

Courts' New Options for Collecting Fines, Costs, and Restitution in Act 163 of 2022
ACLU of Pennsylvania (Updated November 4, 2022)

In Act 163 of 2022,¹ the legislature has provided all courts—including MDJs—with additional options regarding the collection of fines, costs, and restitution. The bill does three main things:

- First, courts are now allowed to refer cases to private debt collection agencies or to the county's collections staff if the court schedules a payment determination hearing, the defendant receives notice, and the defendant fails to appear (current law requires that a court first hold a hearing where the defendant is present and found able to pay). For the first time, this allows MDJs to send cases to be collected by the county's collections enforcement unit.
- Second, it provides explicit statutory authority for courts, including MDJs, to reduce or waive all fines and costs (with one exception) when a defendant is unable to afford to pay that court debt.
- Finally, the bill requires counties to allow defendants to pay using credit and debit cards.

Combined, these changes will allow courts to remove cases from their collections dockets and reduce the use of bench warrants for failure to pay, even when defendants fail to appear for hearings. When a defendant is unable to pay, courts will be able to waive outstanding balances and close those cases. Both courts and low-income defendants will benefit.

This document provides a summary of the changes included in Act 163. The changes become effective on March 3, 2023 (120 days after signing).

1. Referring cases to private debt collection agencies or county collections staff

Existing Law

- Counties must either contract with a private debt collector or have a county collections enforcement unit (or both).²
 - The county collections enforcement unit varies from county to county. It may be a standalone entity, part of the probation department, or part of the clerk of courts.
 - Prior to Act 163, county collections units only collected common pleas debt.
- Cases could be sent to a private debt collector only after holding a payment determination hearing where the defendant is present and found able to pay, with no alternate procedure if the defendant failed to appear.³
 - The referral to a private debt collector adds a surcharge of up to 25% on the debt owed by the defendant.⁴

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<https://www.legis.state.pa.us/cfdocs/billInfo/BillInfo.cfm?syear=2021&sind=0&body=S&type=B&bn=1208>.

² 42 Pa.C.S. § 9728(a)(2).

³ 42 Pa.C.S. § 9730(b)(2). While Section 9730.1(a) states that a separate hearing is not required under *that* statute, Section 9730(b)(2) still requires a hearing.

⁴ 42 Pa.C.S. § 9730.1(b)(2) and (3).

New debt collection tools provided by Act 163

- All courts can now send cases to a private debt collection agency *or* the county collections enforcement unit for collections (in counties with such an entity) if the court:
 - Schedules a payment determination hearing;
 - Sends notice to the defendant to appear; and
 - The defendant fails to appear at the hearing.
- Whether collections are managed by a county office or a private debt collector, the defendant has a right to ask the court for a new payment determination hearing.
 - Each communication to the defendant from a private debt collection agency or the county collections enforcement unit must inform the defendant of that right.
 - Upon request, the court **must** schedule that hearing.
 - Upon receiving notice of the defendant's first request for a new hearing, collection efforts by that entity **must** pause automatically.
 - If the defendant fails to appear at that hearing, the collections resume.
 - If the defendant makes a subsequent request for a hearing after failing to appear at the first requested hearing, those subsequent requests do not require a pause in collections unless so ordered by the court, but the court must still schedule a new payment determination hearing.
- At the payment determination hearing scheduled at the request of the defendant after the case has gone to the private debt collector or the county collections enforcement unit, the court must determine whether the defendant is able to pay or unable to pay.
 - If able to pay, the court can impose sanctions or send the case back to the private debt collection agency (as under existing law).⁵
 - If unable to pay, the court *cannot* send the case back to a private debt collector. It must either reduce or waive the fines and costs, put the defendant on a payment plan, or permit the defendant to perform community service. If found unable to pay, the court **must** also waive all of the unpaid 25% surcharge from any prior referral to a private debt collector.⁶

2. Reducing or waiving fines and costs

Existing Law

- While common pleas courts have existing authority to reduce or waive court costs when a defendant is unable to pay, MDJs have not had that power in summary cases.
- All courts have had statutory authority to reduce or waive fines and costs in exchange for community service when a defendant was found unable to pay.⁷

⁵ 42 Pa.C.S. § 9730(b)(2).

⁶ 42 Pa.C.S. § 9730(b)(3).

⁷ 42 Pa.C.S. § 9730(b)(3).

The provisions of Act 163 permit courts to waive or reduce all fines and most costs (with one exception)

- All courts, including MDJs, now have discretion to reduce or waive both fines and court costs after they hold a hearing and find that the defendant is unable to pay the entire balance in a single remittance.
- If a defendant is currently on a payment plan and either defaults or tells the court that default is imminent, the court may hold a hearing and waive fines and costs.
- All fines and costs, whether generally considered “discretionary” or “mandatory,” can be reduced or waived when a defendant is unable to pay.
 - The **only exception** from the power to reduce or waive is for the Crime Victim Compensation Fund and Victim Witness Service costs, which are imposed under Section 1101 of the Crime Victims Act.⁸
 - These costs cannot be reduced or waived, even if a defendant is unable to pay (although a defendant could still complete community service in lieu of payment).
 - 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,”⁹ 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 Victim Act costs.
- This leaves courts with broad authority to reduce or waive fines and costs and to close collections cases when defendants are unable to pay.

Collections fees must always be waived when a defendant is found unable to pay.

- If a case is sent to a private debt collections agency (either under existing law or the new procedure) and the court later finds the defendant unable to pay, all of the unpaid 25% collections surcharge **must** be waived.

3. Payment by credit card or debit card now must be an option for defendants

- Prior to Act 163, counties had the option, but were not required to allow defendants to pay by credit card and set up automatic deductions from bank accounts.¹⁰
- Under Act 163, counties **must** now allow defendants to pay court debt by credit card or debit card. Automatic deductions are still at the county’s discretion.

⁸ 18 P.S. § 11.1011.

⁹ *Commonwealth v. LeBar*, 860 A.2d 1105, 1111 (Pa. Super. Ct. 2004) (describing the Crime Victims Act costs as constituting a “mandatory \$60 assessment”).

¹⁰ 42 Pa.C.S. § 9730(a).