Ending Debtors' Prisons in Pennsylvania

Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform

The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

Purposes of Guide

The purposes of this guide are twofold: (1) to present the current gaps in court procedures that result in the incarceration of low-income Pennsylvanians for strictly financial reasons, either due to failure to meet a financial condition of bail or failure to pay fines, restitution, or court costs assessed after a court interaction; and (2) to recommend best practices for addressing this growing problem through evidence-based methods adopted in our sister states.

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INTRODUCTION

Although debtors' prisons repeatedly have been decried as unconstitutional, there is a growing concern nationwide that state courts continue to incarcerate low-income defendants due solely to their inability to pay financial obligations. These defendants are regularly incarcerated in our nation's jails, contributing to the explosion of the country's jail population. Since 1983, the number of annual admissions to jails across the country has almost doubled, from six million to 11.7 million in 2013.[1]

> Currently, there are two main ways in which financial hardship can lead to low-income Pennsylvanians being incarcerated: failure to pay a financial condition of bail, and failure to pay fines, costs, or restitution assessed after a court interaction.

Pretrial release is typically conditioned upon a defendant or a surety posting money or real property in an attempt to ensure a defendant's appearance at trial, as well as their good behavior (i.e. committing no new criminal offenses, refraining from contacting witnesses, and abstaining from illegal drugs). Decades of studies have shown repeatedly that financial conditions of release unfairly impact lower-income defendants — many of whom are racial and ethnic minorities — and that financial conditions have minimal bearing on community safety and appearance at trial. To make matters worse, when defendants are incarcerated pretrial, they often lose their employment, housing, and access to community services, making their eventual re-entry into the community more difficult. Even just one day of pretrial incarceration is correlated with increased rates of recidivism.

Pennsylvanians who are convicted of a crime also must pay court costs, and are often assessed a fine or restitution as part of their sentence. These legal financial obligations ("LFOs") are imposed by statute and help offset some of the costs associated with the criminal justice system, such as fees for probation supervision, local service charges, DNA testing, and contributions to the Domestic Violence and Crime Victims Compensation Funds. These LFOs can add up quickly, and when poor defendants lack the funds to pay them, the consequences can be severe: extension of probation, disqualification from public assistance, drivers' license suspension, and even incarceration.

This guide is designed to present the current state of both pretrial release and LFOs in Pennsylvania and the reforms that other states have enacted to prevent incarceration simply due to a defendant's socioeconomic status. The guide highlights various courts' policies and procedures that have led to systematic, data-supported improvements in state-level criminal courts. These best practices can inform Pennsylvania's Unified Judicial System and provide a roadmap for reform in our Commonwealth.

A Current Pretrial Release Practices

Nationally, six out of every ten Americans who are incarcerated in a jail have not yet been convicted of a crime.[2] In some parts of Pennsylvania, that number is even higher: 81% of Allegheny County's jail population has not yet been convicted.[3] This is due in large part to Pennsylvania's fractured and outdated bail system, which relies on monetary bonds to attempt to ensure a defendant's future appearance at trial as well as public safety.

Current Rules for Bail In Pennsylvania

Pennsylvania's bail system is governed by Rules 520 - 536 of the Pennsylvania Rules of Criminal Procedure, which provide for five different types of pretrial release (Release on Recognizance, Nonmonetary Conditions, Unsecured Bail Bond, Nominal Bail, and Monetary Conditions).[4] Rule 523 lists ten factors for the bail authority to consider in determining whether bail is appropriate, including the defendant's employment history, family relationships, residence in the community, age, character, addiction to alcohol or drugs, criminal record, history of flight, and the nature of the current offense.[5] When the bail authority determines that a monetary condition should be imposed, Rule 528 specifically requires the bail authority to consider the defendant's financial ability to pay, and also requires the amount of the monetary condition to be reasonable.[6]

Prevalence of Financial Bond and its Disparate Impact on Black Defendants

This statutory framework may seem to protect low-income Pennsylvanians; however, in practice, studies have shown just the opposite. Similar bail rules — including those that govern the federal system — have been found to lead to increased rates of incarceration for low-income and minority defendants, and rampant use of monetary bond conditions. For example, a study of felony defendants in the nation's 75 largest urban counties determined that 61% of pretrial releases in 2009 included a financial condition.[7] Of those who were detained pretrial, 92% had been given a financial condition that they could not fulfill.[8] The widespread use of financial bond conditions has a disparate effect on black defendants, who "are more likely to be detained [than their white counterparts] because they do not have the financial means necessary to secure release."[9]

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Lack of Standardized Bail Procedures

The disparities cited in the DOJ study above were amplified by the lack of standardized bail procedures, which allowed bail-setting authorities almost unfettered discretion in making bail determinations. For instance, in 2007 the Pretrial Justice Institute ("PJI") studied the pretrial services in Allegheny County. The PJI study found serious problems with how bail was set prior to the reforms: (1) about 40% of defendants were not reached by the pretrial services program; (2) defendants were not interviewed about factors that were relevant to bail determinations, leaving bail-setting authorities with incomplete information; (3) risk assessment "was largely guesswork," with no objective risk assessment in use.[10] As a result, 45% of defendants were recommended for a deposit bail, which typically ranged from $3,000 to $5,000.[11] Because pretrial community supervision was virtually nonexistent, bail-setting authorities were using monetary bonds to attempt to ensure community safety. This did not work as intended: pretrial incarceration costs soared and failure to appear rates remained steady.[12]

Routine Detention of Low-Level Offenders in Philadelphia

Just as nationwide studies have found, requiring monetary bond disproportionately affects lower-income Pennsylvanians, who are less likely to be able to afford paying the required deposit to secure their freedom, even when that amount is minimal. A sweeping study of over 300,000 cases in Philadelphia from 2006 to 2013 found that, of those defendants detained pretrial, more than half would have been released if they had paid a deposit of $1,000 or less.[13] Many defendants remained incarcerated even when given extremely low monetary release conditions, where the deposit required to secured their freedom was only $50 - $100.[14] Detained defendants often were not facing particularly serious charges: 60% of those held for more than three days were charged with non-violent crimes and 28% of that same group were charged with misdemeanors.[15] The study also found racial disparities in pretrial incarceration: black defendants were about 40% more likely to be detained pretrial than their non-black counterparts.[16]

Ballooning Jail Populations and Poor Outcomes

Incarcerating low-income Pennsylvanians prior to trial has obvious, immediate costs. Nationally, the biggest contributor to growing jail populations is pretrial detention, with 95% of the growth in the overall jail population caused by the increase in inmates awaiting trial.[17] Research has also shown that, among low-risk defendants, individuals who are incarcerated pending trial are four times more likely to receive a sentence of imprisonment, and 51% more likely to recidivate after sentence completion compared to their released counterparts.[18]

B Suggested Reforms for Pretrial Release

1. *Assess Risk Through Use of Standardized, Evidence-Based Risk Assessment Tool*

Risk assessment tools identify patterns in historical data using statistical, empirical methods. These systems use group data, typically about individuals who have been arrested, to forecast the probability of future behavior. They are used across the criminal justice system — pretrial, post-conviction sentencing, and probation.

In the pretrial context, risk assessment tools are designed to assess a defendant's risk of either failing to appear at trial or being rearrested while awaiting trial in the community. When the Conference of State Court Administrators ("COSCA") examined numerous empirical studies on pretrial risk assessments, they found that "the six most common validated pretrial risk factors are prior failure to appear; prior convictions; current charge felony; being unemployed; a history of drug abuse; and having a pending case."[19]

Unfortunately, some of these risk factors identified by the COSCA study, such as employment status and prior convictions with no consideration of the grading of the prior offenses, have been found to increase the likelihood of disproportionate pretrial detention of indigent defendants, especially from minority communities. Thus, some jurisdictions specifically try to rely on objective factors based on evidence, as they assess risk using these tools, so that courts can eliminate demographic disparities in pretrial release decisions and increase public safety.

The Targets of Pretrial Risk Assessment

One critical element in evidence-based pretrial risk assessment is defining and constructing what risks are actually being assessed. This observation may seem obvious, but in fact, it is unclear whether today's risk assessment tools are actually predicting the outcomes that existing policies define as important, such as eliminating bias while still complying with local bail rules and state law.

Typically, bail laws focus on a defendant's nonappearance at his/her court dates and public safety. In Pennsylvania, Article 1 Section 13 of the State Constitution notes that all "prisoners shall be bailable … unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and community when the proof is evident or presumption great."[20] Most of today's pretrial risk assessment tools, however, predict just one outcome, generalized pretrial failure, meaning the likelihood that a defendant either fails to appear or is rearrested. A single composite risk assessment score that represents the aggregate risk of either event occurring may paint with too broad a brush. For example, a defendant who might appear in court if given a small intervention, such as an SMS text reminder a few days before the trial appearance, represents a different "risk" than a defendant who might truly present a violent danger to the community if released. For a pretrial risk assessment to provide the most benefit to a jurisdiction, it should clearly delineate predictions of failure-to-appear and likelihood of rearrest.

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Moreover, tools must be clear about what *type* of rearrest prediction is being made. Pennsylvania's Constitution refers to the "safety of any person and community." Currently, 45 states and the District of Columbia permit pretrial detention or release subject to restrictions "[a]fter a finding that a defendant poses a danger to an individual or community."[21] But current risk assessment tools predict rearrest — a different category that is not necessarily representative of future violence or threat to public safety, and is demonstrably a more likely outcome for an individual of color or an otherwise marginalized person.[22] Indeed, federal statistics belie the notion that those defendants who are arrested after being released pretrial are arrested for serious crimes. From 2012-2014, under 2% of all defendants released to the community pending trial had a new felony offense charged.[23] Instead, the vast majority of rearrests of individuals who were released pretrial were for technical violations of their pretrial release conditions. While jurisdictions may nevertheless find those technical violations problematic, it is clear that assessing the risk of a rearrest for a technical violation and a rearrest for a violent crime is not the same. Yet, most of today's tools, focused on generalized rearrest, do not accomplish this. The Arnold Foundation's public assessment tool is one instrument that at least distinguishes between generalized rearrest and rearrest for a violent crime.

Simply put, generalized rearrest data, which is largely composed of rearrests for technical violations of pretrial release or for minor crimes, does not suggest new, violent criminal activity. Thus, it is critically important for pretrial risk assessment tools to not only disaggregate their predictions of failure-to-appear and rearrest, but, separately, also disentangle simple rearrest from rearrest for a new violent crime.

Ongoing, Community-Based and Independent Validation

Validation is a critical and necessary element of any pretrial risk assessment system. A "valid" tool is one in which given measures *accurately* measure what they claim to measure. Moreover, validation is not a one-time event—just because a tool has been validated *elsewhere* does not mean it is valid *everywhere*. As prominent risk assessment scholars John Monahan and Jennifer Skeem note, "[u]nless a tool is validated in a local system—and then periodically re-validated—there is little assurance that it works."[24] It is also important to be clear-eyed about what validation does and does not mean. Though local validity is a necessary condition for a tool's success, it is by no means sufficient. Local community members must be involved in the validation process in order to ensure that the tool is measured against local needs and concerns. Ongoing validation studies should monitor racial, ethnic, gender, and socioeconomic disparities, as well as the distribution of a tool's false positive and false negative rates.

Further, the accuracy of a risk assessment tool depends not only upon its validity, but also its reliability. Broadly speaking, reliability refers to the consistency of an assessment over time or between assessors who utilize the tool. Typically, reliability is measured by "inter-rater reliability" (which examines results among assessors, such as pretrial services staff or MDJs) or "test-retest reliability" (which examines the consistency of a test over time, where an assessment administered one week should yield the same result the next week given the same facts). Ensuring inter-rater reliability is especially important for risk assessment tools that are manually scored or that involve an interview with subjective components. Meta -analytic studies have shown that few studies of pretrial risk assessment tools properly evaluate the tool's reliability. A 2013 review found that less than 4% of studies with the purported intent of evaluating risk assessment tools examined inter-rater reliability, "the most relevant form of reliability among used risk assessment tools."[25]

Arnold Foundation Public Safety Assessment in Pennsylvania

One risk assessment tool that has been extensively studied and privately validated is the Public Safety Assessment ("PSA") developed by the Houston-based Laura and John Arnold Foundation. Over 1.5 million cases from 300 different jurisdictions were analyzed to determine which factors, such as age, criminal history, and pending charges, are the best predictors of failure to appear or rearrest before trial.[26]

Pennsylvania amended the comment to Rule 523 of the Pennsylvania Rules of Criminal Procedure to explicitly allow for the use of risk assessments, adding that "[n]othing in this rule prohibits the use of a pretrial risk assessment tool as one of the means of evaluating the factors to be considered."[27] Pursuant to this rule, the Allegheny County Pretrial Services Department began using the Arnold Foundation PSA for all cases in Pittsburgh Municipal Court in November of 2015. Subsequently, in August of 2016, nine of the 46 Allegheny County District Courts began a pilot program to test a version of the PSA that does not rely on defendant interviews. Instead, it draws all validated predictive risk factors from the charging document and criminal history, thereby minimizing time and cost for bail-setting authorities.[28] Significantly, this latest PSA does not factor in a defendant's employment status, an important change from prior risk assessments that would assign unemployed, poorer defendants a higher risk score than their employed counterparts.

Kentucky Risk Assessment Tool

Kentucky uses a standardized, validated statewide risk assessment for bail determinations, which has led to its courts releasing 70% of all defendants pretrial, with only 4% requiring monetary bail.[29] Even with decreased use of monetary bail, Kentucky pretrial release outcomes remain better than the national average: only 10% of defendants in Kentucky who had been released missed their court date (versus 17% nationally) and only 8% were rearrested before trial (versus 16% nationally).[30]

Use of Risk Assessment Tools to Reduce Racial Disparities In Pretrial Detentions

Jurisdictions are expanding their use of predictive risk assessment tools for many well intentioned reasons, from reducing unnecessary pretrial incarceration, to saving scarce resources, to protecting public safety. Fundamentally, risk assessment tools are aimed at reducing levels of incarceration. But while risk assessment tools may help a jurisdiction reduce its incarcerated population, they do not necessarily address underlying racial disparities in pretrial detention. In fact, no rigorous studies have shown risk assessment tools to accomplish both goals. Nor has a risk assessment system been implemented with the explicit goal of reducing racial disparities in pretrial detention.

Consequently, further study is necessary to determine how risk assessment tools may simultaneously reduce pretrial detention and racial disparities. In the meantime, however, jurisdictions may seek to design and implement risk assessment tools and policies with this goal in mind. In particular, stakeholders could contact implementers of risk assessment tools in Kentucky, who have had years of experience with risk assessment policy and tools across their state, in order to determine if they are reducing racial disparities, and what steps should be taken in order to accomplish this goal.

2. *Improve Pretrial Services By Offering a Wider Range of Non-Financial Release Alternatives*

Judges may be wary of releasing defendants on their own recognizance while awaiting trial, particularly those judges who rely on the outdated assumption that a monetary bond will help ensure a defendant's good behavior and appearance at trial. Improving pretrial services statewide to allow for varied, non-financial release alternatives is an evidence-based way to assuage these concerns. According to the COS-CA study, "the number of sanctions a pretrial program can impose… further lowers the likelihood of a defendant's pretrial re-arrest."[31] Possible results-tested sanctions include court date reminders (via SMS text reminder, e-mail, U.S. mail, or by phone), electronic monitoring, drug and alcohol counseling and testing, and tiered check-in requirements based on a defendant's risk score. Indeed, some of these interventions may help significantly reduce a jurisdiction's failure-to-appear rate. For example, studies in Colorado and in Nebraska have shown that court-date reminders via live-caller or friendly, readable postcards can significantly help in reducing failures-to-appear.[32]

Importantly, each of these non-financial conditions of release must be tracked and separately validated to ensure that the conditions are actually having their desired effect. For example, it might be possible for electronic monitoring to be a helpful solution in concept, but due to program cost and frequent cost-shifting to defendants, it provides little practical help in reducing pretrial detention rates for the indigent.

In 2011, Kentucky reformed its bail procedures in this manner with an emphasis on decreasing incarceration costs while maintaining public safety. Since implementation of the reforms, "Pretrial Services data shows a 10% decrease in the number of defendants arrested and a 5% increase in the overall release rate, with a substantial increase in non-financial releases and in releases for low and moderate risk defendants. The non-financial release rate increased from 50% to 66%, the low risk release rate increased from 76% to 85%, and the moderate risk release rate increased from 59% to 67%."[33] During that same time, defendants' appearance and rearrest rates have remained constant.[34]

> Jefferson County, Colorado, decreased its failure-to-appear rate by 52% in one year by instituting a program of friendly court date reminder phone calls. The program has since been expanded, as it provides a cost-savings to the Sheriff's Office by reducing the number of bench warrants deputies must serve.[32]

3. *Eliminate Financial Release Conditions*

Standardized risk assessments will enable judges to classify defendants into three categories: low-risk defendants, who need minimal pretrial supervision; medium-risk defendants, who need more intensive and individually-tailored pretrial services to ensure their good behavior and future appearance at trial; and the highest-risk defendants, for whom no amount of pretrial supervision will ensure their appearance and good behavior, and thus should remain incarcerated pending trial. If used properly, the standardized risk assessments should eliminate the need for imposing upon any defendant a financial condition for release.

No Surety Bond in the District of Columbia

The District of Columbia has entirely eliminated the surety bond, and the D.C. Code prohibits judges from imposing financial conditions on defendants as a means of preventative detention.[35] Its Pretrial Services Agency uses a validated risk assessment containing 38 factors to assign defendants a low, medium, or high-risk score. In 2008, 80% of defendants were released without a monetary bond.[36] Of those released, only 12% failed to appear and 12% were rearrested before trial.[37] By 2012, 85% of defendants were released without monetary bond, with an 11% failure-to-appear rate and 12% rearrest rate.[38]

Promising Reforms to New Jersey's Bail System

New Jersey recently passed the Bail Reform and Speedy Trial Act, which has substantially reduced the imposition of monetary bonds by mandating that "court[s] shall not impose the monetary bail to reasonably assure the protection of the safety of any other person or the community or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, or for the purpose of preventing the release of the eligible defendant."[39] Prior to this reform, one in eight inmates in the state were incarcerated because they could not post a bond of $2,500 or less.[40] New Jersey Supreme Court Chief Justice Stuart Rabner commented on the effect of reforms on pretrial release, noting that "[m]ost defendants will be released pretrial on a range of conditions that will not include money bail. For low-risk defendants, the court may simply direct an officer to send a text message or place a phone call to remind defendants when they must appear in court. Defendants who pose greater risks may be placed on electronic monitoring. Those considered a serious threat to public safety or risk of flight will be detained."[41]

The Bail Reform and Speedy Trial Act took effect in New Jersey on January 1, 2017. During the 3,382 bail hearings conducted in the first month of the new statutory scheme, judges imposed a monetary release condition in only three cases.[42] Eight percent of defendants, who committed the most serious crimes and were deemed highest risk, were detained pretrial.[43] Local jails have already noted a decrease in their populations due to fewer pretrial detentions. The Hudson County Jail population decreased by 20% in less than three months since the law's implementation.[44] Statewide, the number of inmates incarcerated pretrial has decreased from 9,000 in February of 2016 to 6,573 in February of 2017, a 27% reduction.[45]

Current Status of Legal Financial Obligations

The term "Legal Financial Obligation" refers to any monetary cost assessed against criminal defendants through their interaction with the court system. These include fines, restitution, court costs, and various fees (common add-on fees include probation/supervision fees, fees for drug or alcohol monitoring, local fees, and fees for mandatory classes).

A Growing National Problem

Both COSCA and the Conference of Chief Justices ("CJC") have examined the growing amount of LFOs nationwide, describing the problematic nature of financing state courts through collection of LFOs:

> "State legislatures and county or city governments have enacted fines as punishment and imposed an expansive array of fees intended to defray the costs of operating courts, jails, public defender and prosecutor offices, police agencies, probation services, as well as a variety of government programs unrelated to criminal justice. While courts do not enact the fines and fees, courts are required to order defendants to pay them. The imposition of these legal financial obligations (LFOs) too often results in defendants accumulating court debt they cannot pay, landing them in jail at costs to the taxpayers much greater than the money sought to be collected."[46]

LFOs in Pennsylvania: Manifold, Expensive, and Confusing

The Pennsylvania Commission on Sentencing ("PCS") examined the use of economic sanctions against criminal defendants across the state in its 2006 report, Evaluation of Best Practices in Restitution and Victim Compensation Orders and Payments, which focused on fines, fees, and restitution.[47] The report identified at least 36 different county-level costs and fees, in additions to fines and restitution, which can be imposed against defendants. The wide range of these LFOs and their mounting impact on individual defendants is perfectly illustrated by an oft-cited docket sheet from Cambria County, which shows 26 different state and local fees assessed against a defendant who was convicted of a drug offense.[48] The defendant was ordered to pay a $500 fine, $325 in restitution, and an astonishing $2,464 in various costs.[49] Data from the Administrative Office of Pennsylvania Courts ("AOPC") underscores that costs often outweigh other LFOs, as 52% of the LFOs assessed by Magisterial District Courts and 65% of LFOs assessed by Courts of Common Pleas are only costs.[50]

The PCS also found that the imposition of these LFOs varied extensively among jurisdictions. For instance, the "average amount of economic sanctions ordered [in the six counties studied] ranged from $1305 in Blair County to $1864 in Lancaster County."[51] Importantly, the PCS also discovered a troubling connection between race and LFOs in some jurisdictions, noting that in "Blair and Delaware Counties, the total amount of economic sanctions ordered was significantly higher for non-white than white offenders."[52] The variety of both the LFOs themselves and the way they are imposed in different jurisdictions has led to a great deal of confusion for defendants who are responsible for payment; the PCS found that the vast majority of defendants "did not understand how other economic sanctions were determined or where their payments went."[53]

Consequences of LFOs in Pennsylvania

The consequences of failure to pay LFOs can be severe. Pennsylvania is one of the leading fifteen states where individuals are incarcerated for failing to pay LFOs.[54] For example, a single Magisterial District Judge ("MDJ") in Montgomery County sent non-paying defendants to jail 228 times from 2011 through 2013.[55] Unfortunately, such actions are not unique to that court. The American Civil Liberties Union of Pennsylvania ("ACLU-PA") obtained data from the AOPC in an attempt to quantify how often defendants are jailed for non-payment of LFOs. Although inaccuracies and inconsistencies in court dockets make it impossible to accurately determine the number of Pennsylvanians who are incarcerated each year for their inability to pay LFOs, the AOPC data and the ACLU-PA's experiences from court observations, interviews with judges, and direct representation indicates that thousands of Pennsylvanians continue to be jailed for failure to pay LFOs each year by courts across the state.

In addition to helping to quantify the number of offenders jailed for failure to pay LFOs, AOPC data clearly demonstrates that Pennsylvania courts routinely fail to assess a defendant's ability to pay before imposing incarceration. As a result of changes to the Rules of Criminal Procedure in 2015, MDJs must make written findings before committing a defendant to jail pending an ability-to-pay hearing. According to Rule 456, a court can only impose jail in those circumstances if collateral is necessary *and the defendant is able to afford to post the collateral and willfully refuses to do so*. Despite the explicit direction in the rule, several examples demonstrate that judges fail to actually determine the defendant's ability to pay:

Docket Number	**MJ-23305-TR-0002612-2015**
Collateral amount	$50
Reasons for setting collateral	Sheriff's Dept. Central Processing sent to BCP on Bnch warrant Judge told them commit on all scofflaws.
Facts supporting finding that Defendant can afford to post collateral	No employment record.

Docket Number	MJ-14203-NT-0000971-2015
Collateral amount	$523.90
Reasons for setting collateral	Failed to abide by payment plan
Facts supporting finding that Defendant can afford to post collateral	No money

Docket Number	MJ-23102-NT-0000936-2015
Collateral amount	$650
Reasons for setting collateral	Defendant has a history of failing to appear; and is currently homeless, and unemployed.
Facts supporting finding that Defendant can afford to post collateral	Defendant has a history of failing to appear; and is currently homeless, and unemployed.

Docket Number	MJ-40201-NT-0000596-2015
Collateral amount	$569.40
Reasons for setting collateral	Def is unable to make total payment due.
Facts supporting finding that Defendant can afford to post collateral	Def came into office numerous times to request extensions on total due

These examples represent only a snapshot of data on thousands of cases that the ACLU-PA obtained, which covers defendants who were jailed in 2016. It highlights that, in the absence of clear standards on how to determine ability to pay, judges are not appropriately taking into account a defendant's actual financial resources, and it shows that judges across the state are still unconstitutionally jailing defendants for their poverty.[56]

Inability to pay LFOs also causes ongoing harm for defendants who have been convicted of a crime and are incarcerated or on probation or parole. Any Pennsylvanian who is convicted of a crime must pay a minimum court cost of $60 before becoming eligible for probation, parole, or accelerated rehabilitative disposition.[57] This requirement means that an indigent inmate who is otherwise eligible for parole will remain incarcerated if he or she cannot pay $60, costing the state $42,339 per inmate per year.[58] Additionally, in some counties, offenders cannot be discharged from probation until all LFOs are paid in full, which often results in probation being extended indefinitely for low-income Pennsylvanians, increasing their risk of incarceration for probation violations.[59] When the PCS examined this practice in Cumberland County, it found that "the judge prefers that [non-paying offenders] appear in court before their probation expires so that he can extend their probation. The judge only occasionally sends someone to prison for nonpayment, mainly to send a message that it can happen."[60]

LFOs have many other collateral consequences as well. Outstanding criminal justice debt can prevent Pennsylvanians from accessing public benefits such as food stamps, for themselves and their families.[61] It can result in the suspension of drivers' licenses, and can also bar individuals from receiving pardons or expungements of their criminal records, which is a significant barrier to employment.[62] Housing and employment are key parts of a successful re-entry for formerly incarcerated Pennsylvanians, and LFOs can jeopardize both, leading to a higher chance of recidivism.[63]

Large Number of MDJ-Ordered LFOs

MDJs routinely handle a very large volume of cases, resulting in the imposition of LFOs totaling around $250 million per year over the past ten years.[64] That court debt spurs MDJs to issue a startling number of warrants: in 2016, they issued 482,308 arrest warrants in traffic and non-traffic cases post-disposition, nearly all of which were for defendants who failed to pay their LFOs.[65] Not only do these arrest warrants have a huge impact on the defendants, but they also utilize law enforcement resources, who must locate the defendants, serve the warrant, arrest the defendants, transport them, and monitor them through the jail's intake process. The service costs are also passed onto defendants, potentially adding hundreds of dollars to a defendant's total LFO.[66]

D Suggested Reforms for Legal Financial Obligations

Fortunately for Pennsylvania, many other states have instituted reforms that may be replicated in the Pennsylvania courts. These models have been shown to improve LFO compliance, minimize incarceration due to failure to pay LFOs, and reduce the burden on indigent defendants who lack the ability to pay. Moreover, for the most part, the cost of the reforms is minimal and they can be implemented without the need for legislative action.

1. *Properly Assess Offenders' Ability to Pay*

Courts are required to assess the ability to pay before incarcerating an individual who has not paid required LFOs under the United States Supreme Court precedent set in *Bearden v. Georgia*[67] and its Pennsylvania analogue, *Commonwealth ex rel. Benedict v. Cliff*.[68] However, Pennsylvania currently has no standardized process to help judges make that determination, which in practice leads to arbitrary decisions about whether a defendant is able to pay, that are not always related to the defendant's actual means. Rhode Island provides an excellent model for streamlining judges' assessment of individuals' ability to pay. This model "requires that ability to pay be determined by use of standardized procedures including a financial assessment instrument completed under oath in person with the offender and based upon sound and generally accepted accounting principles. In addition, the following conditions shall be prima facie evidence of the defendant's indigency and limited ability to pay, including receipt of TANF, SSI or state supplemental income payments, public assistance, disability insurance, or food stamps."[69]

The ACLU-PA has made recommendations to the Pennsylvania Supreme Court Criminal Rules Committee about how to change MDJ practices to reduce the number of defendants who are incarcerated for their inability to pay LFOs. The recommendations include permitting judges to use the financial information contained in defendants' applications for court-appointed attorneys, as well as defendants' receipt of means-tested public benefits. In addition, the ACLU-PA has recommended tying defendants' payment plans to the federal poverty guidelines, suspending all payments for indigent defendants whose income is under 125% of the federal poverty level, and providing a graduated pay scale for individuals making just over that amount. If a judge conducts this thorough inquiry and determines that the offender is unable to pay, the offender cannot be incarcerated for this reason alone. A copy of the ACLU-PA's proposed amendments to the Pennsylvania Rules of Criminal Procedure is attached to this guide as Appendix A. The ACLU-PA is currently working on recommendations to rule changes to address similar issues in the Courts of Common Pleas.

2. *Waive or Reduce the Amount of LFOs for Those Truly Unable to Pay*

The United States Supreme Court in *Bearden* explicitly suggested that courts reduce the amount of LFOs for defendants who are indigent. Under Rule 1901 of the Pennsylvania Rules of Judicial Administration, Pennsylvania courts have the authority to enact policies to waive or reduce LFOs based on a defendant's inability to pay. Pursuant to that rule, in 2005, the President Judge of the Chester County Court of Common Pleas enacted District Court Operational Regulation 2-2005, which allows MDJs to find any summary LFO "non-collectable because of the indigence of the defendant" and permanently close the case. Similarly, in Centre County, the PCS found that, "judges often reduce the total amount of economic sanctions the offender owes. These reductions are often substantial because judges base their decision on the offender's ability to pay."[70]

The ACLU-PA's proposed changes to the Rules of Criminal Procedure (referenced above) also include a mechanism for MDJs to have discretion to close cases after two years if they deem them uncollectable; after five years, the cases would be automatically closed and the balance of the LFO forgiven. This rule would effectively eliminate cases in which defendants are arrested and jailed years later for small amounts of money.[71] Any such authority should be extended equally to both the Courts of Common Pleas and the MDJs. The ACLU-PA has also developed a bench card, disposition sheet, ability-to-pay form, and a notice of rights and obligations, based specifically on Pennsylvania law, to help judges appropriately assess a defendant's financial status.[72] They are attached to this guide as Appendix B.

3. *Expand Non-Financial Alternatives to LFOs*

Some jurisdictions in Pennsylvania already employ limited alternatives to LFOs for those who are unable to pay. The PCS found mixed usage of these programs, including payment plans and community service in lieu of payment.[73] The use of these alternatives varies among jurisdictions, with only one county out of six that the PCS surveyed routinely allowing for community service to offset LFOs.

Community Service

Courts should allow defendants who cannot pay their LFOs to perform community service to offset their total amount due.; however, the design of community service programs is critical. For example, defenders in Illinois observed that "when community service is imposed on individuals who are otherwise employed, it can be difficult for them to complete the necessary hours. For this reason, community service should only be imposed at the defendant's request, or when an unemployed defendant has been unable to make payments."[74] Judicial discretion should be used to tailor service-hour requirements to individual defendant's situations, as relying on a preset monetary value per hour can result in unrealistic hour requirements for those defendants with the largest LFO debt. Community service programs administered by the courts can partner with local non-profits in need of volunteers to assist with the paperwork necessary to record hours and document completion.

> Other possible alternatives that could be used to offset LFOs include completing anger management courses, attending counseling, receiving mental health services, and completing literacy classes.

Other Non-Financial Alternatives

Under *Bearden*, courts must consider reasonable alternatives to payment for those offenders who lack the ability to pay their LFOs.[75] When COSCA studied this issue, they urged courts to "provide credit for GED preparation classes, work-skills training, or other nontraditional types of options to ensure compliance with LFOs, while providing defendants with viable options to improve their future prospects."[76] These programs would be individually tailored to the offender, while still allowing for overall improvement to the community at large. Other possible non-financial alternatives that could be used to offset LFOs include completing anger management courses, attending counseling, receiving mental health services, completing literacy classes, among other alternatives.

4. *Use Bench Cards to Guide Judicial Decision-Making on Imposition and Disposition of LFOs*

By using a bench card that outlines how to assess a defendant's ability to pay and what steps the court can take once it has established that a defendant is unable to pay, courts will be in a position to better identify chronically indigent defendants and have a mechanism to waive or reduce their LFOs based on their inability to pay.

Supreme Court of Alabama Bench Card

In November 2015, the Supreme Court of Alabama issued an extensive bench card, which includes the following sections: (1) Imposing Court Costs ("In determining whether to impose a fine, the court should consider the reasons a fine is appropriate, the financial resources and obligations of the defendant and the burden payment of a fine will impose, ability of the defendant to pay, and the extent to which payment of a fine will interfere with the defendant's ability to make restitution"); (2) Enforcing Fines By Imposing Jail ("Before committing an offender to jail for nonpayment of fines, a court must examine reasons for nonpayment and make specific determinations and findings that the defendant willfully refused to pay, failed to make sufficient bona fide efforts to pay, or that alternate measures to punish or deter are inadequate"); (3) Court Actions on Nonpayment, which lists permissible and impermissible steps for the court to take when a defendant does not pay LFOs; and (4) Other Remedies for Nonpayment ("For indigent defendants, the court should consider alternative public service in lieu of fines, where the State's goals of punishment and deterrence are adequately served").[77] This bench card is attached to this guide as Appendix C.

Biloxi, Mississippi Bench Card and Layperson Advisement

The Biloxi, Mississippi Municipal Court also began using a bench card after the ACLU brought a federal class action lawsuit against the city's court due to its widespread practice of incarcerating poor Mississippians without regard for their ability to pay court debt.[78] The ACLU also developed a form for laypeople, which advises them in straightforward language of their rights regarding court debt, procedures for a hearing with counsel, and options if they cannot pay.[79] The form likewise advises defendants that they can only be jailed for willful non-payment of LFOs.[80] The language from this form is now displayed prominently on the court's website, and is attached to this guide as Appendix D.[81]

National Task Force Bench Card

The National Center for State Courts, COSCA, and CJC established the National Task Force on Fines, Fees and Bail Practices in 2016 to examine the use of LFOs nationwide and highlight best practices in this area. The Task Force released its own bench card in February of 2017, focusing on the due process rights of individuals unable to pay their LFOs.[82] The bench card outlines appropriate procedures for notifying non-paying defendants of a hearing to determine their ability to pay, factors the court should evaluate to determine if the failure to pay is willful, alternative sanctions to imprisonment that the court should impose, and specific findings the court must make on the record during the hearing.[83] This bench card is included as Appendix E.

CONCLUSION

Swelling jail populations have led many states across the country to look more closely at their policies and procedures surrounding incarceration, particularly when that incarceration is tied solely to a defendant's poverty. As more states reform their rules on financial bond and LFOs to address this problem, data has shown these reforms to lower incarceration rates while maintaining public safety. Pennsylvania now sits at a unique junction, where it can learn from successful reform efforts that other states have adopted, reduce state expenditures for incarceration, and fully eradicate the unconstitutional problem of debtors' prisons.

ENDNOTES

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2. Todd D. Minton & Zhen Zeng, *Jail Inmates at Midyear 2014*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2015).
3. University of Pittsburgh Institute of Politics Criminal Justice Taskforce, *Criminal Justice in the 21st Century: Improving Incarceration Policies and Practices in Allegheny County* (2015), at 7.
4. Pa.R.Crim.P. 524.
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7. Brian A. Reaves, *Felony Defendants in Large Urban Counties, 2009*, US Department of Justice, Office of Justice Planning, Bureau of Justice Statistics (2013), at 15.
8. *Id.*
9. Tina Frierburger and Carly Hilinski (2010), *The Impact of Race, Gender, and Age on the Pretrial Decision*, Criminal Justice Review 35(3), at 330.
10. John Clark, et. al., *The Transformation of Pretrial Services in Allegheny County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment*. Pretrial Justice Institute (2007).
11. *Id.* at 5.
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15. *Id.*
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19. Arthur W. Pepin, *Evidence-Based Pretrial Release*, Conference of State Court Administrators (2013).

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21. Shima Baradaran, Frank L. McIntyre, *Predicting Violence,* 90 Tx. L. Rev., 497, at 512 (2012).
22. Brad Heath, *Racial gap in U.S. arrest rates: 'Staggering disparity'*, USA Today, November 18, 2014.
23. Federal Justice Statistics, 2012 - Statistical Tables, Table 3.3 at 15; Federal Justice Statistics, 2013 - Statistical Tables, Table 3.3 at 15; Federal Justice Statistics, 2014 -Statistical Tables, Table 3.3, at 15.
24. John Monahan, Jennifer L. Skeem, *Risk Assessment in Criminal Sentencing,* Virginal Public Law and Legal Theory Research Paper, No. 53, at 23 (2015).
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29. Tara Boh Klute and Mark Heyerly, *Report on Impact of House Bill 463: Outcomes, Challenges and Recommendations.* Pretrial Services, Administrative Office of the Courts (2012).
30. *Incarceration's Front Door, supra*, note 1, at 33.
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49. *Ibid.*

50. AOPC, *Collection Rate of Payments Ordered by Magisterial District Courts in 2016*, http://www.pacourts.us/news-and-statistics/research-and-statistics/collection-rate-of-payments-ordered-by-magisterial-district-courts; AOPC, *Collection Rate of Payments Ordered by Common Pleas Courts in 2016*, http://www.pacourts.us/news-and-statistics/research-and-statistics/collection-rate-of-payments-ordered-by-common-pleas-courts.

51. *Best Practices in Restitution, supra*, note 39, at 39.

52. *Id.*

53. *Id.* at 102.

54. Brennan Center for Justice, *The Hidden Costs of Criminal Justice Debt* (2010) (The leading states for imprisoning debtors are Alabama, Arizona, California, Florida, Georgia, Louisiana, Illinois, Michigan, Missouri, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia).

55. Emma Jacobs, *After Minor Charges, Pennsylvanians Unable to Pay Fines Await Hearings in Jail*, Newsworks, January 28, 2014.

ENDNOTES

56. Although this data is limited to MDJs, the ACLU-PA has obtained evidence demonstrating that such problems also exist in the Courts of Common Pleas. For example, a transcript from a February 2016 fines and costs proceeding in Cambria County shows that the presiding judge summarily jailed 54 defendants for contempt without holding a hearing to determine whether they were able to afford to pay the LFOs on which they had defaulted.

57. *See* 18 P.S. §11.1101.

58. Vera Institute of Justice, *The Price of Prisons: What Incarceration Costs Taxpayers* (2012).

59. *Best Practices in Restitution, supra,* note 39, at 117.

60. *Id.* at 121.

61. Meghna Philip, Brennan Center for Justice, "New Documentary Tells the Story of Criminal Justice Debt in Philadelphia" (May 21, 2012), available at http://www.brennancenter.org/blog/new-documentary-tells-story-criminal-justice-debt-philadelphia.

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63. Karin D. Martin, Sandra Susan Smith, and Wendy Still, *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create*, New Thinking in Community Corrections, Harvard Kennedy School (2017).

64. *See* AOPC, "Collection Rate of Payments Ordered by Magisterial District Courts" (2015), http://www.pacourts.us/news-and-statistics/research-and-statistics/collection-rate-of-payments-ordered-by-magisterial-district-courts. The AOPC has made these statistics available since 2007. The lowest amount of LFOs ordered from MDJs was $243,662,982 in 2011, the highest was $266,772,958 in 2008.

65. AOPC, "2016 Caseload Statistics of the Unified Judicial System of Pennsylvania" at 60, http://www.pacourts.us/assets/files/setting-768/file-6151.pdf?cb=c3ccad.

66. *See, e.g.,* MJ-13302-NT-0000018-2014 (showing $191.80 in server fees and another $69 in "Miscellaneous Issuances," which court staff confirms to be a bench warrant fee).

67. Bear*den v. Georgia,* 461 U.S. 660 (1983).

68. *Commonwealth ex rel. Benedict v. Cliff,* 304 A.2d 158 (Pa. 1973).

69. *End of Debtors' Prisons, supra*, note 38, at 11, internal citations omitted.

70. *Best Practices in Restitution, supra*, note 39, at 120.

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71. *See, e.g.,* MJ-22301-TR-0001875-2005 (defendant in 2005 traffic case jailed for three days in 2016 over $165.07 because he was unable to post collateral pending a payment determination hearing; the facts the judge used to determine that he was able to afford to post the collateral consisted of a finding that "The defendant was found sleeping in a parking lot. He could hardly stay awake for Judge to determine if collateral should be set for his appearance on Friday.").

72. *See* ACLU of Pennsylvania, "Debtors' Prisons," https://www.aclupa.org/issues/criminaljustice/debtors-prisons/

73. *Best Practices in Restitution, supra*, note 39, at 120.

74. *The Hidden Costs of Criminal Justice Debt, supra*, note 45, at 15.

75. *Bearden v. Georgia*, 461 U.S. 660 (1983).

76. *End of Debtors' Prisons, supra*, note 38, at 22.

77. Bench card issued by the Supreme Court of Alabama, "Collections of Fines and Court Costs, Developed for Alabama Judges by the Alabama Access to Justice Commission," accessed at http://nacmconference.org/wpcontent/uploads/2014/01/Bench-Card-11-10-15.pdf

78. *See* Stipulated Settlement Agreement, Kennedy v. City of Biloxi, No. 1:15-cv-00348-HSO-JCG (S.D. Miss. March 15, 2016). Available online at https://www.aclu.org/supplement-kennedy-v-biloxi-settlement-agreement.

79. *See* Biloxi Municipal Court Website, https://www.biloxi.ms.us/departments/municipal-court/

80. *Id.*

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82. National Task Force on Fines, Fees, and Bail Practices, "Lawful Collection of Legal Financial Obligations: A Bench Card for Judges," National Center for State Courts, 2017. Available online at http://www.ncsc.org/~/media/Images/Topics/Fines%20Fees/ BenchCard_FINAL_Feb2_2017.ashx

83. *Id.*

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Rule 403. Contents of Citation.

. . .

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

(1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and

(2) that the defendant shall, within ~~10~~ **30** days after issuance of the citation:

(a) plead not guilty by:

(i) notifying the proper issuing authority in writing or in person of the plea **and including a current mailing address, phone number, and e-mail address** ~~and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of $50 as collateral for appearance at trial; or~~

~~(ii) appearing before the proper issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require. If the defendant cannot afford to pay the collateral specified in the citation or the $50, the defendant must appear before the issuing authority to enter a plea~~; or

(b) plead guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; ~~or~~

(ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation or when required to appear pursuant to Rule 409(B)(3), 414(B)(3), or 424(B)(3); ~~or~~

(iii) notifying the proper issuing authority in writing on the front of the citation of the plea with a statement that he or she is without the financial means to pay the fines and costs listed on the citation and requests a hearing at which the issuing authority shall consider the defendant's ability to pay and imposing fines and costs as appropriate; or

(c) appear before the proper issuing authority to request consideration for inclusion in an accelerated rehabilitative disposition program;

(3) that all checks forwarded for the fine and costs or for collateral shall be made payable to the magisterial district number set forth on the citation;

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(4) that failure to respond to the citation as provided above within the time specified:

(a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

(b) shall result in the suspension of the defendant's driver's license when a violation of the Vehicle Code is charged;

(5) that failure to indicate a plea when forwarding an amount equal to the fine and costs specified on the citation shall result in a guilty plea being recorded; and

(6) that, if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial de novo.

Rule 407. Pleas in Response to Citation.

Within ~~10~~ **30** days after issuance of a citation, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

Rule 408. Not Guilty Pleas—Notice of Trial.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, **and providing a current mailing address, phone number, and e-mail address**~~, and depositing such collateral for appearance at trial as the issuing authority shall require~~; or

(2) notifying the issuing authority in writing of the plea and ~~forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of $50 as collateral for appearance at trial~~ **providing a current mailing address, phone number, and e-mail address**.

Rule 409. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; ~~or~~

(2) **notifying the issuing authority in writing on the front of the citation of the plea with a statement that he or she is unable to afford to pay the fines and costs listed on the citation, requesting a hearing at which the issuing authority shall consider the defendant's ability to pay impose fines and costs as appropriate, and providing a current mailing address, phone number, and e-mail address; or**

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~~(2)~~ **(3)** appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the citation or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the citation.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant pleads guilty pursuant to paragraph (A)(2), the issuing authority shall schedule a payment determination hearing pursuant to Rule 459 to determine the defendant's ability to pay and set the fines and costs accordingly. The issuing authority shall provide the defendant notice by first-class mail of the hearing. If the defendant fails to appear for that hearing, the court may issue a bench warrant under Rule 430.

~~(C)~~**(D)** When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph ~~(A)(2)~~ **(A)(3)**, the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

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(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Rule 411. Procedures Following Filing of Citation—Issuance of Summons.

(A) Upon the filing of the citation, including receipt of electronically transmitted citation or parking violation information, the issuing authority shall issue a summons commanding the defendant to respond within ~~10~~ **30** days of receipt of the summons, unless the issuing authority has reasonable grounds to believe that the defendant will not obey a summons in which case an arrest warrant shall be issued. The summons shall be served as provided in these rules.

Rule 412. Pleas in Response to Summons.

Within ~~10~~ **30** days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

Rule 413. Not Guilty Pleas—Notice of Trial.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, **and providing a current mailing address, phone number, and e-mail address**~~, and depositing such collateral for appearance at trial as the issuing authority shall require~~; or

(2) notifying the issuing authority in writing of the plea and ~~forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of $50 as collateral for appearance at trial~~ **providing a current mailing address, phone number, and e-mail address**.

Rule 414. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; ~~or~~

(2) **notifying the issuing authority in writing on the front of the citation of the plea with a statement that he or she is without the financial means to pay the fines and costs listed on the summons, requesting a hearing at which the issuing authority shall consider the defendant's ability to pay impose fines and costs as appropriate, and providing a current mailing address, phone number, and e-mail address; or**

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~~(2)~~ **(3)** appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant pleads guilty pursuant to paragraph (A)(2), the issuing authority shall schedule a payment determination hearing pursuant to Rule 459 to determine the defendant's ability to pay and set the fines and costs accordingly. The issuing authority shall provide notice by first-class mail of the hearing addressed to the defendant's current mailing address . If the defendant fails to appear for that hearing, the court may issue a bench warrant under Rule 430.

~~(C)~~**(D)** When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph ~~(A)(2)~~ **(A)(3)**, the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

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(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Rule 422. Pleas in Response to Summons.

Within ~~10~~ **30** days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

Rule 423. Not Guilty Pleas—Notice of Trial.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, **and providing a current mailing address, phone number, and e-mail address**~~, and depositing such collateral for appearance at trial as the issuing authority shall require~~; or

(2) notifying the issuing authority in writing of the plea and ~~forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of $50 as collateral for appearance at trial~~ **providing a current mailing address, phone number, and e-mail address**.

Rule 424. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; ~~or~~

(2) **notifying the issuing authority in writing on the front of the summons of the plea with a statement that he or she is without the financial means to pay the fines and costs listed on the summons, requesting a hearing at which the issuing authority shall consider the defendant's ability to pay impose fines and costs as appropriate, and providing a current mailing address, phone number, and e-mail address; or**

~~(2)~~ **(3)** appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

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(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant pleads guilty pursuant to paragraph (A)(2), the issuing authority shall schedule a payment determination hearing pursuant to Rule 459 to determine the defendant's ability to pay and set the fines and costs accordingly. The issuing authority shall provide notice by first-class mail of the hearing addressed to the defendant's current mailing address. If the defendant fails to appear for that hearing, the court may issue a bench warrant under Rule 430.

~~(C)~~**(D)** When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph ~~(A)(2)~~ **(A)(3)**, the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

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Rule 430. Issuance of Warrant.

. . .

(3) A bench warrant may be issued when:

(a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of the fine and costs specified in the citation or summons **or the defendant has pled guilty by mail and failed to appear for a payment determination hearing to set the fine and costs**; or

(b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of the fine and costs imposed.

(4) No warrant shall issue under paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a bench warrant, and the defendant has not responded to this notice within ~~10~~ **30** days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

Rule 431. Procedure When Defendant Arrested With Warrant.

. . .

(B) *Arrest Warrants Initiating Proceedings*

(1) When an arrest warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed guilty plea a current mailing address, phone number, and e-mail address, and a statement that he or she is unable to afford to pay the fines and costs listed on the citation and requests a hearing at which the issuing authority shall consider the defendant's ability to pay impose fines and costs as appropriate;

~~(b)~~ **(c)** accept from the defendant a signed not guilty plea **and obtain a current mailing address, phone number, and e-mail address, to be provided to the proper issuing authority** ~~and the full amount of collateral if stated on the warrant~~; or

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(d) if the warrant was issued because the issuing authority has reasonable grounds to believe that the defendant will not obey a summons, cause the defendant to be taken that day before the proper issuing authority.

~~(c) if the defendant is unable to pay, cause the defendant to be taken without unnecessary delay before the proper issuing authority.~~

. . .

(C) Bench Warrants

(1) When a bench warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed guilty plea, a current mailing address, phone number, and e-mail address, and a statement that he or she is unable to afford to pay the fines and costs listed on the citation and requests a hearing at which the issuing authority shall consider the defendant's ability to pay impose fines and costs as appropriate;

(c) if the warrant has been issued because the defendant failed to appear at a hearing to set the fines and costs following a guilty plea, take the defendant to the proper issuing authority that day pursuant to Rule 117 for a bench warrant hearing;

~~(b)~~ **(c)** accept from the defendant a signed not guilty plea **and obtain a current mailing address, phone number, and e-mail address, to be provided to the proper issuing authority**;

~~(c)~~ **(d)** accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; or

~~(d)~~ **(e)** if the defendant is unable to pay **the amount specified in (C)(1)(d)**, ~~promptly~~ take the defendant **that day** for a hearing on the bench warrant as provided in paragraph (C)(3).

(2) When the defendant pays the restitution, fine, ~~and~~ **or** costs~~, or collateral~~ pursuant to paragraph (C)(1), the police officer shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant does not pay the restitution, fine, and costs, ~~or collateral,~~ the defendant ~~promptly~~ shall be taken before the proper issuing authority **that day** ~~when available~~ pursuant to Rule ~~117~~ **456** for a ~~bench warrant~~ **payment determination** hearing. ~~The bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.~~

Rule 452. Collateral.

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~~(E) To be released on recognizance or to request a lower amount of collateral, the defendant must appear personally before the issuing authority to enter a plea, as provided in Rules 408, 413, and 423.~~

Rule 454. Trial in Summary Cases.

. . .

(F) At the time of sentencing, the issuing authority shall:

(1) if the defendant's sentence includes restitution, a fine, or costs~~, state~~:

~~(a) the amount of the fine and the obligation to pay costs;~~

(a) follow the procedures under Rule 459 to determine whether the defendant is able to pay the fine and costs;

(i) if the defendant is able to pay, the court shall state in writing the amount of the fine and the obligation to pay costs; or

(ii) if the defendant is unable to pay, the issuing authority may reduce or waive the fine and costs and shall state in writing any amount of the fine and the obligation to pay any costs;

(b) the amount of restitution ordered, including

(i) the identity of the payee(s),

(ii) to whom the restitution payment shall be made, and

(iii) whether any restitution has been paid and in what amount; and

(c) the date on which payment is due.

If the defendant is ~~without the financial means~~ **unable** to pay the amount in a single remittance, the issuing authority ~~may~~ **shall** provide for installment payments **in an amount the defendant is found able to pay** and shall state **in writing** the date on which each installment is due;

(2) advise the defendant of the right to appeal within 30 days for a trial de novo in the court of common pleas, and that if an appeal is filed:

(a) the execution of sentence will be stayed and the issuing authority may set bail where a sentence of imprisonment is mandatory; and

(b) the defendant must appear for the de novo trial or the appeal may be dismissed;

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(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and

(4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (F)(1) through (F)(3), and a copy of the order shall be given to the defendant.

Rule 455. Trial in Defendant's Absence.

. . .

(D) If the defendant is found guilty, the issuing authority shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, and of the right to file an appeal within 30 days for a trial de novo. In those cases in which the amount of collateral deposited does not satisfy the fine and costs imposed or the issuing authority imposes a sentence of restitution, the notice shall also state that failure within ~~10~~ **30** days of the date on the notice to pay the amount due or to appear for a hearing to determine whether the defendant is financially able to pay the amount due may result in the issuance of an arrest warrant. **If, at the payment determination hearing, the issuing authority determines that the defendant is unable to pay, it may reduce or waive the fine and costs and shall state any amount of the fine and the obligation to pay any costs.**

(E) Any collateral previously deposited shall be forfeited and applied only to the payment of the fine, costs, and restitution. When the amount of collateral deposited is more than the fine, costs and restitution, the balance shall be returned to the defendant.

(F) If the defendant does not respond within ~~10~~ **30** days to the notice in paragraph (D), the issuing authority may issue a warrant for the defendant's arrest.

Rule 456. Default Procedures: Restitution, Fines, and Costs.

(A) When a defendant advises the issuing authority that ~~a default on~~ **the defendant cannot pay** a single remittance or **an** installment payment of restitution, fines, or costs ~~is imminent~~, the issuing authority ~~may~~ **shall** schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within ~~10~~ **30** days of the date on the default notice, the defendant pays the amount due as ordered, or ~~appears before~~ **schedules a payment determination hearing with** the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, **or meets with the court clerk and is placed on a new payment plan,** a warrant for the defendant's arrest may be issued. **If the defendant does not respond within 20 days, the**

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issuing authority shall send an additional notice by certified mail, return receipt requested. The court may provide additional notice to the defendant by e-mail, phone, and/or text message.

(C) If the defendant appears pursuant to the ~~10~~ **30**-day notice in paragraph (B) or following an arrest for failing to respond to the ~~10~~ **30**-day notice in paragraph (B), the issuing authority shall conduct a hearing ~~immediately~~ **that day** to determine whether the defendant is financially able to pay as ordered. **The issuing authority may continue the hearing if it releases the defendant on recognizance.**

~~(1) If the hearing cannot be held immediately, the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may set collateral as provided in Rule 523.~~

~~(2) If collateral is set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.~~

~~(3) If collateral is set and the defendant does not post collateral, the defendant shall not be detained without a hearing longer than 72 hours or the close of the next business day if the 72 hours expires on a non-business day.~~

(D) When a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C) **the issuing authority shall utilize the procedures under Rule 459 and proceed as follows**:

(1) upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law. **The issuing authority shall state in writing the reason(s) that support a determination that the defendant is able to pay the fines, costs, and restitution. No defendant may be sentenced to imprisonment if the right to counsel was not afforded at the hearing.**

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.

(3) At the conclusion of the hearing, the issuing authority shall:

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state **in writing** the date on which each installment payment is due;

(b) advise the defendant **in writing** of the right to appeal within 30 days for a hearing *de novo* in the court of common pleas, and that if an appeal is filed:

(i) the execution of the order will be stayed and the issuing authority may set bail or collateral; and

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(ii) the defendant must appear for the hearing *de novo* in the court of common pleas or the appeal may be dismissed;

(c) if a sentence of imprisonment has been imposed, **that sentence shall not begin until after the 30-day appeal period has passed, and the issuing authority shall** direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (D)(3)(a) through (D)(3)(c), and a copy of the order shall be given to the defendant.

(E) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.

Rule 456.1. Termination of Inactive Cases (new rule)

(A) If fines, costs, and/or restitution remain owed two years after sentencing, the issuing authority shall conduct a review of the case. If the issuing authority determines further action is warranted, the case shall remain open and proceed under Rule 456. If the issuing authority determines no further action is warranted because the defendant is indigent or the amount owed is deemed uncollectable with reasonable effort, the issuing authority shall do a case balance adjustment to close the case.

(B) For any case that remains active after the review in paragraph (A), the issuing authority shall review the case at yearly intervals thereafter to determine whether it should remain open. If the issuing authority determines no further action is warranted because the defendant is indigent or the amount owed is deemed uncollectable with reasonable effort, the issuing authority shall do a case balance adjustment to close the case. If a defendant has appeared before the court and been found indigent or unable to make regular payments, there shall be a presumption that the case should be closed. If any case remains active five years after sentencing, the issuing authority shall do a case balance adjustment to close the case.

(C) The issuing authority need not conduct the review in paragraphs (A) and (B) for as long as a case is turned over to a collection agency. If the case returns from the collection agency, the issuing authority shall proceed with the review in paragraphs (A) and (B).

Rule 459. Ability to Pay (new rule)

(A) When assessing a defendant's ability to pay when imposing a sentence or at a payment determination hearing, the issuing authority shall base its determination on the defendant's income (after tax and other automatic deductions) relative to the federal poverty guidelines. The Administrative Office of the Pennsylvania Courts shall update the issuing authority each year with the current the federal poverty guidelines, which include family size. A defendant making less than or equal to 125% of the federal poverty guidelines shall be considered indigent. If the

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defendant is indigent or otherwise unable to pay, the issuing authority may reduce or waive any fines and costs and shall state in writing any amount to be paid. All payment plans shall be limited to the following formula:

Poverty Level Percentage	Maximum Monthly Payment Plan
125% of Poverty Level	$5
150% of Poverty Level	$7
175% of Poverty Level	$10
185% of Poverty Level	$15

(1) The issuing authority shall not require the defendant to make a single payment or monthly payments, if on a payment plan, greater than the amount listed above for that defendant's poverty level. The issuing authority may set payment amounts that are lower than the amount listed above for that defendant's poverty level.

(2) If the defendant's income is less than or equal to 125% of the federal poverty guidelines, the issuing authority shall suspend the defendant's payments for a period of six months and shall set a payment determination hearing after that time. At that payment determination hearing, the court shall extend the period of suspension of payments if the defendant's income (after tax and other automatic deductions) remains equal to or below 125% of the federal poverty guidelines. The defendant shall not be considered in default during this time. If the defendant fails to appear for the payment determination hearing, the issuing authority may either proceed under Rule 456. Nothing in this provision prevents the court from proceeding under Rule 456.1 to terminate inactive cases.

(3) If the defendant's income is more than 125% of the federal poverty level but the issuing authority determines that the defendant is currently experiencing economic hardship that warrants suspension of payments, the issuing authority may proceed as under paragraph (A)(2).

(B) For defendants whose income (after tax and other automatic deductions) is above 185% of the federal poverty level, the issuing authority shall consider both that income and expenses in setting monthly payments. The issuing authority must set payment amounts solely on the defendant's ability to pay, regardless of the total amount owed by the defendant in that or other cases.

(C) The issuing authority may delegate authority to a clerk to place defendants on a pre-specified range of payment plans that are available to all defendants. The issuing authority may send notices to defendants via first-class mail to have the defendant meet with the clerk to be placed on such a pre-specified payment plan. However, if a defendant does not agree to one of those pre-specified payment plans, the issuing authority must hold a payment determination hearing and proceed under paragraph (A). If a defendant requests a payment determination hearing under this provision, and that hearing cannot be held immediately, the issuing authority shall set a date certain for the hearing and release the defendant on recognizance. The defendant shall not be considered in default and shall not have to make payments while awaiting the scheduled payment determination hearing.

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Rule 470. Procedures Related to License Suspension After Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs.

(A) When a defendant fails to comply with the ~~10~~ **30**-day response period set forth in Rules 407, 412, 422, and 456, the issuing authority shall notify the defendant in writing that, pursuant to Section 1533 of the Vehicle Code, the defendant's license will be suspended if the defendant fails to respond to the citation or summons or fails to pay all fines and costs imposed or enter into an agreement to make installment payments for the fines and costs within 15 days of the date of the notice.

. . .

(D) If the defendant responds to the citation or summons, ~~or~~ pays all fines and costs imposed, ~~or~~ enters into an agreement to make installment payments for the fines and costs imposed after notice has been sent pursuant to paragraph (C), **or has the case terminated as set forth in Rule 456.1,** the issuing authority shall so notify the Pennsylvania Department of Transportation and request the withdrawal of the defendant's license suspension. The notice and request shall be sent by electronic transmission. The issuing authority shall print out and sign a copy of the notice and request, which shall include the date and time of the transmission, and the signed copy shall be made part of the record.

(E) Upon request of the defendant, the attorney for the Commonwealth, or any other government agency, the issuing authority's office shall provide a certified copy of any notices or any request form required by this rule.

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ACLU-PA BENCH CARD AND JUDICIAL PACKET

The U.S. Constitution and Pennsylvania law require safeguards when collecting fines, state assessments, fees, court costs, and restitution (collectively, "legal financial obligations" or "LFOs").[1] All Court of Common Pleas and Magisterial District Judges shall abide by the procedures described below.

COMPLIANCE HEARINGS TO COLLECT LFOs

1. Courts of record must ensure a clear record: If a court reporter is not present, Compliance Hearings should be audio recorded. In the event audio recording equipment is temporarily not working, the Court shall ensure that the case record includes: 1) the evidence submitted by the defendant, and 2) written documentation of the Court's findings, supporting evidence, and colloquy concerning ability to pay, efforts to secure resources, alternatives to incarceration, and the right to counsel.

2. Advise defendants of their rights:
   a. Defendants have a right to present evidence on any issue before the Court, particularly whether any failure to pay has been willful, whether they have made bona fide efforts to secure employment or other income with which to pay their LFOs, and whether they are unable to secure work because of a disability or lack of access to transportation.
   b. A defendant cannot be jailed for failure to pay LFOs unless the Court finds that the defendant had the ability to pay and willfully refused to do so.
   c. Defendants have a right to bring counsel of their choice.
   d. For defendants facing potential incarceration for contempt for nonpayment, the Court will appoint counsel if they cannot afford counsel.
   e. Defendants have a right to appeal any finding of contempt, or any payment ordered by the Court if they believe the evidence shows they are unable to make the ordered payments.

3. The Court may set a monthly payment plan for a defendant who owes LFOs, but the payments must be "reasonable" and "just and practicable" in light of the defendant's resources.[2] The Court shall use the **Ability-to-Pay Form** to conduct this inquiry. This is an individualized determination, and there is no minimum payment plan.

4. When a defendant is experiencing economic hardship and cannot even meet basic needs such as rent and utilities, the Court should suspend payments.[3] The Court shall find that a defendant is unable to pay LFOs when, in consideration of the totality of the circumstances, it finds that the payment of LFOs would impose substantial hardship on the defendant or the defendant's dependents, including children and elderly parents. There is a rebuttable presumption that a person is unable to pay LFOs when:

   a. the defendant's annual income is at or below 125% of the federal poverty level for his or her household size according to the current Federal Poverty Guidelines, which are listed below;

Individual	Family of 2	Family of 3	Family of 4	Family of 5	Family of 6	Family of 7	Family of 8
$15,075	$20,300	$25,525	$30,750	$35,975	$41,200	$46,425	$51,650

   b. the defendant is homeless (including staying with a friend or family member or in another irregular abode while unable to pay rent for that abode);
   c. the defendant receives public benefits (e.g. TANF, food stamps, or Medicaid);
   d. the defendant is incarcerated or has been recently released and has not had a chance to obtain employment; and/or

[1] *Bearden v. Georgia*, 461 U.S. 670, 672 (1983) ("If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court *must* consider alternative measures to punishment other than imprisonment.") (*Emphasis added*); *Commonwealth ex rel. Benedict v. Cliff*, 304 A.2d 158 (Pa. 1973); Pa.R.Crim.P. 706.
[2] *Commonwealth ex rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973); Pa.R.Crim.P. 706(B), (D).
[3] Rule 706 enforces the constitutional "duty of paying costs 'only against those who actually become able to meet it without hardship.'" *Com. v. Hernandez*, 917 A.2d 332, 337 (Pa. Super. Ct. 2007) (quoting *Fuller v. Oregon*, 417 U.S. 40, 54 (1974)).

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e. the defendant resides in a mental health facility or substance abuse treatment facility, or is recently released therefrom and has not had a chance to obtain employment.

5. If a defendant is in default of a court-ordered payment plan, the Court can only find the defendant in contempt if the Court finds that the defendant's failure to pay was willful. To make such a finding the Court must conduct an evidentiary hearing at which the Court makes an *affirmative inquiry* into the defendant's ability to pay and determines that the defendant presently has that ability but willfully refused to pay.[4]

6. The Court may require the defendant to make reasonable efforts to secure employment, unless the defendant is unable to work because of age, disability, or needs to care for dependents. The Court shall take into account limitations on the defendant's ability to work due to homelessness, health and mental health issues, temporary and permanent disabilities, limited access to public transportation, limitations on driving privileges, and other relevant factors.

7. The Court must appoint counsel to represent any indigent defendant who faces the possibility of incarceration due to nonpayment of an LFO, including in Compliance Hearings and Probation Revocation Hearings, unless there is a knowing, voluntary, and intelligent waiver of the right to counsel. Counsel must have an opportunity to consult with the defendant before that defendant's hearing.

8. The Court may impose incarceration if it finds, after a hearing, that the defendant has willfully refused to pay an LFO when she/he presently has the means to pay; or the defendant has failed to make bona fide efforts to find employment.

9. If the Court commits a defendant to jail in order to compel payment, it must find "[b]eyond a reasonable doubt, from the totality of the evidence before it," that the defendant is capable of paying the purge amount at the time that he is found in contempt.[5]

If the Court determines that a defendant is unable to pay, **the Court will apply appropriate alternatives to incarceration for nonpayment of fines or restitution**, including:

a. Waiver or Suspension of the fines, restitution, fees, and court costs imposed;
b. Reduction of the amount of fines, fees, court costs, and/or restitution imposed;
c. Community Service credit toward the discharge of fines, fees, state assessments, court costs, or restitution owed. The Court shall not impose a fee for those who participate in community service and shall attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
d. Extension of the amount of time for payment of the fines, restitution, fees, state assessments, and court costs imposed;
e. Completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
f. Imposing other dispositions deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Judges shall be guided by the Supreme Court's recognition that the government's "interest in punishment and deterrence can often be served fully by alternative means" to incarceration.[6]

The Court will document its actions with findings and evidence in the record supporting its findings.

[4] *Com. v. Dorsey*, 476 A.2d 1308, 1312 (Pa. Super. Ct. 1984).
[5] *Barrett v. Barrett*, 368 A.2d 616, 620-21 (Pa. 1977).
[6] *Bearden v. Georgia*, 461 U.S. 670, 671–72 (1983).

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Pennsylvania Ability-to-Pay Evaluation

Commonwealth of Pennsylvania
v.
_____, Defendant

Docket No.: ___-_____-___-_____-_____
Balance Due:

Section I: Other Case Information

Other case docket numbers where the defendant owes money, if any:
Active payment plan number(s), if known:

Section II: Identification and Employment

Name – Last, First, Middle	Date of Birth	Spouse Full Name (if married)	
Home Address	City	State	Zip
Telephone Number	Number of People in House/ Number Working		
Employer	Occupation / Date Hired	Supervisor Name and Telephone Number	
Employer Address	City	State	Zip

If unemployed:
Are you actively searching for employment? YES / NO
Do you have a disability preventing employment? YES / NO
If yes, please provide a doctor's note explaining the work restriction. Date expected to be able to return to work: _____

Section III: Monthly Income

Monthly Income (take-home income)	$
Dates of Last Employment if Unemployed	
Legal Spouse's Income	$
Interest/Dividends	$
Pension/Annuity	$
Social Security Benefits	$
Disability Benefits	$
Unemployment Compensation	$
Welfare/TANF/V.A. Benefits	$
Worker's Compensation	$
Other Retirement Income	$

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Support from Other People (parents, children, etc.)	$
Other Income (e.g. trust fund, estate payments)	$
TOTAL MONTHLY INCOME	$

Section IV: Monthly Expenses

Rent/Mortgage	$
Utilities (Gas, Electric, Water)	$
Television/Internet	$
Food (amount beyond what food stamps cover)	$
Clothing	$
Telephone	$
Healthcare	$
Other Loan Payments	$
Credit Card Payments	$
Education Tuition	$
Transportation Expenses (car payment, insurance, transit pass, etc.)	$
Payments to courts/probation/parole	$
Number of Dependents (e.g. children)	
Dependent Care (including child support)	$
Other Expenses (explain)	$
TOTAL MONTHLY EXPENSES	$

Section V: Liquid Assets

Cash on Hand	$
Money in Bank Accounts (checking and savings)	$
Certificates of Deposit	$
Stocks, Bonds, and Mutual Funds	$

MONTHLY INCOME: $_____

MONTHLY EXPENSES: $_____

DISPOSABLE INCOME: $_____
(Income left over after expenses each month)

Signature: _____ Date: _____

125%[1] of the 2017 Federal Poverty Guidelines:
Individual: $15,075
Family of 2: $20,300
Family of 3: $25,525
Family of 4: $30,750
Family of 5: $35,975
Family of 6: $41,200
Family of 7: $46,425
Family of 8: $51,650

[1] Recommended by the National Task Force on Fines, Fees and Bail Practices, a joint task force of the Conference of Chief Justices and the Conference of State Court Administrators, coordinated by the National Center for State Courts. *See* National Task Force on Fines, Fees and Bail Practices, "Lawful Collection of Legal Financial Obligations: A Bench Card for Judges," http://www.ncsc.org/~/media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx.

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COMPLIANCE HEARING DISPOSITION SHEET

Defendant's Name: _____

Case Number: _____

Total Amount Owed: $_____ **Amount Past Due:** _____

Current Monthly Payment Plan: _____ **Any Payments Since Last Appearance? Yes / No**

1. The Public Defender ☐ was or ☐ was NOT appointed to represent the Defendant in this proceeding.

2. Public Defender's Name (if appointed)_____

3. The Defendant ☐ did or ☐ did NOT make a knowing, voluntary and intelligent waiver of the right to counsel.

4. The Defendant ☐ did or ☐ did NOT complete an Ability-to-Pay Evaluation.

5. The Defendant's monthly income ☐ is or ☐ is NOT below 125% of the relevant Federal Poverty Guideline for household size.

6. The Defendant ☐ is or ☐ is NOT homeless/living with friends or relatives without the ability to pay rent.

7. The Defendant ☐ is or ☐ is NOT incarcerated, or ☐ has recently been released and has not had a chance to obtain employment.

125% of the 2017 FPG:

Individual: $15,075
Family of 2: $20,300
Family of 3: $25,525
Family of 4: $30,750
Family of 5: $35,975
Family of 6: $41,200
Family of 7: $46,425
Family of 8: $51,650

8. The Defendant ☐ does or ☐ does NOT reside in a mental health facility or substance abuse treatment facility, ☐ or is recently released therefrom and has not had a chance to obtain employment.

9. The Defendant ☐ has or ☐ has NOT experienced a change in circumstances since sentencing and/or placement on a payment plan.

10. The Defendant ☐ did or ☐ did NOT contest the amount owed.

11. Does the Defendant face limitations on the ability to earn money due to:
    - ☐ Lack of access to transportation or limitations on driving privileges?
    - ☐ Child care requirements?
    - ☐ Other relevant factors?_____

APPENDIX B:
ACLU-PA BENCH CARD AND JUDICIAL PACKET

12. The Court determines that the Defendant ☐ is able to pay _____ per month or ☐ is NOT able to pay anything in his or her current financial situation. (Explain)

.....

.....

.....

13. The Court determines that the Defendant ☐ has or ☐ has NOT made sufficient bona fide efforts to secure employment. (Explain)

.....

.....

.....

14. The Court determines that the Defendant ☐ did NOT willfully fail to pay, or ☐ did willfully fail to pay and is therefore found to be in contempt of court. (Explain)

.....

.....

.....

The Court orders:

☐ Payment schedule as follows: _____ per month beginning _____;

☐ Appear for another Compliance Hearing on _____ at _____;

☐ Waiver or Suspension of the fines, fees, court costs, and restitution imposed until _____;

☐ Reduction of the amount of fines, fees, court costs, and restitution imposed to _____;

☐ Community Service credit of _____ toward the discharge of fines, fees, state assessments, court costs, and restitution owed to the Court;

☐ Completion of Approved Job Skills Training and Educational, Drug Treatment, Counseling, and/or Mental Health Programs credit of _____ toward the discharge of fines, fees, state assessments, court costs, and restitution owed to the Court;

☐ Any Other Disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law. (Specify below)

.....

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APPENDIX B:
ACLU-PA BENCH CARD AND JUDICIAL PACKET

FORM ONE

ORDER SETTING COMPLIANCE HEARING

CASE NUMBER:

DEFENDANT NAME:
COMPLIANCE HEARING DATE:
TOTAL BALANCE DUE:

YOU ARE HEREBY ORDERED to appear before the _____ Court of Common Pleas at _____ on the _____ day of _____, 20____, to explain why you did not pay court fines and costs as required by the _____ Court of Common Pleas.

You MUST appear on the date set forth above, if you have not responded before then.

The Court will NOT put you in jail if you appear and are NOT ABLE TO PAY.

FAILURE TO APPEAR may result in your arrest and a finding of contempt of Court.

At the hearing, you may ask the judge to appoint a free lawyer to help you.

If you cannot afford a lawyer, the judge will appoint a free lawyer to help you.

Please see the attached list of your rights and obligations.

BY THE COURT:

_____
Judge, Court of Common Pleas

YOU MUST NOTIFY IMMEDIATELY THE COURT OF ANY CHANGE IN YOUR ADDRESS.

Attachments:
Form Two: Advisement of Rights Regarding Payments and Community Service

APPENDIX B:
ACLU-PA BENCH CARD AND JUDICIAL PACKET

FORM TWO

ADVISEMENT OF RIGHTS AND OBLIGATIONS ON PAYMENTS

The Court has required you to pay money.
The amount you owe and when you must pay are listed on the Order given to you.

If you receive a notice that you **owe money to the Court**, you have the following legal rights:

1) **You have the right to a court hearing before being jailed for nonpayment.**

   You can explain that you already paid.
   You can explain that you owe less than the amount the Court says you owe.
   You can explain that you cannot afford your payments and ask to be temporarily excused from payments.
   You can ask the Court to make you pay less.
   You can ask the Court to let you pay the money later.
   You can tell the Court how much money you have.
   You can tell the Court how much you pay for rent, food, or other important things.

2) **You have the right to have a lawyer help you at the hearing.**

   A lawyer can help you avoid jail.
   A lawyer can help you explain that you do not have money to pay.

3) **You have the right to ask the Judge to appoint a lawyer to help you at the hearing.**

   The Judge will decide whether to appoint a lawyer for you.
   You can ask the Judge to make you pay nothing for the lawyer appointed to help you.

4) **Do you want a lawyer?** When you arrive in Court, ask the Judge to appoint a lawyer to help you.

5) **At the court hearing:**

   The Judge will decide whether you can pay.
   The Judge will decide whether you tried to earn the money to pay.
   The Judge will decide whether you could not earn money because you do not have transportation, need to care for your kids, or are disabled.

   If you cannot pay, the Judge will decide whether you can pay less or nothing at all, can pay later, or can do work to help the community instead of paying.

   The Judge may decide that you did not pay even though you had the money.
   Only then, may the Judge sentence you to jail.

Because you owe money to the Court, you also have the following obligations:

1) **You must contact the Court upon receiving this notice to explain your financial situation.**
2) **You must appear at the Court on the date listed.**
3) **You must inform the Court of your current address.**
4) **You must continue to make a good-faith effort to make payments or find employment so you can make payments to the Court.**

APPENDIX C:
SUPREME COURT OF ALABAMA BENCH CARD

ALABAMA ACCESS TO JUSTICE COMMISSION

THE SUPREME COURT OF ALABAMA

COLLECTION OF FINES AND COURT COSTS

Developed for Alabama Judges by the Alabama Access to Justice Commission

IMPOSING FINES AND COURT COSTS

- In determining whether to impose a fine, the court should consider the reasons a fine is appropriate, the financial resources and obligations of the defendant and the burden payment of a fine will impose, ability of the defendant to pay, and the extent to which payment of a fine will interfere with the defendant's ability to make restitution. [1]
- Docket fees and other costs in criminal cases shall be assessed at the time of conviction. [2]
- Trial courts retain jurisdiction to permit payment of costs, fines, and/or restitution at some later date, or in specified installments. The trial court may also, should the defendant fail to pay a fine and/or restitution, reduce the fine to an amount the defendant may pay, modify the fee payment schedule, or release the defendant from the obligation to pay the fine. [3]
- When multiple offenses arise from the same incident, docket fees and other court costs should generally be assessed on the basis of the most serious offense for which the defendant is convicted. A judge may, in his or her discretion, assess costs for each conviction [4]

ENFORCING FINES BY IMPOSING JAIL

- **In no case shall an indigent defendant be incarcerated for inability to pay a fine or court costs or restitution.** [5]
- A person may be jailed for *willful* nonpayment of a fine that he or she has the ability to pay. [6]
- Incarceration shall not automatically follow nonpayment and should be employed only after the court has examined the reasons for nonpayment. [7] This examination should include the defendant's financial, employment, and family standing, and the reasons for nonpayment of the fine and/or restitution, including whether nonpayment of the fine and/or restitution was contumacious or due to indigence. [8]
- Before committing an offender to jail for nonpayment of fines, a court must examine reasons for nonpayment and make specific determinations and findings that the defendant willfully refused to pay, failed to make sufficient bona fide efforts to pay, or that alternate measures to punish or deter are inadequate. [9]
- In the event of incarceration for willful nonpayment only, the period of incarceration may not exceed the maximum periods set forth in Ala. Code § 15-18-62.
- If, at the time the fine was imposed or the restitution was ordered, a sentence of incarceration was also imposed, the aggregate of the period of incarceration imposed for nonpayment and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense. [10]
- If the fine was imposed in connection with a felony, the period of incarceration for nonpayment may not exceed one (1) year. [11]
- If the fine was imposed in connection with a misdemeanor or municipal ordinance violation, the period of incarceration for nonpayment may not exceed one-third (⅓) of the maximum term of incarceration authorized for the offense.[12]

COURT ACTIONS ON NONPAYMENT

PERMISSIBLE ACTIONS:

- Community Service [13]
- Reducing or Remitting Amount Due
- Voluntary Payment [14]
- Payment Plan [15]
- Collection Agency [16]
- Imposing Jail for Willful Nonpayment Only *(see Enforcing Fines)*
- Suspension of Driver's License or Restricted Driving Conditions [17]
- Attachment of Prisoner Property [18]
- Contempt of Court [19]
- Execution of Civil Judgment [20]
- Forfeiture of Confiscated Money [21]
- Order Employer to withhold wages [22]

IMPERMISSIBLE ACTIONS:

- Violation or Extension of Probation [23]
- Refusal to Accept Filings [24]
- Jailing or threatening to jail a person who is indigent or other wise unable to pay.

CONTEMPT

- Nonpayment of a fine or court costs constitutes contempt only where the court determines, after proper notice and an evidentiary hearing, that defendant has willfully refused to comply with the court's order to pay. [25]

OTHER REMEDIES FOR NONPAYMENT

- If a defendant fails to pay a fine, the court may reduce the fine to an amount the defendant is able to pay, continue or modify the payment schedule, or release the defendant from the obligation to pay. [26]
- For indigent defendants, the court should consider alternative public service in lieu of fines, where the State's goals of punishment and deterrence are adequately served. [27] Municipal courts have the authority to remit fines and require competent defendants to attend educational, corrective or rehabilitative programs. [28] Alternatively, municipal courts may allow a defendant to work off, under municipal direction, the amount of an unpaid judgment at a rate of at least $10.00 per day of service. [29]

APPENDIX C:
SUPREME COURT OF ALABAMA BENCH CARD

PROBATION

- Probation may be used only when a suspended sentence is imposed following a conviction. [30]
- For misdemeanors, "in no case shall the maximum probation period…exceed two (2) years." [31]
- Community service may be imposed as a condition of probation. Conditions requiring payment of fines, restitution, reparation or family support should not go beyond the probationer's ability to pay. [32]
- In order to revoke probation for nonpayment, defendant must be given proper notice and the court must conduct an evidentiary hearing. Only where the evidence presented shows that defendant willfully failed to make payment may the Court then sentence Defendant to imprisonment within the authorized range of its sentencing authority. [33]
- If the evidence shows that defendant is indigent, the court must consider alternative measures of punishment other than imprisonment.

RIGHT TO COUNSEL

- The court must provide access to legal counsel, including to misdemeanor defendants, in any proceeding in which there is a possibility of incarceration. [34]
- A probationer is entitled to be present at the probation revocation hearing and to be represented by counsel.
- When probation is revoked and the defendant was not provided access to counsel in the original underlying adjudication, the court cannot impose jail time. [35]

INDIGENCE

- In determining indigence, the court shall recognize ability to pay as a variable depending on the nature, extent and liquidity of assets, disposable net income of the defendant, the nature of the offense, the effort and skill required to gather pertinent information and the length and complexity of the proceedings. [36]
- A defendant whose income is at or below 125% of the Federal Poverty Level is presumed to be indigent. [37]
- In determining indigence and ability to pay, the court cannot consider the assets of relatives or friends. [38]
- A court may develop a form to uniformly collect earning and asset information from defendants, which may be required to be completed under oath. The Administrative Office of Courts has developed an Affidavit of Substantial Hardship for civil proceedings that may provide helpful guidance

BAIL

- Except as provided in Ala. Code § 15-13-3(a), a defendant before conviction is entitled to bail as a matter of right. [39]
- Any bail that is set must be reasonable, with consideration of defendant's ability to pay. [40]
- Holding an indigent defendant, otherwise eligible for release, solely because he cannot make a monetary bail payment violates the defendant's right to equal protection under the law. [41]
- A system of monetary bail only, not providing for release on a defendant's own recognizance in appropriate circumstances (including indigence), is unconstitutional. [42]

ENDNOTES:

[1] *Ala. R. Crim. P. 26.11(b).*
[2] *Ala. R. Crim. P. 26.11(c).*
[3] *Ala. R. Crim. P. 26.11(h).*
[4] *Ala. Code § 12-19-150(c) (2014).*
[5] *Ala. R. Crim. P. 26.11(i)(2); Tate v. Short, 401 U.S. 395 (1971) see also Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).*
[6] *Ala. R. Crim. P. 12.11(h)(3), (i)(2); Taylor v. State, 47 So. 3d 287, 289-90 (Ala. Crim. App. 2009).*
[7] *Ala. R. Crim. P. 26.11(i)(1).*
[8] *Ala. R. Crim. P. 26.11(g).*
[9] *Taylor v. State, 47 So. 3d at 290; see also Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).*
[10] *Ala. R. Crim. P. 26.11(i)(1)(c).*
[11] *Ala. R. Crim. P. 26.11(i)(1)(ii).*
[12] *Ala. R. Crim. P. 26.11(i)(1)(iii).*
[13] *Code of Ala. § 12-14-10 and 12 (1975); Ala. R. Crim. P. 27.1.*
[14] *Ala. R. Crim. P. 26.11(b).*
[15] *Ala. R. Crim. P. 26.11(d).*
[16] *Wilkins v. Dan Haggerty & Associates, Inc., 672 So.2d 507, 510 (Ala.1995).*
[17] *Ala. R. Crim. P. 26.11(i)(3); Code of Ala. § 12-14-10 (1975).*
[18] *Code of Ala. § 15-18-180 (restitution).*
[19] *Little v. State, 693 So. 2d 30, 30-32 (Ala. Crim. App. 1997).*
[20] *Smith v. State, 335 So. 2d 393, 395 (Ala. Crim. App. 1976); Ala. R. Crim. Pro. 26.11(k).*
[21] *Ala. Code 1975 § 15-5-65; Heard v. State, 607 So. 2d 260, 261 (Ala. Civ. App. 1992).*
[22] *Ala. R. Crim. P. 26.11(k).*
[23] *Ala. R. Crim. P. 26.11.*
[24] *Boddie v. Connecticut, 401 U.S. 371, 381-82 (1971).*
[25] *Ala. R. Crim. P. 33.*
[26] *Ala. R. Crim. P. 26.11(k).*
[27] *Jackson v. State, 435 So. 2d 235, 238 (Ala. Crim. App. 1983).*
[28] *Code of Ala. § 12-14-10 (1975).*
[29] *Code of Ala. § 12-14-12 (1975).*
[30] *Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).*
[31] *Ala. Code §15-22-54(a) (1975).*
[32] *Ala. R. Crim. P. 27.1; see Vandiver v. State, 401 So. 2d 326 (Ala. Crim. App. 1981).*
[33] *Bearden v. Georgia, 461 U.S. 660, 672 (1983); Ala. Code §15-22-54 (1975).*
[34] *See Gideon v. Wainwright, 372 U.S. 335 (1963). See also Argersinger v. Hamlin, 407 U.S. 25 (1972).*
[35] *Alabama v. Shelton, 535 U.S. 654 (2002).*
[36] *Ala. Code § 15-12-5 (2014).*
[37] *Ala. Code § 15-12-1 (2014).*
[38] *Ex parte Sanders, 612 So. 2d 1199 (Ala. 1993); Quick v. State, 825 So. 2d 246 (Ala. Crim. App. 2001).*
[39] *Ala. Code § 15-13-1 (2014).*
[40] *Ala. R. Crim. P. 7.2; Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).*
[41] *E.g., State v. Blake, 642 So. 2d 959, 968 (Ala. 1994).*
[42] *Id.*

APPENDIX D:
BILOXI BENCH CARD AND LAYPERSON ADVISEMENT

BENCH CARD
Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

The U.S. Constitution and Mississippi law require safeguards when collecting fines, state assessments, fees, court costs, and restitution (collectively, "legal financial obligations" or "LFOs").[1] All Biloxi Municipal Court ("BMC") Judges shall abide by the procedures described below.

RIGHT TO COUNSEL

FIRST APPEARANCE:

When a person is brought before the Biloxi Municipal Court, and charged with a misdemeanor, the Court shall provide the defendant an opportunity to sign an **Affidavit of Indigence** stating that he or she is indigent and unable to employ counsel.[2]

It is a best practice for the Court to assign a public defender or court staff to help the defendant complete the Affidavit of Indigence.

The court shall use the **Affidavit of Indigence**, and any other relevant factors, to evaluate whether the defendant is entitled to counsel.

The court may appoint counsel to represent an indigent defendant charged with a misdemeanor punishable by confinement.[3]

When the court determines that representation is required at the plea, trial, sentencing, or post-sentencing stage of the proceedings, it must appoint counsel to represent an indigent defendant, unless there is a knowing, voluntary, and intelligent waiver of the right to counsel.[4]

SENTENCING:

A defendant is entitled to the assistance of counsel ***before*** being sentenced to incarceration or probation for the collection of a fine, fee, court cost, state assessment, or restitution, unless there is a knowing, voluntary and intelligent waiver of the right to counsel.[5]

If the Court contemplates imposing incarceration or probation on an unrepresented defendant, or wishes to preserve its right to impose a jail sentence or probation in the future, the Court must conduct an indigence determination by using the **Affidavit of Indigence**, and considering any other relevant factors, to evaluate whether the defendant is entitled to court-appointed counsel at no cost.

COMPLIANCE HEARING:

The court must inform every person charged with failure to pay an LFO of:

(1) all defendants' right to representation by legal counsel in any proceeding concerning nonpayment;
(2) indigent defendants' right to court-appointed representation at no cost when facing possible incarceration for failure to pay LFOs.

The Court must appoint counsel to represent indigent people who face the possibility of incarceration due to nonpayment of an LFO, including in Compliance Hearings and Probation Revocation Hearings, unless there is a knowing, voluntary, and intelligent waiver of that right.

WAIVER OF RIGHT TO COUNSEL:

The Court **may not** accept a written or oral waiver of any right to court-appointed counsel without FIRST informing the defendant of the nature of the charges, of the defendant's right to be counseled regarding her/his plea, and the range of possible punishments, and ensuring that any waiver is knowing, intelligent, and voluntary.

If a defendant/probationer seeks to waive his or her right to counsel, the court must conduct a colloquy on the right to inform the defendant:

(1) **that the indigent defendant has a right to a court- appointed attorney or public defender at no cost**;

(2) **that any fee normally charged for representation by a court-appointed attorney shall be waived** for indigent defendants; and

(3) the nature of the charges against the defendant, of defendants' right to be counseled regarding his or her plea, and the range of possible punishments.

APPENDIX D:
BILOXI BENCH CARD AND LAYPERSON ADVISEMENT

BENCH CARD
Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

IMPOSITION AND COLLECTION OF LFOs

SENTENCING:

The Court shall assess ability to pay when setting the amount of any fine, fee, court cost, or restitution.[6] The Court should consider:

(1) the defendant's financial resources and income;
(2) the defendant's financial obligations and dependents;
(3) the defendant's efforts and ability to find and engage in paid work, including any limitations due to disability or residence in a mental health facility;
(4) outstanding LFO obligations in other cases or to other courts;
(5) the length of the defendant's probation sentence, if any;
(6) the goals of deterrence, retribution, and rehabilitation;
(7) the Affidavit of Indigence; and
(8) any other factor or evidence that the Court deems appropriate.

The Court shall also consider the ability to perform community service when setting any community service requirements.

Fines, Fees, Court Costs, and Restitution:

If the defendant is unable to pay, the Court should consider:

(1) Reduction of the amount of fines, fees, court costs, and restitution imposed;
(2) Waiver or Suspension of the fines, fees, court costs and restitution imposed;
(3) Community Service credit toward the discharge of fines, fees, court costs, or restitution owed to Biloxi. Biloxi Municipal Court Judges shall not impose a fee for those who participate in community service. Biloxi Municipal Court Judges will attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
(4) Extension of the amount of time for payment of the fines, restitution, fees, and court costs imposed;
(5) Completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
(6) Other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Mandatory State Assessments:

If the defendant is unable to pay, the Court should consider:

(1) extending the defendant's time to pay;
(2) requiring the defendant to perform community service to satisfy the state assessment fees;
(3) requiring the completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
(4) imposing any other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

The Court may not reduce or suspend any mandatory state assessments, including those imposed under Miss. Code Ann. § 99-19-73.

Jail: The Court's decision to sentence a defendant to jail shall NOT solely be based on any finding that the defendant is unable to pay a fine, state assessment, court costs, fee, or restitution.

After setting the amount of any LFOs, and Community Service, and Program Requirements the Court shall:

(1) Determine whether the defendant can pay LFOs in full, or needs additional time;
(2) Set the terms of a Payment Plan by which LFO payments shall be made to the BMC Clerk, if the defendant cannot pay in full on sentencing day;
(3) Set forth the sentence in a written order indicating the final date for payment of LFOs and performance of community service, any Payment Plan terms and the total amount of (1) fines, (2) restitution, (2) fees and costs, and (3) state assessments;
(4) Provide the defendant the **Advisement of Rights Regarding Payments and Community Service** and the **Notice of Change of Address** form.

REPORT OF NONPAYMENT:

Warrants: The court shall not issue any warrant directing arrest for alleged LFO nonpayment absent a Compliance Hearing as described below.

The Court shall hold a Compliance Hearing for defendants who are sentenced to LFOs, community service and/or training, treatment, counseling and mental health programs and who are alleged to have failed to meet the requirements of the Court's sentence.

The Court shall provide at least 21-days notice of a Compliance Hearing through use of the **Biloxi Municipal Court Order Setting Compliance Hearing**. The Court shall also provide the **Advisement of Rights Regarding Payments and Community Service**, and the **Notice of Change of Address** form when providing notice of a Compliance Hearing.

APPENDIX D:
BILOXI BENCH CARD AND LAYPERSON ADVISEMENT

BENCH CARD
Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

IMPOSITION AND COLLECTION OF LFOs (continued)

COMPLIANCE HEARING:

Compliance Hearings will be audio recorded. In the event audio recording equipment is temporarily not working, the Court shall ensure that the case record includes: 1) the evidence submitted by the defendant, and 2) written documentation of the Court's findings, supporting evidence, and colloquy concerning ability to pay, efforts to secure resources, alternatives to incarceration, and the right to counsel.

Hearing Procedures and Standards

The Court must advise defendants of:

(1) all defendants' right to an ability-to-pay hearing prior to jailing for nonpayment of fines, fees, state assessments, court costs, or restitution;
(2) all defendants' right to be represented by legal counsel for defense against possible incarceration for failure to pay LFOs;
(3) indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration in proceedings concerning nonpayment of LFOs;
(4) that ability to pay, efforts to secure resources, and alternatives to incarceration are critical issues in a Compliance Hearing;
(5) the type of information relevant to determining ability to pay; and
(6) the potential penalties if a person is found to have willfully failed to pay an LFO.

The Court must provide defendants an opportunity to present evidence that the amount allegedly owed is not accurate or not in fact owed if the defendant believes the amount is not correct.

As part of determining whether the failure to pay was willful and whether incarceration can be imposed, the Court shall:

1. **Inquire into, and make a determination on, ability to pay LFOs**, by considering the totality of the circumstances, including the defendant's income, assets, debts, other LFO obligations, and any other information the Court deems appropriate. The Court shall use the **Affidavit of Indigence** to conduct this inquiry.

   The Court shall find that a defendant is unable to pay LFOs when, in consideration of the totality of the circumstances, it finds that the payment of LFOs would impose substantial hardship on the defendant or the defendant's dependents, including children and elderly parents. The Court shall make a rebuttable presumption that a person is unable to pay LFOs when:

   a. the defendant's annual income is at or below 125% of the federal poverty level for his or her household size according to the current Federal Poverty Level ("FPL") chart;
   b. the defendant is homeless;
   c. the defendant is incarcerated; and/or
   d. the defendant resides in a mental health facility.

2. **Inquire into, and make a determination on, the reasonableness of a defendant's efforts to acquire resources to pay LFOs.**

   The Court shall take into account efforts to earn money, secure employment and borrow money, as well as any limitations on the defendant's ability to engage in such efforts due to homelessness, health and mental health issues, temporary and permanent disabilities, limited access to public transportation, limitations on driving privileges, and other relevant factors.

3. If the Court determines that a defendant is unable to pay, **the Court will consider and make a determination on the adequacy of alternatives to incarceration for nonpayment of fines or restitution**, including:

   a. Reduction of the amount of fines, fees, court costs, and restitution imposed;
   b. Waiver or Suspension of the fines, restitution, fees, and court costs imposed;
   c. Community Service credit toward the discharge of fines, fees, state assessments, court costs, or restitution owed to Biloxi. Biloxi Municipal Court Judges shall not impose a fee for those who participate in community service. Biloxi Municipal Court Judges will attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
   d. Extension of the amount of time for payment of the fines, restitution, fees, state assessments, and court costs imposed;
   e. Completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
   f. Imposing other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Judges shall be guided by the Supreme Court's recognition that the government's "interest in punishment and deterrence can often be served fully by alternative means" to incarceration.[7]

The Court will document its actions and findings and evidence in the record supporting its findings.

APPENDIX D:
BILOXI BENCH CARD AND LAYPERSON ADVISEMENT

BENCH CARD
Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

IMPOSITION AND COLLECTION OF LFOs (continued)

IMPOSING JAIL FOR FAILURE TO PAY

The Court may impose incarceration following a Compliance Hearing if it makes one of the following findings, supported by evidence:

(1) a defendant has willfully refused to pay the fine, fee, court cost, state assessment, or restitution when she/he has the means to pay;
(2) a defendant has failed to make sufficient bona fide efforts to seek employment, borrow money, or otherwise secure resources in order to pay the fine; or
(3) the defendant is unable to pay, despite making sufficient efforts to acquire the resources to pay, and alternative methods for achieving punishment or deterrence are not adequate.[8]

THIRD PARTY COLLECTIONS

The Court may send a case to collections by a third-party contractor if a defendant has failed to make LFO payments in accordance with a Payment Plan and the Court has determined, after holding a Compliance Hearing in accordance with the procedures described herein, that:

(1) the defendant has the ability to pay, but has refused to pay the LFO(s) owed; or

(2) the defendant is unable to pay the LFO, but has failed to make sufficient bona fide efforts to seek employment, borrow money, or otherwise secure the resources in order to pay a fine, fee, court cost, state assessment, or restitution.

In any civil execution, attachment, and/or wage garnishment proceeding to collect unpaid LFOs, the defendant is entitled to the exemptions and exclusions found in Miss. Code Ann. § 85-3-1.

Collecting Fines, Fees, State Assessments, Court Costs, and Restitution

Permitted Methods of Collection	Impermissible Methods of Collection
• Voluntary Payment • Payment Plan Administered by Court • Community Service (except restitution owed to a party other than Biloxi) • Execution of Civil Judgment • Collection by Third Party Contractors following Compliance Hearing and Court determination as described above.	• Imposing Jail at Sentencing • Issuance of Failure-to-Pay Warrants Upon Report of Nonpayment • Forfeiture of Confiscated Money • Imposing "pay or stay" sentence

[1] *Bearden v. Georgia*, 461 U.S. 670, 672 (1983) ("If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court *must* consider alternative measures to punishment other than imprisonment.") (*Emphasis added*); Miss. Code Ann. §§ 21-23-7; 25-32-9; 63-1-53; 99-15-26; 99-37-11.
[2] Miss. Code Ann. § 25-32-9.
[3] Miss. Code Ann. §§ 21-23-7; 25-32-9
[4] Miss. Code Ann. § 25-32-9.
[5] *Alabama v. Shelton*, 535 U.S. 654, 658 (2002).
[6] *Bearden v. Georgia*, 461 U.S. 660, 669–70 (1983) ("[W]hen determining initially whether the State's penological interests require imposition of a term of imprisonment, the sentencing court can consider the entire background of the defendant, including his employment history and financial resources.").
[7] *Bearden v. Georgia*, 461 U.S. 670, 671–72 (1983).
[8] *Id.* at 668–69.

APPENDIX D:
BILOXI BENCH CARD AND LAYPERSON ADVISEMENT

Payment of fines

Payment of Money and Community Service

The Biloxi Municipal Court may require you to pay money if you plead guilty or are convicted of an offense. If you are found NOT GUILTY, the Court will NOT require you to pay money.

The Court will consider your ability to pay when setting the amount of money you owe and any payment schedule. If you cannot afford to pay, the Court may require you to do work to help the community instead.

You may pay the full amount that you owe on sentencing day. If you are unable to pay in full, the Court may place you on a Payment Plan. The Court will consider your ability to pay when setting the payment schedule.

YOUR RIGHTS: If you receive a notice that you owe money to the Court or did not complete community service, you have the following legal rights:

You have the right to a court hearing before the court can jail you.

The court will NOT put you in jail if you are not able to pay.

You MUST appear in court. You could be jailed if you do not.

You have the right to have a lawyer help you at the hearing.

A lawyer can help you avoid jail.

A lawyer can help you explain that you do not have the money to pay or could not complete community service.

You have the right to ask the Judge to appoint a lawyer to help you at the hearing.

You can ask the Judge to make you pay nothing for the lawyer.

AT THE COURT HEARING:

The Judge will decide whether you can pay.

If you cannot pay, the Judge will decide whether you can pay less or nothing at all, whether you can pay later, and whether you can work to help the community instead of paying.

If you were not able to complete community service, the Judge will decide whether to require fewer hours or provide another alternative.

The Judge may decide that you did not pay even though you had the money. The Judge may decide that you did not work for the community even though you were able. Only then, may the Judge sentence you to jail.

YOUR DUTY:

You MUST appear in court on the date set on the notice.

FAILURE TO APPEAR may result in your arrest.

You must keep the Court informed of your mailing and residence address.

As soon as reasonably possible after a change in address, you should complete the Notice of Change of Address and deliver it to the Biloxi Municipal Court Clerk at 170 Porter Avenue, Biloxi, Mississippi 39530, by one of the following means:

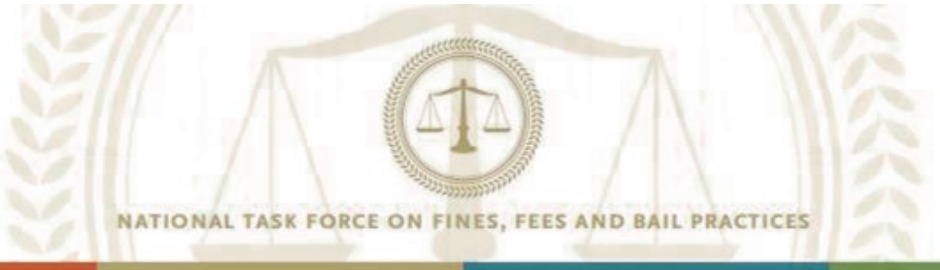
(1) U.S. Mail,

(2) hand delivery to the Biloxi Municipal Court Administrator/Clerk's office, or

(3) email to coacourt@biloxi.ms.us.

You may access the Notice of Change of Address form by clicking here.

APPENDIX E:
NATIONAL TASK FORCE BENCH CARD



NATIONAL TASK FORCE ON FINES, FEES AND BAIL PRACTICES

LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS

A BENCH CARD FOR JUDGES

Courts may not incarcerate a defendant/respondent, or revoke probation, for nonpayment of a court-ordered legal financial obligation unless the court holds a hearing and makes one of the following findings:

1. The failure to pay was not due to an inability to pay but was willful or due to failure to make bona fide efforts to pay; or
2. The failure to pay was not the fault of the defendant/respondent and alternatives to imprisonment are not adequate in a particular situation to meet the State's interest in punishment and deterrence.

If a defendant/respondent fails to pay a court-ordered legal financial obligation but the court, after opportunity for a hearing, finds that the failure to pay was not due to the fault of the defendant/respondent but to lack of financial resources, the court should consider alternative measures of punishment other than incarceration. *Bearden v. Georgia*, 461 U.S. 660, 667-669 (1983). Punishment and deterrence can often be served fully by alternative means to incarceration, including an extension of time to pay or reduction of the amount owed. *Id.* at 671.

Court-ordered legal financial obligations (LFOs) include all discretionary and mandatory fines, costs, fees, state assessments, and/or restitution in civil and criminal cases.

1. Adequate Notice of the Hearing to Determine Ability to Pay

Notice should include the following information:

a. Hearing date and time;
b. Total amount claimed due;
c. That the court will evaluate the person's ability to pay at the hearing;
d. That the person should bring any documentation or information the court should consider in determining ability to pay;
e. That incarceration may result only if alternate measures are not adequate to meet the state's interests in punishment and deterrence or the court finds that the person had the ability to pay and willfully refused;
f. Right to counsel*; and
g. That a person unable to pay can request payment alternatives, including, but not limited to, community service and/or a reduction of the amount owed.

2. Meaningful Opportunity to Explain at the Hearing

The person must have an opportunity to explain:

a. Whether the amount charged as due is incorrect; and
b. The reason(s) for any nonpayment (e.g., inability to pay).

3. Factors the Court Should Consider to Determine Willfulness[1]

a. Income, including whether income is at or below 125% of the Federal Poverty Guidelines (FPG);[2]

For 2016, 125% of FPG is:	
$14,850 for an individual;	*$30,375 for a family of 4;*
$20,025 for a family of 2;	*$35,550 for a family of 5;*
$25,200 for a family of 3;	*$40,725 for a family of 6.*

b. Receipt of needs-based, means-tested public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or veterans' disability benefits (Such benefits are not subject to attachment, garnishment, execution, levy, or other legal process);

[1] See *Bearden v. Georgia*, 461 U.S. 660 (1983)
[2] U.S. Dep't of Health & Human Servs., Poverty Guidelines, Jan. 26, 2016, https://aspe.hhs.gov/poverty-guidelines

APPENDIX E:
NATIONAL TASK FORCE BENCH CARD

c. Financial resources, assets, financial obligations, and dependents;
d. Whether the person is homeless, incarcerated, or resides in a mental health facility;
e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;
f. The person's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
g. Other LFOs owed to the court or other courts;
h. Whether LFO payment would result in manifest hardship to the person or his/her dependents; and
i. Any other special circumstances that may bear on the person's ability to pay.

4. Findings by the Court

The court should find, on the record, that the person was provided prior adequate notice of:

a. Hearing date/time;
b. Failure to pay an LFO is at issue;
c. The right to counsel*;
d. The defense of inability to pay;
e. The opportunity to bring any documents or other evidence of inability to pay; and
f. The opportunity to request an alternative sanction to payment or incarceration.

After the ability to pay hearing, the court should also find on the record that the person was given a meaningful opportunity to explain the failure to pay.

If the Court determines that incarceration must be imposed, the Court should make findings about:

1. The financial resources relied upon to conclude that nonpayment was willful; or
2. If the defendant/respondent was not at fault for nonpayment, why alternate measures are not adequate, in the particular case, to meet the state's interest in punishment and deterrence.

Alternative Sanctions to Imprisonment That Courts Should Consider When There Is an Inability to Pay

a. Reduction of the amount due;
b. Extension of time to pay;
c. A reasonable payment plan or modification of an existing payment plan;
d. Credit for community service (*Caution*: Hours ordered should be proportionate to the violation and take into consideration any disabilities, driving restrictions, transportation limitations, and caregiving and employment responsibilities of the individual);
e. Credit for completion of a relevant, court-approved program (e.g., education, job skills, mental health or drug treatment); or
f. Waiver or suspension of the amount due.

*Case law establishes that the U.S. Constitution affords indigent persons a right to court-appointed counsel in most post-conviction proceedings in which the individual faces actual incarceration for nonpayment of a legal financial obligation, or a suspended sentence of incarceration that would be carried out in the event of future nonpayment, even if the original sanction was only for fines and fees. See *Best Practices for Determining the Right to Counsel in Legal Financial Obligation Cases*.

This bench card was produced by the National Task Force on Fines, Fees and Bail Practices. The Task Force is a joint effort of the Conference of Chief Justices and the Conference of State Court Administrators, sponsored by the State Justice Institute and the Bureau of Justice Assistance, coordinated by the National Center for State Courts.

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