

February 17, 2022

To the Members of the 151st Delaware General Assembly:

As Delawareans, we write to urge your support for HB244 with HA1, which makes meaningful reforms to Delaware's system of court fees and fines. The current system creates significant unintended consequences at odds with the objectives of our criminal justice system.

### **The Problem**

Under our system, a fine of \$100 for conviction of a misdemeanor can result in a total liability for the defendant, including one who is a child, of over \$500 through the addition of multiple fees, costs and assessments. While judges have discretion to offer a payment plan, this is not required under Delaware law and this discretion is not uniformly exercised. If this liability is not paid or a payment is missed, the defendant is exposed to harms unrelated to the original misdemeanor, effectively creating a punishment without an underlying crime. Paramount among these harms, defendants' driver's licenses are automatically suspended – making it more difficult for them to work to earn funds to pay the liability, support their families and maintain their homes.

Our system fails to recognize the fundamental reality that 85% of defendants in Delaware are indigent and unlikely to be able to pay this liability. Making it illegal for those defendants to drive to work is counterproductive. In this context, it is important to consider that the Federal Reserve Board has found that 40% of Americans cannot afford an unexpected expense of \$400.

Driver's licenses should not be suspended for anything unrelated to driving. They certainly should not be suspended when doing so works counter to a larger objective. If a defendant chooses, or is forced through circumstance, to drive without a license, the defendant likely will move deeper into the criminal justice system and incur significantly more court debt. This is not just a small-scale problem. In 2017, 20,679 Delawareans had their licenses suspended for unpaid fines and fees.

But this problem doesn't stop just at driving. *Delawareans are also being jailed for not paying this liability.* In 2017, Delaware issued 44,889 warrants solely for nonpayment of court costs. Over 56% were issued to Black persons. And in the first half of 2018, Delaware sentenced 129 people to jail solely because they could not pay court costs. Poverty should not be treated or punished as a crime.

Delaware is not alone among states in having a counterproductive system of court fines and fees. But Delaware's system is among the worst. In its 2020 "Fines and Fees Index," the National Center for Access to Justice (NCAJ) at Fordham Law School ranked Delaware 47 out of 51 states and the District of Columbia. Evaluating Delaware's system against 17 best practices, the NCAJ scored Delaware 8 out of 100 points, ahead of only Wyoming, Alabama, Arkansas and Kansas.

### **The Solution**

How does HB244 with HA1 reform this distorted system? This bill:

- Prohibits a court from imposing on a child or the child's parent, guardian, or custodian any fine, fee, cost (including the cost of placing the child in a DSCYF residential facility) or assessment.
- Prohibits a court and the Department of Transportation from suspending a driver's license for nonpayment of a fine, fee, cost, assessment or restitution.
- Prohibits a court from charging a defendant for cancellation of an arrest warrant issued for nonpayment.
- Prohibits a court from charging a fee for making payments at a court-designated kiosk or an internet-based court payment system.
- Prohibits a court from charging a defendant for periodic or late payments.
- Eliminates the Public Defender Fee and the Probation Supervision fees, which are paid into the General Fund.

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The Delaware Campaign to End Debtors' Prison (CEDP) is a coalition of Delaware community members pushing for the reform of the court fines & fees system, and seeking to eliminate poverty as an element of criminal punishment. CEDP is an affiliate of Network Delaware and Building People Power.

- Brings transparency to this system by (a) requiring public reporting by the Judiciary and Delaware Criminal Justice Information system on amounts collected from fines, fees, costs, assessment and restitutions and (b) creating the Criminal Legal System Imposed Debt Study Group to make recommendations “to promote access, fairness, and transparency in the imposition and collection of criminal justice imposed financial obligations.”

HB244 with HA1 is common sense reform with bipartisan support that will align the current system more closely with objectives of criminal justice. Children will no longer be subject to this liability. Defendants will no longer face the restrictive impact of driver’s license suspension or additional fees associated with the payment process. Two fees (one of which, the Public Defender Fee, may be unconstitutional) are eliminated. The system will become transparent in a way it has never been, allowing for rational review and future reform.

We urge your support of this bill to correct a system that includes counter-productive measures and has been distorted over the years by placing the financial burden of government and public operations on largely indigent defendants in a way that does not serve the ends of criminal justice.

Sincerely, the undersigned organizations,

Campaign to End Debtors’ Prison

**ACLU of Delaware**  
**Building People Power Campaign**  
**Campaign for Smart Justice**  
**Coalition to Dismantle the New Jim Crow**  
**Community Legal Aid Society, Inc.**  
**Delaware Association of Criminal Defense Lawyers**  
**Delaware Center for Justice**  
**Delaware Coalition for Open Government**  
**Delaware Poor People’s Campaign**  
**Delaware Racial Justice Collaborative**  
**Delaware Working Families Party**  
**Friendship House**  
**Human Rights Tank Force of the First Unitarian Universalist Society of Wilmington, DE**  
**IMA of Dover & Vicinity**  
**League of Women Voters of Delaware**  
**Metropolitan Wilmington Urban League**  
**Network Delaware**  
**Newark DE NAACP**  
**Office of Defense Services, State of Delaware**  
**Peace By Piece Inc.**  
**Progressive Democrats for Delaware**  
**Project New Start, Inc.**  
**Southern Delaware Alliance for Racial Justice**  
**Unitarian Universalist Delaware Advocacy Network**  
**Westminster Peace & Justice Group**  
**Wilmington Alliance**  
**Wilmington Community Advisory Council**