Improving Access to Legal Representation in Massachusetts: Mandated Reporting of Volunteer Hours

By Alexander Chow & Maggie King
Roosevelt @ Northeastern University

THESIS

Backlog in the Massachusetts court system causes overworked public defenders and a prolonged legal process for indigent defendants. Passing legislation in the Massachusetts Legislature to mandate reporting of volunteer hours by private attorneys will increase the amount of hours volunteered and therefore improve access and quality of representation for low-income defendants.

BACKGROUND & ANALYSIS

The right to an attorney is stated in the Sixth Amendment, but for many years that attorney was not provided by the government. In 1963, *Gideon v. Wainwright*, a unanimous U.S. Supreme Court decision, ruled that “the framers of the constitution placed a high value on the right of the accused to have a means of proper defense,” and set the precedent that if one cannot afford an attorney, one will be provided by the government. However, the public defender’s office in Massachusetts is not well funded, leading to backlog in the system and overworked attorneys. Indigent defendants are subject to a prolonged legal process solely because of their economic circumstance. In order to make the legal system more just, we must encourage private lawyers to volunteer their services when cases arise in their area of expertise. Mandatory reporting of pro-bono hours is the best way to reach this means, as it has shown an increase in service hours volunteered by private attorneys in other states. In addition, it has also shown an increase in dollars contributed to legal aid groups because it improves the state’s ability to adequately track the amount of indigent representation needed. In Massachusetts, implementation of this policy will increase availability of counsel and raise awareness of the need for private attorneys to assist in representation of the indigent.

TALKING POINTS

- Mandatory reporting of pro-bono hours has seen success in other states such as Florida and Indiana.
- Mandatory reporting of pro-bono hours increases accessibility to constitutional right to legal representation.
- Mandatory reporting of pro-bono hours is economically feasible because it expands on existing court systems.

POLICY IDEA

In order to increase available representation for indigent defendants, we propose the implementation of legislation that mandates annual reporting of pro-bono or discounted work done by private attorneys. This system will encourage volunteerism and allow the state to more accurately document the need for counsel.

KEY FACTS

- In 2007, Massachusetts had 197 full-time equivalent Public Defenders, and handled 16,820 cases.
- The Public Defender’s office is only funded to represent 25 percent of indigent clients in Massachusetts.
- After the Florida Legislature instituted mandatory reporting in 1997, the contributions of private attorneys over tripled (from $1.5 million to $4.9 million).
POLICY ANALYSIS

Mandated reporting of volunteer work done by attorneys will increase access to legal representation for indigent defendants. States such as Indiana and Florida that require reporting of pro-bono work have seen a vast increase in the amount of volunteer work done by the private sector, which in turn reduces the quantity and quality of representation available to indigent defendants. Currently, reporting of pro-bono work done by attorneys is only required in nine states.\textsuperscript{6}

The proposed policy does not force attorneys to do volunteer work, nor does it not violate the rights of attorneys. It only makes them aware of the suggestion for pro-bono work by the respective American (50 hours) and Massachusetts (25 hours) Bar Association, and encourages them to meet these standards.\textsuperscript{7} Our policy solution is an economically feasible approach to an expensive problem because it will cost the government a fraction of the cost of hiring additional public defenders while increasing the representation available to indigent defendants. The only cost associated with our plan is the administration of the program, which would entail documenting submitted pro-bono hours. Quality of representation would be maintained as attorneys have an obligation to represent their clients well and would be able to take cases in their respective fields of specialization. This policy is financially feasible and would improve access to and quality of representation for all.

NEXT STEPS

The Massachusetts Legislature should pass a bill that mandates reporting of pro-bono hours by practicing in-state attorneys. We will target Chair of the Senate Judiciary Committee William Brownsberger, and Chair of the House Judiciary Committee Claire Cronin to advance our bill legislatively. A coalition of support for this bill will consist of communication with the American Bar Association, Massachusetts Bar Association, and Boston Bar Association to ensure the voices of practicing lawyers are represented. The Public Defender Agency of Massachusetts and the Public Defender’s Office for Boston would also be strong allies, as they represent the interests of overworked public defenders. In order to adequately represent the voices of the indigent defendants, we will ally with the Massachusetts Law Reform Institute.
ENDNOTES


7 Ibid.