

Senate Judiciary Committee

Jennifer Horgan 271-3092

SB 200-FN, relative to incarceration for nonpayment of an assessment or nonperformance of community service.

Hearing Date: February 7, 2017

Time Opened: 10:06 a.m.

Time Closed: 10:28 a.m.

Members of the Committee Present: Senators Carson, Lasky, French, Gannon and Hennessey

Members of the Committee Absent : None

Bill Analysis: This bill requires appointment of counsel for an indigent defendant in cases involving nonpayment of an assessment or nonperformance of community service.

Sponsors :

Sen. Feltes
Rep. Rouillard

Sen. Bradley
Rep. Berch

Sen. Carson
Rep. W. Pearson

Who supports the bill: Senator Feltes; Senator Bradley; Senator Carson; Sarah Mattson Dustin (NH Legal Assistance); Robin Melone (NH ACDL); John MacIntosh (NH Bar Association); Sarah Blodgett (Judicial Council); Devon Chaffee (American Civil Liberties Union) Albert "Buzz" Scherr

Who opposes the bill: No one

Summary of testimony presented in support :

Senator Feltes

- This deals with the debtors' prison problem
- It is unconstitutional to jail someone for the inability to pay a fine.
- The American Civil Liberties Union, along with others did a study and confirmed that circuit court judges were, in some cases, putting people in jail for their inability to pay.
- The NH Supreme Court has an Advisory Committee who brought a series of recommendations for the circuit court before the NH Supreme Court, which included this concept.
- The NH Supreme Court approved some of the rules and determined that this particular matter should go before the legislature.
- Lines 4-11 and 22-24 are the appointment of council provisions. In a final hearing if they cannot afford council it will be appointed to them for that hearing.
- Lines 12-21 provides a funneling provision. This takes proactive steps to ask the necessary questions, provide defendants information about their rights and the final hearing, and give them a financial affidavit to determine their ability to pay. This will help to deal with before the final hearing and ensures the defendant is aware of their constitutional rights.
- Lines 25-28 grants relief to the defendant from paying back the cost of their defense. Many cases when an individual gets a public defender they have to pay back some

of the costs, this would address that.

- This is so important to deal with this problem.
- The fiscal note says that this will result in more incarcerations but, it will actually result in less individuals being incarcerated.
- The argument can be made that individuals may choose to spend more time in prison in order to pay off a debt at an amount per day rate, but that would be uncommon.
- Senator French asked why they added in 'non-performance of community service'.
 - There may be instances where an individual cannot complete their community service due to a disability or physical impairment. The court system is complicated and having council there to make those arguments in these cases is important.
- Senator Carson asked if this is a pilot program or something that would simply be enacted.
 - It would just be enacted. The Advisory Committee has recommended this as a pilot to the Supreme Court in order to inform the Legislature, who then could enact it completely, but the Supreme Court decided to just put it to the Legislature.

Sarah Blodgett (Judicial Council)

- The Judicial Council includes members from all three branches of government and the public.
- It is rare for the Council to take a formal position on a bill, but they unanimously decided to support this.
- There have been cases where an individual did not have the ability to pay and they were being incarcerated as a result.
- There is now an understanding that even a short period of incarceration can have a huge impact on families, jobs, housing, counseling, etc.
- This is important in order to uphold the state and federal constitution.
- IV was discussed during the Council's meeting and it is key for these particular clients. The Council is responsible for paying for the representation. They pay the public defender a flat fee, contract attorneys per case, and assigned council on an hourly basis.
- Estimates it will be 35-50 cases per year and most of those will be handled by a public defender.
- The cost of this would be an insignificant addition to the overall expenditures of the Council.
- Being able to provide this without adding to the underlying payment plan of the individual is essential to avoid adding to the cycle of poverty.
- Senator Gannon asked if the assessment would include bail.
 - Not in my understanding.

Devon Chaffee (ACLU) (provided written testimony)

- Provided an executive summary and asked the Committee to look at the stories of individuals.

Albert "Buzz" Scherr

- Professor at UNH Law
- In some courts, the judge was not distinguishing between who could not afford to pay a fine and who was willfully not paying.
- It is constitutional to incarcerate someone who is willfully not paying but it is unconstitutional to incarcerate someone who cannot afford to pay.

- Every stakeholder in the system is in support of the comprehensive proposal the Advisory Committee put before the Supreme Court.
- The NH Supreme Court felt that the Legislature should deal with this question, as it may deal with the expenditure of funds.
- The reforms create a funnel, so that way before the final hearing takes place they encourage the court to consider the financial status of the individual and work out alternatives by instituting time payments, reducing the fine, reducing community service, or other options.
- The number of cases will be significantly reduced after this funnel.
- Even if there are 50 cases a year, about 2/3 of those will have a public defender, so it won't cost the system any more.
- It would then only be 15-17 cases a year at about \$75-\$100 each.
- This will save the counties money as it costs \$110 a day to incarcerate someone (\$75,000-\$100,000 a year)
- The County Super Intendants are in full support of this.

Summary of testimony presented in opposition :

None

Future Action: Ought to Pass

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Date Hearing Report completed: February 10, 2017