



The Pennsylvania Interbranch Commission
for Gender, Racial and Ethnic Fairness

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Aaron Marcus, Esq.
Chair, Criminal Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P.O. Box 62635
Harrisburg, PA 17106

Re: Act 163 of 2022 and Changes to Fines, Costs, and Restitution Collections

Dear Chairperson Marcus and Members of the Criminal Procedural Rules Committee:

As you may know, on November 3, 2022, Governor Wolf signed Act 163 of 2022 into law, making several substantive changes to the powers of courts that collect fines, costs, and restitution, both at the magisterial district court and common pleas court levels. We are writing to urge the Criminal Procedural Rules Committee to propose amendments to the Criminal Procedural Rules (“Rules”) to ensure consistency between the new statutory powers and requirements of Act 163 and the current Rules. By so doing, the Committee can ensure that Act 163 is properly implemented without making the Rules overly cumbersome to parse for courts and litigants. We have set forth below the relevant elements of Act 163. We have also attached our proposals for amending the Rules to create consistency with the Act.

Act 163 addresses two main purposes relevant to the Rules. First, it gives courts the substantive authority to reduce or waive all fines and costs (with one exception) when the court determines that the defendant is unable to pay them. It also sets out different requirements based on whether the court has previously issued an order setting a payment plan. If there is no existing payment plan, waiver is appropriate if the defendant cannot pay all fines and costs in a single remittance. If there is an existing payment plan, waiver is appropriate if the defendant cannot afford the payment plan.¹ The attached proposed rules address this distinction between individuals who are or are not

¹ The only exception to this reduction/waiver authority is the costs imposed under Section 1101 of the Crime Victims Act (the Crime Victim Compensation Fund and Victim Witness Service costs). The legislature’s exception for the Crime Victims Act costs demonstrates its intention to permit waiver of all other fines and costs, whether “mandatory” or “discretionary.” The Crime Victims Act costs are already considered “mandatory,” and if the legislature did not intend for “mandatory” fines and costs to be waivable, it would not have needed to include an exception for the Crime

on a payment plan. In addition, consistent with the legislature’s instruction in Section 9730, they clarify the court’s options after it holds a payment determination hearing: when a defendant is able to pay, the court may impose sanctions or send the case to a private debt collection agency, and when a defendant is unable to pay, the court may set a payment plan, reduce or waive any fines and costs, or allow the defendant to complete community service.

Second, Act 163 creates new requirements for the use of private debt collection agencies or the county collections enforcement unit. By statute, counties are required to either have a contract with a private debt collection agency or have their own collections enforcement unit, and some have both. *See* 42 Pa.C.S. § 9728(a)(2). Act 163 now permits courts to directly send cases to a private debt collection agency or the county collections enforcement unit if a defendant fails to appear for an ability-to-pay hearing for which the defendant has received notice. This is an important alternative to simply issuing a bench warrant for failure to pay. Critically, if a case is referred in such a manner, the defendant has a statutory right to ask for a new ability-to-pay hearing, and such a request automatically stays collections by the collecting entity (unless the defendant has previously requested such a hearing and failed to appear). The court is then required, before resuming collections or proceeding with the referral, to hold an ability-to-pay hearing to determine if the defendant is able to pay.² At the conclusion of that hearing, the court’s options are the same as at all other payment determination hearings. If the defendant is found unable to pay, any unpaid portion of the 25% private debt collection surcharge that was added onto the account must be waived.

In sum, therefore, Act 163 gives courts additional powers to collect debt from those who can pay, while also allowing courts to end wasteful and fruitless collections efforts for those who cannot. As the Senate sponsors noted, the goal was “to achieve a compromise that would protect these [indigent] defendants, while increasing the court’s ability to collect fees from those who have the

Victim Act costs. *See Commonwealth v. LeBar*, 860 A.2d 1105, 1111 (Pa. Super. Ct. 2004) (describing the Crime Victims Act costs as constituting a “mandatory \$60 assessment”). This is also consistent with the *Lopez* decision, wherein the Court authorized the waiver of costs in a case that expressly dealt with the imposition of “mandatory” court costs. Act 163 has effectively expanded this *Lopez* holding to also address costs in summary cases, as well as fines. Accordingly, the Rules should not distinguish between “discretionary” or “mandatory” fines or costs when a defendant is unable to pay at some point after sentencing.

² Based upon data collected by the AOPC and reviewed by the Interbranch Commission, which revealed repeated failures by numerous magisterial district judges to conduct adequate financial determination hearings, the Commission and other stakeholders have advocated for the implementation of criminal procedural rules requiring a more rigorous evaluation of defendants’ ability to pay during such hearings. The Interbranch Commission highlighted this concern in the formal comments it submitted to the Criminal Procedure Rules Committee (“Committee”) in February 2022 in response to the Committee’s Notice of Proposed Rulemaking. The Committee had been working on amendments to the rules governing the appointment of counsel and bail proceedings, among other issues. The Interbranch Commission was recently advised by the Committee that it expects to complete its review process of all comments submitted pursuant to its notice and to produce an amended version of the rules by March 2023.

ability to pay.”³ A prior version of the bill had been vetoed because of “the potential impact on indigent defendants,” which Act 163—acting as a whole—corrects.⁴

The proper implementation of these complex statutory provisions, however, requires straightforward Rules that ensure their equitable and consistent application. The proposed rules language that we suggest for Rules 456, 470, and 706 both implements the legal changes in Act 163 and also streamlines these Rules to accommodate them. The proposed amendment to Rules 456 and 706 would clarify the actions the court can take with or without a hearing, as well as the options the court has depending on whether a defendant has previously been placed on a payment plan. They also attempt to harmonize Rules 456 and 706, including by addressing default on the payment of restitution under Rule 706, as no Rule presently addresses default in restitution payments in non-summary offenses, and Section 9730 provides courts with the same authority upon default for restitution as for fines and costs (except waiver of restitution is not permitted).⁵

For consistency, the proposed language also works from the last draft that the Committee published addressing some of these same Rules in 2019. *See* “Incarceration of the Indigent for Failure to Pay in Summary Cases,” 49 Pa.B. 1122 (March 16, 2019). However, the existing procedures in Rules 456 and 706 were not created to accommodate all of the requirements in Act 163. In addition, because the legislature has now set forth a simple, straightforward process to waive fines and costs, the Committee’s 2019 proposal regarding “uncollectable restitution, fines, and costs” in Rule 456 is unnecessary, and we have suggested in our proposal that the Committee drop its prior language on that topic.

Thank you in advance for reviewing our proposed amendments to the aforementioned Rules. If you have any questions or concerns regarding our request, please do not hesitate to contact the Interbranch Commission at (412) 697-1311 or lisette.mccormick@pacourts.us and Pennsylvanians for Modern Courts at (215) 569-1150 or dgross@pmconline.org. We look forward to working with you to ensure the effective implementation and consistent application of Act 163.

Respectfully Submitted,


Lisette McCormick

Executive Director

Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness


Deborah Gross

Executive Director

Pennsylvanians for Modern Courts

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<https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20210&cosponId=37229>.

⁴ *Id.*

⁵ Rule 705.1 addresses only the imposition of restitution, not the collection thereof or procedures upon default.

RULE 456. DEFAULT PROCEDURES: RESTITUTION, FINES, AND COSTS.

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay **and proceed pursuant to paragraph (D), after providing the defendant with notice of the hearing. If the defendant agrees to a new payment schedule without holding a hearing [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.

Commented [A1]: Note: These proposals use the 2019 version of this rule proposed by the Committee. The underlined portions were additions made by the Committee in that proposal.

Commented [A2]: Clarification that all hearings are pursuant to (D), and that notice must be given to the defendant prior to any hearing.

Commented [A3]: To avoid unnecessary hearings and codify current practice, the defendant can agree to a new installment payment schedule without the need for a hearing.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered:

(1) [the] 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 the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law **or to request a new schedule of installment payments or reduction or waiver of fines and costs, a bench** warrant for the defendant's arrest may be issued.

Commented [A4]: Suggest increasing to 30 days to be in line with the other timing changes suggested by the Committee in 2019, as 10 days is too short a window.

Commented [A5]: The notice should also explain that the defendant may appear before the court to request a payment plan, so that the defendant is aware of that option.

(2) The issuing authority may schedule a hearing on the defendant's ability to pay and provide the defendant with notice of the hearing.

Commented [A6]: This clarifies that upon default, the issuing authority may schedule a hearing on the defendant's ability to pay, without having to wait for the defendant to appear and without having to first issue an arrest warrant. If the defendant appears at the hearing, no warrants would be required.

(3) If the issuing authority has sufficient information to make a determination that the defendant is financially unable to pay as ordered, the issuing authority may issue an order to reduce or waive any fines or costs, except costs imposed under section 1101 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act, without a hearing.

Commented [A7]: This clarifies that the issuing authority may make a determination that fines and costs should be reduced or waived, without the need for a hearing, in situations where the issuing authority has sufficient information.

(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 to determine whether the defendant is financially able to pay as ordered.

(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] **At a hearing held pursuant to paragraph (A), when a defendant appears pursuant to the notice in paragraph (B), or when the defendant appears pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C), the issuing authority shall determine whether the defendant is financially able to pay as ordered:**

Commented [A8]: These clarify that no matter that path, the issuing authority must make the same determination when the defendant is before it.

(1) [upon] **Upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law or transfer any unpaid fines, costs, or restitution to a private collection agency or the county's collection enforcement unit.**

Commented [A9]: Implementing the complete set of options available under Section 9730(b)(2) when a defendant is found able to pay.

(2) [Upon] **If the issuing authority has not previously ordered a schedule of installment payments, upon a determination that the defendant is financially unable to pay as ordered, the issuing authority [may] shall order a schedule or reschedule for installment payments, or [alter or amend the order as otherwise provided by law], in the case of fines and costs, reduce or waive the fines or costs, except costs imposed under section 1101 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act. The issuing authority shall waive any existing private collection fee that was not previously collected from the defendant by a private collection agency.**

Commented [A10]: This implements Section 9730(b)(3)(i), which addresses when a defendant has not previously been placed on a court-ordered payment plan and is then found unable to pay.

Commented [A11]: Implementing the reduction/waiver authority under Section 9730(b)(3)(i).

Commented [A12]: Implementing Section 9730(b)(3)(iii), so that the extra charge imposed by a private debt collector is waived if the defendant is found unable to pay.

(3) **If the issuing authority has previously ordered a schedule of installment payments, upon a determination that the defendant is financially unable to pay as ordered, the issuing authority [may] shall alter or amend the order, reduce or waive the fines or costs, except costs imposed under section 1101 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act, or with the defendant's consent, permit the defendant to complete a period of community service in lieu of payment. The issuing authority shall waive any existing private collection fee that was not previously collected from the defendant by a private collection agency.**

Commented [A13]: This implements Section 9730(b)(3)(i), which addresses when a defendant has not previously been placed on a court-ordered payment plan and is then found unable to pay.

Commented [A14]: Implementing Section 9730(b)(3)(iii), so that the extra charge imposed by a private debt collector is waived if the defendant is found unable to pay.

The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.

(3) (4) 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 the date on which each installment payment is due;

(b) if the issuing authority has reduced or waived costs or fines, state the amount thereof that has been reduced or waived, as well as the remaining balance owed;

Commented [A15]: Implementing the option to reduce or waive fines and costs.

[(b)] (c) advise the defendant 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

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

[(c)] (d) 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

[(d)] (e) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs [(D)(3)(a)] (D)(4)(a) through [(D)(3)(c)] (D)(4)(d), and a copy of the order shall be given to the defendant. **The order shall also state the reason(s) why a sentence was deemed appropriate and the facts that support a determination that the defendant has the ability to pay as ordered.**

[(4)] (5) A sentence of imprisonment or probation shall not be imposed if the right to counsel was not afforded at the hearing. Counsel shall be appointed as provided in Rule 122(A)(1).

(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.

(F) If, after providing the defendant with notice of a hearing scheduled under paragraph (D), the defendant fails to appear for the hearing, the issuing authority may transfer the unpaid fines, costs, or restitution over to a private collection agency or the county's collection enforcement unit, as provided by law.

Commented [A16]: This implements Section 9730(b)(2.1), when a defendant fails to appear at a scheduled payment determination hearing and the issuing authority chooses to send the case to a collection agency or the county collection unit.

(1) Following that collections transfer, if the defendant requests that the issuing authority hold a new hearing on the defendant's ability to pay, the issuing authority shall schedule such a hearing, provide notice to the defendant, and order that the

Commented [A17]: This addresses what occurs when a defendant requests a hearing following that transfer.

private collection agency or the county's collection enforcement unit cease all collections activities pending the conclusion of the hearing.

(2) Following that collections transfer, if the defendant requests that the issuing authority hold a new hearing on the defendant's ability to pay after failing to appear at such a prior hearing requested under this paragraph, the issuing authority shall schedule such a hearing and provide notice to the defendant, but the issuing authority may in its discretion order that the private collection agency or the county's collection enforcement unit cease all collections activities pending the conclusion of the hearing.

Commented [A18]: This addresses what occurs when a defendant requests a subsequent following that transfer, after the defendant has failed to appear at the first requested hearing.

Commented [A19R18]: I'm confused about this section. Section (F) only applies if the defendant FTAs. Wouldn't (F)(2) always apply (and (F)(1) never apply)?

(3) Such a hearing on the defendant's ability to pay, scheduled pursuant to this paragraph, shall proceed under paragraph (D).

Commented [A20]: This clarifies that the hearing the issuing authority holds is the same hearing under (D).

(F) UNCOLLECTABLE RESTITUTION, FINE, AND COSTS

Commented [A21]: In light of the new authority to reduce or waive unaffordable fines and costs, this proposed procedure, which was suggested in 2019, should be removed as it is no longer necessary.

(4) If, after a period of two years following sentencing, in which the defendant defaults upon the payment of restitution, fine, and costs due as ordered, the issuing authority determines that the defendant does not have the ability to pay, the issuing authority may notify the defendant, any victim, and the affiant, or the attorney for the Commonwealth in person or by first class mail that, unless within 10 days of the date of the notice any victim, the affiant, or the attorney for the Commonwealth objects, the issuing authority may issue an order declaring the payments uncollectable due to the defendant's inability to pay.

(5) The order may be issued only after a hearing at which the defendant is present and represented by counsel.

(6) Service of the notice of the hearing held pursuant to paragraph (F)(2) shall be by first class mail.

(7) notice of the hearing also shall be made on the victim, affiant, and attorney for the Commonwealth who shall be permitted to object to the issuance of the order.

(8) When an order has been issued pursuant to paragraph (F)(1), no further action shall be taken to collect the amount owed by the defendant, including:

(a) the scheduling of a default hearing pursuant to paragraph (A);

(b) the issuance of the notice pursuant to paragraph (B);

(c) issuance of a bench warrant for the defendant's arrest;

(d) referral of the case to a collections agency;

(e) contempt proceedings for failure to pay;

(f) issuance of a notice of default to the Pennsylvania Department of Transportation pursuant to Rule 470.

(9) The order shall be served on the defendant and the victim, affiant, or attorney for the Commonwealth.

(10) If the defendant later becomes able pay, the issuing authority, after notice to the defendant and the victim, affiant, and attorney for the Commonwealth and an opportunity to be heard, may rescind the order and proceed with efforts to obtain payment from the defendant on the money owed.]

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-day] 30-day** response period set forth in Rules 407, 412, **and** 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, **within 15 days of the date of the notice,** 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].**

(B) When a defendant defaults on the payment of fines, costs, or restitution as ordered, 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, within 15 days of the date of the notice, the defendant fails to pay all fines, costs, and restitution imposed, or enter into an agreement to make installment payments for fines, costs, and restitution and the issuing authority finds that the defendant has the financial ability to pay.

[(B)] (C) Service of the notice required in paragraphs (A) **and (B)** shall be by first class mail, and a copy shall be made part of the record.

[(C)] (D) If the defendant does not respond by the fifteenth day, the issuing authority shall so notify the Pennsylvania Department of Transportation. The notice shall be sent by electronic transmission in the form prescribed by the Pennsylvania Department of Transportation. The issuing authority shall print out and sign a copy of the notice, which shall include the date and time of the transmission, and the signed copy shall be made part of the record.

(E) If the defendant responds by the fifteenth day, and fails to pay all fines, costs, and restitution imposed, or fails to enter into an agreement to make installment payments for fines, costs, and restitution, a notice issued pursuant to paragraph (B) shall be sent to the Pennsylvania Department of Transportation only if the issuing authority first has held a hearing pursuant to Rule 456(C) and determined that the defendant has the financial ability to pay. The notice shall not be sent during the pendency of any appeal from that hearing.

[(D)] (F) 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)] (D) or the issuing authority waives all fines and costs, 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.

Commented [A22]: A clarification is now necessary that if the waiver removes all remaining fines and costs, then the suspension must be lifted.

Rule 706. [Fines or Costs] FINES, COSTS, AND RESTITUTION.

(A) A court shall not commit the defendant to prison for failure to pay a fine or costs unless it appears after hearing that the defendant is financially able to pay the fine or costs.

(B) [When the court determines, after hearing, that the defendant is without the financial means to pay the fine or costs immediately or in a single remittance, the court may provide for payment of the fines or costs in such installments and over such period of time as it deems to be just and practicable, taking into account the financial resources of the defendant and the nature of the burden its payments will impose, as set forth in paragraph (D) below.]

When a defendant advises the issuing authority that a default on a single remittance or installment payment of fines, costs, or restitution is imminent, or if the defendant defaults on the payment of fines, costs, or restitution as ordered, the court may schedule a hearing on the defendant's ability to pay and shall provide the defendant with notice of the hearing. The court may, without a hearing, order a new installment payment schedule if the defendant consents, or, if the court has sufficient information to make a determination that the defendant is financially unable to pay, it may issue an order to reduce or waive any fines or costs, except costs imposed under section 1101 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

(C) The court, in determining the amount and method of payment of a fine or costs shall, insofar as is just and practicable, consider the burden upon the defendant by reason of the defendant's financial means, including the defendant's ability to make restitution or reparations.

(D) At a hearing pursuant to paragraph (B), the court shall determine whether the defendant is financially able to pay:

(1) When there has been default and the court finds the defendant is not indigent and is financially able to pay as ordered, the court may impose imprisonment, or transfer any unpaid fines, costs, or restitution to a private collection agency or the county's collection enforcement unit, as provided by law for nonpayment.

(2) If the court has not previously ordered payment of a fine, costs, or restitution in installments, when the court determines, after hearing, that the defendant is without the financial means to pay the fine or costs immediately or in a single remittance, the court may provide for payment of the fines or costs in such installments and over such period of time as it deems to be just and practicable, taking into account the financial resources of the defendant and the nature of the burden its payments will impose, or, in the case of fines and costs, reduce or waive the fines or costs, except costs imposed under section 1101 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act. The court shall waive any existing private collection fee that was not previously collected from the defendant by a private collection agency.

Commented [A1]: (B) previously addressed the imposition of payment plans. In this proposal, it has moved to (D)(2).

The new text harmonizes the Rule with the structure of Rule 456 for summary offenses, as well as Section 9730. Under this proposal, (B) now more clearly sets forth what the court's options are when a defendant defaults, including what the court can and cannot do without holding a hearing.

Commented [A2]: (D) previously addressed only situations where a defendant defaulted on a previously-ordered payment plan. As with Rule 456(D), the proposal would now more clearly sets forth the court's options following a hearing, as is set forth in Section 9730.

Commented [A3]: This sets forth the complete set of options available under Section 9730(b)(2) when a defendant is found able to pay. It maintains the relevant language from (D) that prohibits punishing indigent defendants.

Commented [A4]: This implements Section 9730(b)(3)(i), which addresses when a defendant **has not** previously been placed on a court-ordered payment plan and is then found unable to pay.

It maintains the operative language from what was previously (B).

Commented [A5]: Implementing Section 9730(b)(3)(iii), so that the extra charge imposed by a private debt collector is waived if the defendant is found unable to pay.

(3) In cases in which the court has ordered payment of fines [or], costs, or restitution in installments, ~~the defendant may request a rehearing on the payment schedule when the defendant is in default of a payment or when the defendant advises the court that such default is imminent. At such hearing,~~ the burden shall be on the defendant to prove that his or her financial condition has deteriorated to the extent that the defendant is without the means to meet the payment schedule. ~~Thereupon~~ Upon a determination that the defendant is financially unable to pay as ordered, the court [may extend] shall alter or [accelerate the] amend the order, reduce or waive the fines or costs, except costs imposed under section 1101 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act, or with the defendant's consent, permit the defendant to complete a period of community service in lieu of payment [schedule or leave it unaltered], as the court finds to be just and practicable under the circumstances of record. ~~The court shall waive any existing private collection fee that was not previously collected from the defendant by a private collection agency.~~

Commented [A6]: This implements Section 9730(b)(3)(i), which addresses when a defendant has not previously been placed on a court-ordered.

This was the original (D).

Commented [A7]: Now addressed by the proposed (B).

Commented [A8]: Implementing Section 9730(b)(3)(iii), so that the extra charge imposed by a private debt collector is waived if the defendant is found unable to pay.

(E) If, after providing the defendant with notice of a hearing scheduled under this Rule, the defendant fails to appear for the hearing, the court may transfer the unpaid fines, costs, or restitution over to a private collection agency or the county's collection enforcement unit, as provided by law.

Commented [A9]: This implements Section 9730(b)(2.1), when a defendant fails to appear at a scheduled payment determination hearing and the court chooses to send the case to a collection agency or the county collection unit.

(1) Following that collections transfer, if the defendant requests that the court hold a new hearing on the defendant's ability to pay, the court shall schedule such a hearing, provide notice to the defendant, and order that the private collection agency or the county's collection enforcement unit cease all collections activities pending the conclusion of the hearing.

Commented [A10]: This addresses what occurs when a defendant requests a hearing following that transfer.

(2) Following that collections transfer, if the defendant requests that the court hold a new hearing on the defendant's ability to pay after failing to appear at such a prior hearing requested under this paragraph, the court shall schedule such a hearing and provide notice to the defendant, but the court may in its discretion order that the private collection agency or the county's collection enforcement unit cease all collections activities pending the conclusion of the hearing.

Commented [A11]: This addresses what occurs when a defendant requests a subsequent following that transfer, after the defendant has failed to appear at the first requested hearing.

(3) Such a hearing on the defendant's ability to pay, scheduled pursuant to this paragraph, shall proceed under paragraph (D).

Commented [A12]: This clarifies that the hearing court holds is the same hearing under (D).