

Debtors' Prisons | Recommended Legislative Remedies • ACLU-PA

“Debtors’ prisons” occur when indigent defendants who owe unaffordable fines, costs, and restitution (collectively “legal financial obligations,” or “LFOs”) are imprisoned because they cannot pay what they owe or pay it as fast as the court demands. Thousands of Pennsylvanians a year lose their liberty (and, consequently, their jobs, their homes, and often custody of their children) due to court-imposed poverty. Although the courts impose and collect LFOs, the legislature plays a critical role in establishing guidance for the courts. For legislators who wish to introduce reform measures that will result in meaningful change, the ACLU of Pennsylvania recommends the following legislative remedies, all of which aim to ensure that no person is punished simply for being too poor to pay.

Prohibit punishing people who are objectively without the means to support themselves

The problem: Existing law prohibits jailing defendants who lack the ability to pay and who are not willfully refusing to pay LFOs. However, Pennsylvania law provides no guidance to courts on how to evaluate defendants’ ability to pay fines and fees.

Legislative remedy

Establish criteria to determine ability to pay: States such as [Colorado](#)¹ and Kentucky ([here](#) and [here](#))² provide clear standards whenever courts evaluate ability to pay. Amending the statute to include rebuttable presumptions would: a) establish criteria to determine whether a defendant is indigent, b) prohibit jailing a defendant based on inability to pay, and c) ease the administrative burden on busy courts by relieving them of further action after a defendant’s indigence is determined. Recommended presumptions of indigence include:

1. The defendant is involuntarily unemployed.
2. The defendant's household income is less than 125% of the Federal poverty level.
3. The defendant is receiving any kind of means-based public assistance, including, but not limited to: Supplemental Nutrition Assistance Program (SNAP), Medicaid, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans’ disability benefits, or other state-based benefits.
4. The defendant is an unemancipated juvenile.
5. The defendant is unable to afford to meet his or her basic life needs, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and dependent care.
6. The defendant presents evidence during the hearing that would cause a reasonable person to believe paying the full amount of the penalty would cause manifest hardship to the defendant or their dependents.

Prohibit high payment plans for the indigent and nearly indigent

The problem: Pennsylvania courts routinely set payment plans for defendants who cannot afford to pay LFOs in a lump sum. However, the law provides no standards or guidance on how to set payment plans, although states like California ([here](#) and [here](#)) and [Louisiana](#) do provide some standards.³ Many poor people, faced with a high monthly payment, simply ignore it and wait for the consequences.

Legislative remedy

Create a statutory payment schedule that would cap monthly payments based on income, such as:

Poverty Level Percentage	Maximum Monthly Payment Plan
Under 125% (but found not indigent)	1 hour of minimum wage pay
125-149% of Poverty Level	2 hours of minimum wage pay
150-174% of Poverty Level	3 hours of minimum wage pay
175-184% of Poverty Level	4 hours of minimum wage pay
185-200% of Poverty Level	5 hours of minimum wage pay

Require courts to consider defendants' ability to pay all fines and costs at sentencing

The problem: The best way to ensure that defendants are not punished for paying LFOs they cannot afford is to ensure that the LFOs imposed at sentencing are based on their ability to pay. Numerous other states require that courts consider the defendant's ability to pay at sentencing and require that courts appropriately tailor LFOs accordingly. In Pennsylvania, defendants receive such a hearing only for discretionary fines and only for costs set by a court of common pleas.⁴

Legislative remedies

- 1. Require courts to consider all fines when determining ability to pay:** Pennsylvania courts are prohibited from imposing a fine if a defendant is not or will not be able to pay it, and the total amount must be tailored based on the defendant's financial resources. [42 Pa. Cons. Stat. § 9726(c) and (d)] Subsequent case law has limited this statute to only discretionary fines (those that "may" be imposed, such as truancy fines, or those that have a range of sentencing options, such as "up to \$300").⁵ Legislative reform should require that courts consider a defendant's ability to pay all fines at sentencing, including mandatory fines, and reduce those that are unaffordable.
- 2. Give MDJs the same authority as common pleas judges to reduce fees:** In most cases, costs are automatically imposed in Pennsylvania. [42 Pa. Cons. Stat. §§ 9721 and 9728] Rule 706(C), however, permits courts of common pleas to reduce fines and costs based on a defendant's financial resources. But this rule applies only to common pleas courts and not magisterial district courts.⁶ Extending this authority to MDJs would give them the critical discretion they need when faced with indigent defendants, as costs make up 53% of the total LFOs imposed by magisterial district courts.⁷

Ensure that community service is available, but is not used punitively

The problem: Community service can be an important option, but it will not solve the debtors' prison problem alone. Community service has long been an option in lieu of LFOs in all cases, including traffic cases, if the defendant is found unable to pay.⁸ [See 42 Pa. Cons. Stat. § 9730(b)(3)] But this option, like other Pennsylvania statutory provisions, includes no standards or guidance for its application.

Legislative remedies

- 1. Permit community service to cover entire obligation:** Any legislation regarding community service must ensure a defendant can work off 100% of the total amount of LFOs.
- 2. Establish basic standards for community service:** At a minimum, legislation that addresses community service should establish some basic standards, including, but not limited to:
 - a. Make explicit that community service be conditional upon the defendant's consent to participate
 - b. Clarify that community service is an option for all cases, including traffic violations
 - c. Set a minimum credit of \$20 per hour of service
 - d. Permit courts to define community service to include alternatives such as GED prep classes, mental health treatment, or substance abuse treatment

Authorize courts to reduce or waive LFOs when there is no realistic chance of collecting them

The problem: In its seminal debtors' prison case *Bearden v. Georgia*, the United States Supreme Court explicitly endorsed reducing or waiving LFOs if a defendant is unable to pay. Pennsylvania's case law on this subject is murky.⁹ It is clear, however, that no statute gives this authority. As a result, according to data from AOPC, some magisterial district courts are carrying collection cases that started in the 1970s. Many of these defendants have no realistic hope of being able to pay. Both defendants and courts are caught in an unending cycle of fruitless collections hearings and incarceration.

Legislative remedy

Give courts 'remission' authority: Many states, such as [Georgia](#),¹⁰ [West Virginia](#),¹¹ and [Washington](#),¹² explicitly grant courts authority to reduce or LFOs post-sentencing if the court finds the defendant indigent and unable to pay. Pennsylvania lacks, and is in dire need of, a "remission" statute giving courts this authority.

Suspend licenses only after a judicial determination that a defendant could pay, but did not

The problem: According to PennDOT, over 70,000 Pennsylvanians have their driver's licenses suspended every year because they either did not respond to a citation/summons on time, or because they did not pay their LFOs on time.¹³ **Particularly for Pennsylvanians who live in suburban and rural areas outside of Philadelphia and Pittsburgh,** a suspended driver's license makes it even harder for them to get to court or earn the money necessary to pay LFOs, not to mention the impact it has on their ability to find and/or keep work, take children to school, and generally survive. The legislature can address both these problems.

Legislative remedies

- 1. Suspend licenses only after a hearing and determination:** No driver's licenses should be suspended for failure to pay LFOs unless the court has first held a hearing and determined that the defendant is able to pay and willfully refusing to do so. In the same way that courts cannot imprison indigent defendants who are too poor to pay, the constitution also prohibits punishing them by taking away their driver's licenses merely for missing a payment without any inquiry into why that defendant missed the payment. Federal district courts in [Michigan](#)¹⁴ and [Tennessee](#)¹⁵ have recently ruled that those states' automatic suspension schemes, *which are strikingly similar to Pennsylvania's*, are unconstitutional because there is not a pre-deprivation hearing.
- 2. Prohibit license suspensions resulting from undeliverable mail:** PennDOT should not suspend driver's licenses for individuals who have failed to respond to mailed summonses if the mailed summons returns to the court as undeliverable. This means that the defendant did not receive notice, and due process requires that the person not be punished.

¹ Colo. Rev. Stat. § 18-1.3.702.

² K.R.S. § 23A.205 (cross-referencing the definitions in K.R.S. § 453.190).

³ See Cal. Veh. Code § 40220 (cross referencing Cal. Gov't Code § 68632 and capping payments at \$25 per month for low-income individuals); Louisiana Act 260 of 2017 (which goes into effect in August 2018 and caps monthly payments at one day's minimum wage).

⁴ Cal. Penal Code § 1202.5; Haw. Rev. Stat. § 706-641; 5 Ill. Comp. Stat. 283/20; 730 Ill. Comp. Stat. 5/5-9-1; Ind. Code § 35-38-1-18; Kan. Stat. Ann. § 21-6612(c); Ky. Rev. Stat. Ann. § 534.030; Me. Rev. Stat. tit. 17-A, § 1302; Mont. Code Ann. § 46-18-231; N.J. Stat. Ann. § 2C:44-2; Ohio Rev. Code Ann. § 2947.14; R.I. Gen. Laws § 12-21-20.

⁵ See *Commonwealth v. Gipple*, 613 A.2d 600, 601 n.1 (Pa. Super. Ct. 1992) (mandatory fine for drug offense not subject to § 9726(d)); *Commonwealth v. Brown*, 566 A.2d 619, 622 (Pa. Super. Ct. 1989) (when legislature sets minimum sentence, rules of statutory construction apply to invalidate more general and earlier provision).

⁶ The Superior Court has explained that these statutory provisions and Pa.R.Crim.P. 706(C) give courts discretion to reduce costs at sentencing. See *Commonwealth v. Burrows*, 88 WDA 2017, 2017 WL 4974752 at *4 (Pa. Super. Ct. Oct. 31, 2017) (Rule 706(C) does not require an ability-to-pay hearing at sentencing, but it does give the trial court authority to reduce or waive otherwise "mandatory" costs).

⁷ AOPC, "Collection Rate of Payments Ordered by Magisterial District Courts," <http://www.pacourts.us/news-and-statistics/research-and-statistics/collection-rate-of-payments-ordered-by-magisterial-district-courts> (data for disposition year 2017).

⁸ Some magisterial district judges believe that community service is not available in traffic cases because Title 75 does not include a community service provision. As a matter of statutory interpretation, community service is available even in cases arising under Title 75, as it would be inapplicable only if there were an irreconcilable difference between the statutes; as there is no such conflict, § 9730 must be read in *pari materia* (construed together) with Title 75. Nevertheless, to put an end to any confusion, it certainly would not hurt to make its application explicit through a statutory amendment.

⁹ See *Commonwealth v. Opara*, 362 A.2d 305, 311 (Pa. Super. Ct. 1976) (plurality opinion) (courts "should make provision for the defendant to be able to petition for remission of payment of the amount due (or any part yet owed) at any time upon a showing of indigency"); *Lepre v. Susquehanna County Clerk of Judicial Records*, No. 2121 C.D. 2012, 2013 WL 5508784 at *3 (Pa. Commw. Ct. Oct. 2, 2013) (a proceeding upon default under Pa.R.Crim.P. 706 permits "possible reduction" of LFOs).

¹⁰ Ga. Code Ann. § 42-8-102(e)(2).

¹¹ W. Va. Code § 7-8-14(c).

¹² Wash. Rev. Code § 10.01.160(4).

¹³ PennDOT tracks both types of suspensions in one database, so it cannot provide a breakdown of the two types of suspensions.

¹⁴ *Fowler v. Johnson*, Civil Action No. 17-11441, 2017 WL 6379676 (E.D. Mich. Dec. 14, 2017).

¹⁵ See *Robinson v. Purkey*, Civil Action No. 17-1263, 2017 WL 4418134 (M.D. Tenn. Oct. 5, 2017).