

BENCH CARD

Court Procedures for Legal Financial Obligations

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).