical loss of his license.

The Non-Resident Violator Compact of 1977 is clearly the most effective means of dealing with out-of-state violators, and the ideal situation would be for all 50 states to honor its

provisions. During the course of the Committee's work, a representative of the Division of Motor Vehicles participated in the Committee's discussions and indicated that there may be grounds for hope that Massachusetts will join the Compact, and the Committee believes that if this does in fact happen, it will add an important piece of leverage to the State's collection efforts. In the meantime, however, the proposed legislation seeks to provide the State with a mechanism to insure the appearance of those non-resident motorists who come from states who have chosen not to join this important cooperative interstate compact.

The proposed legislation also provides additional recourse to the State to reach non-resident violators who fail to appear. First, the proposed legislation provides for the entry of default judgments upon non-appearance, license suspension in the State of Maine, and referral of the matter to the District Attorney for prosecution of the Class E crime of failure to appear. In addition, any extradition costs associated with the return of a person from another state shall be assessed against the defendant and reimbursed to the Extradition Account in the particular prosecutorial district. Once again, the Committee recognizes that it is simply not feasible to extradite literally thousands of individuals from out of state for failure to appear charges. Nevertheless, it is important that the message be sent and heard that extradition, in selected

cases, may be pursued against individual defendants from out of state.

(8) Criminal Failure to Appear.

Another recurring suggestion from both within the Committee and without was the increased use of criminal failure to appear charges to deal with those individuals who simply ignore Maine's law enforcement system. While the Committee recognizes that these may not be the highest priority cases for a District Attorney's office or the courts, the Legislature, in the recent past, has expressed its views concerning those individuals who have failed to appear in court as required in criminal cases.

See 15 M.R.S.A. § 942(4). The Legislature has also made it clear that the failure to appear in response to a lawful summons for a civil violation is a criminal offense.

17-A M.R.S.A. § 17(4). This remedy to the integrity of the process is available now and should be put to greater use, as the proposed legislation recognizes. A concern was raised that failure to appear for a traffic infraction is not a Class E crime since 17-A M.R.S.A. § 17(4) refers only to civil violations. 29 M.R.S.A. § 1(17-C), however, defines a traffic infraction as a civil violation, and, therefore, it would appear that this concern is unfounded. If there is a legitimate concern, it should be corrected immediately by amendatory language.

(9) Credit Card Payments.

The proposed legislation also authorizes the Judicial Department to implement a procedure to accept major credit cards for payment of court-imposed fines. At the present time, credit cards are not accepted as payment and the only forms of payment which the courts will accept are in-state checks, cash, or money orders and registered checks. There does not appear to be any sound reason why credit cards cannot be utilized for payment of fines either at the court level or to the State Fines Administrator. Any increased costs in accepting a credit card should be passed along to the defendant, since acceptance of the credit cards is intended to be a convenience to him.

(10) Miscellaneous.

There are additional provisions of the proposed legislation which merit brief discussion here. A provision dealing with an appeal of a civil violation or traffic infraction case is also contained in the proposed legislation. It is modeled after Rule 38(b), Maine Rules of Criminal Procedure.

There is also a provision providing that the exemptions from attachment and execution which are generally available to debtors pursuant to Title 14 are not applicable to the collection of fines covered by this Act. This provision reflects the special nature of fines imposed by a court.

The proposed legislation contains a fairly extensive recitation of legislative findings and purposes. This

provision was felt necessary so that there would be a clear articulation of legislative intent and commitment to the resolution of the issue under consideration and to galvanize the effort on the part of all branches of government, as appropriate, to exercise its best efforts to confront the problem.

Finally, the proposed legislation provides that the Attorney General or his designee shall provide legal advice and representation to the State Fines Administrator and that the District Attorneys, upon request, shall appear on behalf of the State Fines Administrator in any court proceedings necessary to carry out this Act. Notwithstanding that, and notwithstanding the provisions of law governing the unauthorized practice of law, the State Fines Administrator would be authorized to appear in court to represent the State in connection with collection efforts pursuant to the proposed legislation. The last provision of the proposed legislation authorizes the Chief Justice of the Superior Court and the Chief Judge of the District Court to establish uniform procedures governing scheduling and disposition of cases for the collection of fines arising under this Act. The purpose of this provision is simply to make it clear that it would defeat the whole purpose of this proposed legislation if the State Fines Administrator eventually finds himself spending an inordinate amount of time in court. The very purpose of this proposed legislation is to

remove the collection procedure from the courts and to put it into the hands of an administrative official, skilled in collection practices.

OTHER CONSIDERATIONS AND RECOMMENDATIONS.

As noted earlier, the proposed legislation is primarily designed to deal with the long-term problem of collecting unpaid fines and insuring that individuals appear when required. With respect to the current backlog of cases, consisting of approximately 47,000 failure to appear cases and \$1.5 million worth of unpaid fines, the Committee recommends that the Administrative Office of the Courts, in consultation with the appropriate executive agencies, continue with discussions with private collection agencies to exert collection efforts on non-payers. Contact should also be made with those District Attorneys who may be interested in having their offices perform this service in anticipation of the passage of authorizing legislation. Individual cases should be identified involving failure to appear and default judgments should be entered and fines imposed on all failure to appear cases within the last several years so that these matters could be immediately turned over for the commencement of collection efforts. It might also be appropriate, and worthwhile, to coordinate with any private collection agency or District Attorney a special type of mailing pointing out to the defendants the amount of the fine, the fact that an

administrative charge will be levied after entry of judgment, the assessment of interest, the suspension of license, the criminal penalty for failure to appear, and the criminal penalty for operating after suspension in the State of Maine. The point, of course, is that some communication be made with these people and that a demand for payment be made.

Additionally, the Legislature has specifically provided that failure to appear in a civil violation proceeding is a Class E offense. The Committee believes that it is time to utilize this remedy at least in some cases so that a clear signal is sent that the State of Maine will no longer tolerate defiance of its legal process.

Several District Court Judges and District Attorneys expressed the view that the penalties imposed by the courts for operating after suspension are inappropriately lenient and have called for the imposition of stricter penalties for operating after suspension. The Committee endorses this suggestion and expresses the view that it considers the offense of operating after suspension a serious breach of the law, since it reflects an individual who has demonstrated a pattern of defiance toward the courts and the law.

Finally, the Committee is hopeful that the preliminary report that Massachusetts will be joining the interstate reciprocal compact proves true. The most effective use of interstate cooperative agreements is to increase the

cooperation. Thus, the Committee urges the appropriate officials within all branches of State Government to encourage their counterparts in non-signatory states to give serious consideration to joining Maine and the other signatories in a compact which benefits all concerned.

CONCLUSION

The Committee believes that the problem of unpaid fines and failure to appear can be dealt with effectively only if it is dealt with persistently. The flaw in the system today is that there is no system for the collection of unpaid fines. As Justice Roberts remarked to the Judicial Council at its March meeting, the problem is one "no one wants to concern themselves with." The Chief Justice phrased it somewhat differently when he urged the Committee to find out who should be "carrying the ball" and how he should be carrying it. The ball, of course, touches several players within our system, and it is difficult and impractical to place the whole responsibility on one component of the system. The Committee believes that the courts have a responsibility to more vigorously pursue the immediate collection of fines at the time they are imposed. The Committee further believes that it is not cost effective or feasible for the courts to act as a collection agency. That function is essentially administrative and executive in nature and therefore belongs in the hands of an administrative agency which can bring to bear a persistent effort on the problem.

The District Attorneys have their role to play as well, since they bring to bear the force of the criminal law against those defiant individuals who choose to ignore Maine's judicial system. There is the perception, at least by some, that no one is going to come after them for payment of a fine or for appearance. That perception must be eliminated if there is to be a substantial reduction in the number of people who are not fulfilling their obligations to the State.

We hope that the Council will find the Committee's proposed procedure a useful source of discussion. If vigorously and persistently utilized, we believe that it may prove helpful in increasing revenues to the State and improving compliance with the law.

Finally, there is no free lunch. The fact of the matter is that unless an effort is made, nothing will get done. Efforts cost money because they take the form of personnel. To deal with this problem straight on, it will be necessary to fund the staff to carry out the responsibilities of the State Fines Administrator. The Committee believes that over time, the efforts of an official like the State Fines Administrator, or someone performing the functions of that office, would return the investment many-fold. Given the interest in this subject by all levels of State Government, now is the time to make the investment.

The members of the Committee wish to express their appreciation to the Chief Justice and the Judicial Council for the honor of having served on the Committee, and we hope that our efforts will assist the Council in dealing with a particularly frustrating and perplexing problem.

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Respectfully submitted,

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