



COMMONWEALTH OF MASSACHUSETTS

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**STATE SENATE TACKLES COURT REORGANIZATION, ALIMONY REFORM, DAM SAFETY, AND DNA TESTING**

**Boston** – The Massachusetts Senate last Thursday passed a number of key legislative items, including the re-organization of the Massachusetts court system to improve efficiency, alimony reform, Dam Safety legislation aimed at gathering information on the status of dams throughout the Commonwealth, and a DNA testing bill aimed at rectifying wrongful convictions. Senator Michael O. Moore (D-Millbury) voted in favor of the measures.

“The Senate last week addressed a number of vital issues that had been lingering for some time,” said Sen. Moore. “The court reorganization will generate cost-savings and ensure equity and transparency in the hiring of court personnel. The update our state’s alimony laws will create fairness and clarity in what can become a very emotional issue. Finally, critical progress was made by the Senate regarding Dam Safety and the use of DNA evidence.”

The court reorganization legislation establishes a civilian court administrator to run the general administration of the Trial Court and brings transparency to hiring and promotion practices at the Department of Probation. The bill establishes an Office of Court Management within the Trial Court to be headed by a civilian Court Administrator. The Court Administrator and Chief Justice of the Trial Court will divide the responsibilities currently held by the Chief Justice for Administration and Management.

The Chief Justice of the Trial Court will serve as the judicial head of the Trial Court, responsible for planning, policy, assigning judges, judicial discipline, and all other inherently judicial functions. Under the legislation, the civilian Court Administrator will be responsible for the general administration of the Trial Court, including reviewing and approving the hiring of non-judicial employees, administering appropriations and expenditures, negotiating contracts and leases, and any other inherently non-judicial administrative functions.

The Court Administrator will also be required to identify core administrative functions and create cost-savings and efficiencies by consolidating certain administrative activities of the various departments of the Trial Court.

The Chief Justices of the various departments of the Trial Court will continue their current appointments and will be responsible for core judicial functions.

An objective entrance exam will be established for the hiring and promotion of all probation and court officers. Candidates must pass the examination before advancing to the next stage which will include an investigative and interview process. The bill removes unilateral hiring power from the Commissioner of Probation, making hiring within the Probation Department subject to the approval of the Court Administrator.

Finally, to continue the ongoing reform effort at the Probation Department, the bill establishes an Advisory Board to help craft additional improvements within the department. The 9-member board will be appointed by the Supreme Judicial Court. The bill now goes to the Governor for his signature.

The alimony reform legislation presents clear categories of alimony, including general term alimony which is the default form of alimony whereby payments are made to an economically dependent former spouse for a length of time based on the years of a marriage, including short-term marriages of five years or less, which traditionally have been excluded.

For example, if a marriage was five years or less, alimony would be required for no more than one-half of the years married. The length of time for alimony increases with the years of marriage. Alimony for a marriage that lasted more than 15 years, and up to 20, could be ordered for up to 80 percent of the number of months married.

Under the bill, the court would also have discretion to order alimony indefinitely for marriages that lasted more than 20 years. Conversely, general term alimony payments could be reduced, suspended or terminated upon the remarriage or cohabitation of the recipient, the payer reaching the full age of retirement, or the death of either former spouse.

The other categories of alimony in the bill are rehabilitative alimony (payment to recipient expected to become self-sufficient by a specific time), reimbursement alimony (payment to recipient who supported payer in some way during marriage less than five years) and transitional alimony (payment to recipient for change in location after marriage less than five years). Each category contains precise definitions and durational limits to provide a clear expectation of how long alimony will be paid.

The bill also contains protections for alimony recipients who have been abused, are chronically ill, or have been deemed unable to find employment. Additionally, it allows the opportunity for existing court-ordered alimony to be modified to conform with the new standards set out in the bill. The bill retains the court's flexibility in hearing divorce cases. The measure will now be reconciled with the House of Representative's version of the bill prior to being sent to the Governor for his signature.

The Dam Safety bill would require DCR, in conjunction with the Department of Fish and Game, to submit an annual report listing the ownership and location of all registered dams in the Commonwealth. The report would also provide information on all dams that are hazardous, abandoned or an environmental threat and all dam owners that have failed to meet dam safety requirements.

To ensure information on hazardous dams are up-to-date, DCR would review the hazard classifications of dams at least every five years and develop Emergency Action Plans for “high hazard” and “significant hazard” dams. DCR would also establish an inspection schedule to ensure that high hazard dams are inspected every two years, significant hazard dams are inspected every five years and low hazard dams are inspected every 10 years.

The bill would allow cities and towns to borrow funds, outside of their debt limit, to pay for the costs of acquiring dams within their borders and any removal, repair, reconstruction or improvements to dams.

Finally, Massachusetts became the 49<sup>th</sup> state to allow defendants to obtain and test evidence after conviction for use in seeking a new trial. The bill, which was developed with the input of current and former prosecutors, police officials, defense attorneys and judges, would help exonerate wrongfully-convicted people and convict individuals who have gone free for decades. The bill would allow individuals who have been convicted of a crime to file a motion with the courts requesting access to evidence for forensic testing that could prove their innocence.

Defendants would have to meet certain standards that show the material in question has not been tested previously in the way sought; testing was not available at the time of conviction, or the material itself was unavailable; the evidence is admissible in court; and an affidavit from the defendant is filed stating the defendant’s innocence.

The bill requires evidence to be kept for the duration of a defendant’s sentence. New evidence cannot be used as cause for legal action against the Commonwealth. This bill now goes to the House of Representatives.

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