

From: Andrew Christy, ACLU-PA
Re: Fines, costs, and restitution in juvenile cases
Date: Updated March 15, 2021

MEMORANDUM

The purpose of this memorandum is to provide an overview of the law governing the imposition of fines, costs, and restitution in juvenile cases in Pennsylvania. The Juvenile Act is explicit that one of the key goals of the juvenile justice system is the “rehabilitation” of the juvenile. 42 Pa.C.S. § 6301(b)(3)(i). 42 Pa.C.S. § 6352(a)(5) permits, but does not mandate, a court to require “payment by the child of reasonable amounts of money as fines, costs, fees or restitution as deemed appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child, including a contribution to a restitution fund.” This provision plainly limits the financial assessments to a “reasonable amounts of money” based on the “plan of rehabilitation.” When courts impose unaffordable financial obligations, they violate this provision and undermine the rehabilitative goals of the Juvenile Act.¹

The Superior Court has ruled that § 6352(a)(5) prohibits a court from imposing a fine that the child cannot afford. As it noted, a fine is unlawful if “the record does not show the juvenile court assessed Appellant’s earning capacity before imposing the fines, as expressly required by Section 6352(a)(5) of the Juvenile Act.” *In re R.D.R.*, 876 A.2d 1009, 1015 (Pa. Super. Ct. 2005). Such reasoning applies equally to costs and restitution, as they are subject to the same statutory language in § 6352(a)(5). *See Commonwealth v. B.D.G.*, 959 A.2d 362, 368 (Pa. Super. Ct. 2008) (en banc) (order to pay restitution in a juvenile case is “subject to the child’s ability to pay”).²

Fines and costs are entirely discretionary and need not be imposed at all if the child cannot afford them or if requiring payment would interfere with rehabilitation. No statute purports to *require* that a court impose them, and 42 Pa.C.S. § 6352(a)(5) on its face makes them discretionary. The Superior Court has repeatedly confirmed this interpretation. *See, e.g., In re R.D.R.*, 876 A.2d at 1015; *B.D.G.*, 959 A.2d at 368. Some courts, nevertheless, feel that they *must* impose certain costs. The ACLU of Pennsylvania is aware of the following costs that can be imposed in juvenile cases:

- Access to Justice (“ATJ”), which goes to fund legal aid. *See* 42 Pa.C.S. § 3733.1(a)(3) and 72 P.S. § 1795.1-E(b)(2)
- Criminal Justice Enhancement Surcharge (“CJES”), which funds district attorney salaries. *See* 71 P.S. § 720.102(a)(2).

¹ In analogous circumstances, the Superior Court has repeatedly explained that if financial assessments “exceed[] the defendant’s ability to pay, the rehabilitative purpose of the order is disserved, especially where the restitution payment is a condition of probation, for in such a case the defendant is told that he will not be imprisoned only if he somehow satisfies a condition he cannot hope to satisfy.” *Commonwealth v. Fuqua*, 407 A.2d 24, 26 (Pa. Super. Ct. 1979). In other words, any “rehabilitative goal” that comes from a payment requirement “is defeated” if the financial obligation is “so unreasonable in view of the defendant’s financial circumstances and ability to work that, despite good faith efforts, the defendant cannot hope to comply.” *Commonwealth v. Wood*, 446 A.2d 948, 950 (Pa. Super. Ct. 1982).

² If a court imposes restitution, it must specify the amount to be paid, to whom, and on what schedule. Pa.R.J.C.P. 515(B).

- Crime Victim Compensation (“CVC”), which funds the Crime Victim’s Compensation Fund. *See* 18 P.S. § 11.1101.
- DNA Detection Fund, which funds the Pennsylvania State Police to carry out services related to DNA testing. A court cannot impose this cost if it would constitute “undue hardship.” *See* 44 Pa.C.S. § 2322.
- Judicial Computer Project Surcharge (“JCPS”), which funds the court system. *See* 71 P.S. § 720.102(a)(1) and 72 P.S. § 1795.1- E.
- Substance Abuse Education, which funds grants through the Substance Abuse Education and Demand Reduction Fund. *See* 18 Pa.C.S. § 7508.1.

Each of these statutes other than the DNA Detection Fund is silent regarding what a court should do if it determines, pursuant to § 6352(a)(5) (or any other provision) that the child is unable to pay that cost.

Statutes governing the imposition of costs must be read *in pari materia*, and they must be construed so that effect is given to each statute. *See* 1 Pa.C.S. § 1932-33. Certain costs specify that a child adjudicated delinquent “shall” pay the cost. The way to construe those costs statutes with § 6352(a)(5) and give effect to each is to read those statutes as imposing costs if they are “appropriate” based on the “earning capacity” of the juvenile and if they reasonably relate to the child’s rehabilitation. In other words, § 6352(a)(5) provides an exception to the general requirement that courts impose certain costs on juveniles. Indeed, if there is actually an “irreconcilable” conflict between those costs statutes and § 6352(a)(5)—and there is not—§ 6352(a)(5) is more specific and therefore must be interpreted as “an exception to the general provision” absent the legislature manifestly intending otherwise in a newer statute. 1 Pa.C.S. § 1933. If the legislature intended otherwise in any statutes imposing court costs, it would specify that those costs must be imposed regardless of the child’s ability to pay and regardless of the impact it has on rehabilitating the child. Since no statutes contain such language, juvenile courts must abide by the requirements of § 6352(a)(5).

It is also settled law that, in juvenile cases, the question of what a child can pay, if anything, is a question *only* of that child’s finances and not those of any family members. *See In re C.W.*, 7 A.3d 891, 895 (Pa. Commw. Ct. 2010) (“Section 6352 addresses ‘payment by the child,’ and it does not provide for payment of restitution by any other person or entity.”); *In re Carroll*, 393 A.2d 993, 994 (Pa. Super. Ct. 1978) (en banc) (child cannot be incarcerated because his parents did not pay restitution).³

Once a juvenile turns 21, the juvenile court loses subject-matter jurisdiction over the case and any unpaid fines and costs expire. *See* 42 Pa.C.S. § 6352(a)(5) and Pa.R.J.C.P. 630. The same is true of restitution: although Section 6352(a)(5) specifies that unpaid restitution becomes a civil judgment when the child turns 21, the juvenile court still loses jurisdiction and any enforcement authority on that date. These time limitations shed light on what the statute means when it refers to “earning capacity”—the court is limited to an amount that a juvenile could afford to pay

³ The Superior Court has applied the same principle in cases involving adults. *See Commonwealth v. Smetana*, 191 A.3d 867, 873 (Pa. Super. Ct. 2018) (“Although Appellant indicated that he could potentially borrow money from a sibling, the court failed to find—as our law requires—that he alone had the financial ability to pay the outstanding fines and costs such that imprisonment was warranted.”).

before turning 21.

Finally, a juvenile cannot be punished with an additional period of probation for nonpayment unless that nonpayment is willful. Case law from adult cases is instructive here. The Superior Court's case law regarding probation violations is clear and unequivocal: nonpayment is a technical violation of the conditions of probation *only if* the defendant has the ability to pay and is willfully refusing to pay. *See Commonwealth ex rel. Powell v. Rosenberry*, 645 A.2d 1328, 1331 (Pa. Super. Ct. 1994). To make that finding, the court must affirmatively inquire into the reasons for nonpayment, even if the defendant does not raise inability to pay as a defense, and the court must make findings on the record regarding the defendant's ability to pay.

Commonwealth v. Dorsey, 476 A.2d 1308, 1312 (Pa. Super. Ct. 1984) (even when the defendant fails to "offer any evidence concerning his indigency," a trial court unconstitutionally revokes probation or parole if it does not "inquire into the reasons for appellant's failure to pay or . . . make any findings pertaining to the willfulness of appellant's omission as required by *Bearden*"). Because finding a violation is a prerequisite to revoking probation and imposing a new period of probation, a juvenile who is indigent or otherwise lacks the ability to pay cannot simply be kept on probation due to nonpayment. For more information, refer to "An ACLU-PA Guide to Probation/Parole Revocation Hearings for Nonpayment of Fines, Costs, or Restitution" available at www.aclupa.org/finesandcosts.⁴

⁴ Imposing an additional period of probation on a juvenile because he or she cannot afford to pay would also be unconstitutional. Such a scenario violates the "fundamental fairness" that the United States Supreme Court has explained is protected by the Fourteenth Amendment. Under *Bearden v Georgia*, 461 U.S. 660, 672-73 (1983), the state's interest in "punishment and deterrence" may permit restrictions on a defendant's liberty, but only after first considering alternatives. In other words, the Fourteenth Amendment requires that the juvenile court first determine whether the child is only on probation because he or she lacks the ability to promptly pay the financial obligations. If the child *cannot* pay, then the court would have to determine if the state's interest in "punishment and deterrence" nevertheless permitted it to keep the juvenile on probation. Pennsylvania, of course, has no interest in punishing or deterring a juvenile: the stated purpose of the Juvenile Act and the financial obligations associated with a disposition is to *rehabilitate* the juvenile. *See, e.g.*, 42 Pa.C.S. 6352. As the Superior Court has explained, the goal of rehabilitation is "defeated" when a defendant is forced to pay a sum that he does not have. *Wood*, 446 A.2d at 950.