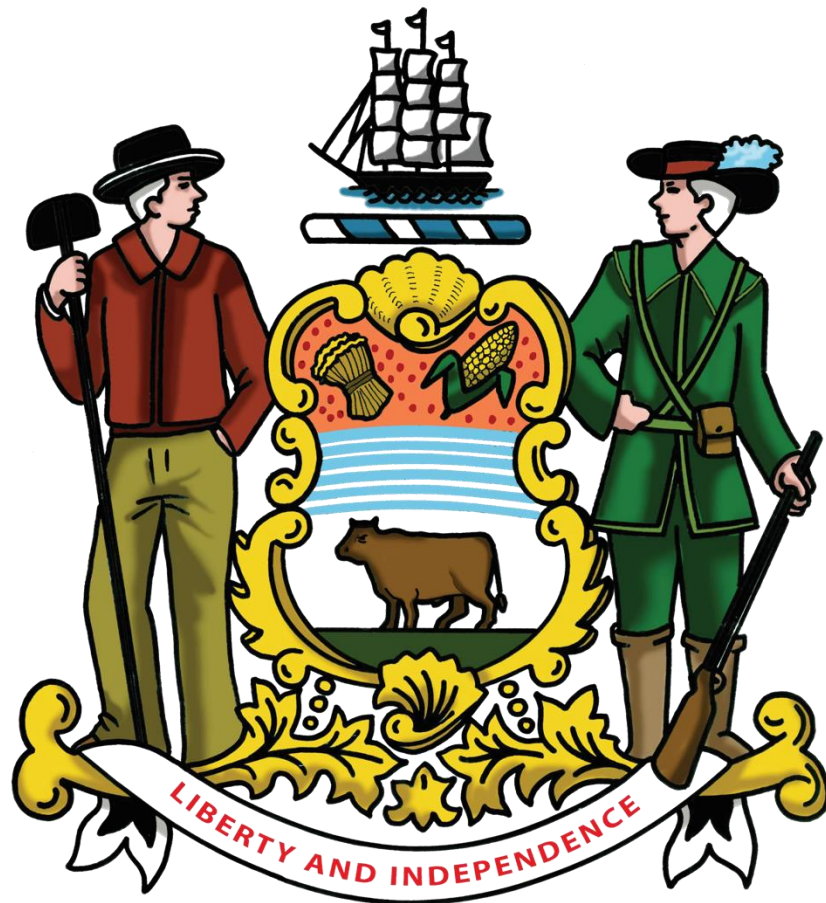


Final Report



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Criminal Legal System Imposed Debt Study Group Membership

Appointed Co-Chairs: Rep. Sean Lynn and Sen. Darius Brown

Roster of Voting Members

<i>Member or Designee</i>	<i>Appointed By</i>	<i>Appointee</i>
Senate Member	President Pro Temp.	Sen. Darius Brown
House Member	Speaker of the House	Rep. Sean Lynn
OGOV Representative	Governor	Romain Alexander
State Court Administrator	Virtue of Position	Gayle Lafferty
Chief Defender of ODS	Virtue of Position	Lisa Minutola
Attorney General	Virtue of Position	Kristi Iannelli
Secretary, DSHS	Virtue of Position	Major Peter Sawyer
Member of Community Group	President Pro Temp.	Meryem Dede
Member of Impacted Community	Speaker of the House	Rebecka Steiner

Roster of Non-Voting Members

<i>Member or Designee</i>	<i>Appointed By</i>	<i>Appointee</i>
Superior Court	President Judge	Alicia Howard
Court of Common Pleas	Chief Judge	Stephanie Fitzgerald
Family Court	Chief Judge	Addie Asay
JP Court rep	Chief Magistrate	Alan Davis
DOC representative	DOC Commissioner	Christopher Ciecko
Member of Community Group	President Pro Temp.	Rev. Rita Mishoe Paige
Member of Community Group	Speaker of the House	Tanya Whittle
Director-State Court Collections	Virtue of Position	William DiBartola
Director of Judicial Info Center	Virtue of Position	Kenneth Kelemen
Director of DELJIS	Virtue of Position	Spence Price
Controller General	Virtue of Position	Jason Smith
Secretary of DTI	Virtue of Position	Christina Dirksen
Executive Director, SAC	Virtue of Position	Philisa Weidlein-Crist

Background on Criminal Justice Debt Reform

Fines are defined as monetary sanctions imposed as punishment for violating the law, whether criminal or civil. Fees are costs, assessments, or surcharges imposed to access services or fund the justice system or other government services. Fines and fees can be imposed at every stage of the justice system and vary by state or locality. While jurisdictions within the country rely heavily on fines and fees, these policies are also found to be an unreliable and inequitable funding resource.¹

In 2014, after police shot and killed Michael Brown in Ferguson, Missouri, the United States Department of Justice opened an investigation into the Ferguson Police Department. The DOJ's report in March 2015 concluded that Ferguson police had engaged in a pattern of unlawful conduct for many years and that the police department's culture and law enforcement practices had been shaped by the City's focus on generating revenue rather than on public safety needs. Moreover, the report concluded that Ferguson's municipal court did not "act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily use[d] its judicial authority as the means to compel the payment of fines and fees that advance[d] the City's financial interests."²

The issuance of the DOJ's Ferguson Report led to a call for Criminal Justice Debt reform efforts across the country. In the ensuing years, multiple policy think tanks and specially- convened task forces have issued findings and principles advocating a variety of changes to the way Criminal Justice Debt is imposed and collected.³ With the passage of House Bill 244, Delaware has successfully implemented many important recommended reforms in this area, including the elimination of some fees altogether, the elimination of most juvenile fees and fines, the elimination of drivers' license suspension as a penalty for nonpayment of fees and fines, and the elimination of late fees and convenience fees for paying online or through a kiosk.

Quick Statistics⁴⁵

- At least \$27.6 billion is owed across the nation in fines and fees.
- Approximately 600 jurisdictions in the United States relied on fines and fees for over 10% of general revenues in FY 2017-2018. Approximately 284 jurisdictions collected almost 20% of their revenue from fines and fees.
- As of April 2, 2019, Delaware's aggregate unpaid fines and fees debt reached a total of \$79.5 million total. This equates to approximately \$104 per adult Delaware resident.
- Over 97% of all crimes and violations filed in Delaware are misdemeanors, leaving the State with the highest per capita arrest rate for misdemeanors in the country.

1 Fines and Fees Justice Center: Delaware Fines and Fees Study Group Presentation Center (2023). Available at <https://legis.delaware.gov/TaskForceDetail?taskForceId=446>.

2 Civil Rights Div., U.S. Dept. of Justice, Investigation of the Ferguson Police Department 3 (Mar. 4, 2015). The report found that 20% of the City's operating budget came from court-ordered fees and fines.

3 See Conference of State Court Administrators, Policy Paper, The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations (2015-16), available [here](#); Harvard Law School Criminal Justice Policy Program, Confronting Criminal Justice Debt: A Guide for Policy Reform, available [here](#) (Sept. 2016); American Bar Association, Ten Guidelines on Court Fines and Fees, available [here](#) (Aug. 2018); Brennan Center for Justice at NYU School of Law, The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties (2019), available [here](#) (hereafter, "Brennan Center study").

4 DE Campaign to End Debtors' Prisons: Delaware Fines and Fees Study Group Presentation Center (2023). Available at <https://legis.delaware.gov/TaskForceDetail?taskForceId=446>.

5 Fines and Fees Justice Center: Delaware Fines and Fees Study Group Presentation Center (2023). Available at <https://legis.delaware.gov/TaskForceDetail?taskForceId=446>.

Study Group Background

The Criminal Legal System Imposed Debt Study Group was created by HB 244 of the 151st General Assembly. This legislation, sponsored by Rep. Sean Lynn and Sen. Darius Brown, created several reforms for criminal justice imposed financial obligations. Section 14 of the legislation authorizes the Study Group to review the impact of criminal justice imposed financial obligations on defendants and victims and make recommendations to promote fairness, and transparency in the imposition and collection of criminal justice imposed financial obligations.

The Study Group is required to produce an interim report by May 1, and a final report by September 1, 2023. Study Group Materials can be found on the Delaware General Assembly website. (See Appendix A.)

Members of the Study Group approved a “Road Map” in the second meeting which included a number of working groups that would allow for members to take on Study Group responsibilities:

- Fee Elimination
- Public Information & Communication
- Costs of Incarceration
- Restitution
- Ability to Pay
- Old Debts
- Alternative Sanctions
- Data Requests

Working groups researched and discussed assigned topics in order to make recommendations whenever possible. *Compiled recommendations may be reviewed on the next page as well as in the relevant working group report for additional context.*

Study Group Meetings

First Meeting (January 3, 2023)

National and local overviews of fines and fees were provided by Priya Sarathy Jones from the Fines and Fees Justice Center and Meryem Dede from the Campaign to End Debtor’s Prisons.

Second Meeting (April 20, 2023)

The second meeting included a presentation from the Administrative Office of the Courts and the story of Rebecka Steiner’s experience in paying off fines and fees within the Delaware Court system. Third Meeting (May 26, 2023)

Members approved the May 1 Interim Report and listened to a presentation on a recent letter from the Federal Department of Justice on fines and fees. Workgroups provided updates.

Fourth Meeting (July 24, 2023)

Workgroups provided information on progress and an update was given on HB 244’s implementation.

Fifth Meeting (August 18, 2023)

Workgroups presented their draft findings for the final report.

Sixth Meeting (September 11, 2023)

Members discussed the final report and voted on recommendations.

Compiled Recommendations

Old Debt Working Group

Topic Specific

- ❖ *The State of Delaware Budget and Accounting Policy should be updated to include a full write off option for debt forgiveness in defined circumstances.*
- ❖ *The Legislature should consider clarifying HB 244 to eliminate Juvenile Fees and Fines, Probationary Fees, and Public Defender Fees retroactively.*
- ❖ *The Judicial Branch should continue conversations with the Executive Branch to determine the most appropriate write-off timeline (5, 7, or 10 years) for “uncollectible” accounts. This should be a Judicial Branch policy determined by the Chief Justice and the collections experts, while having communications with the Executive Branch.*
- ❖ *The legislature should consider authorizing the courts to waive (and also retroactively write-off) fees, fines, and assessments when incarceration of a certain time period is sentenced. Fines may be part of the sentence, but fees are unlikely to be affordable when incarceration is included in the sentence. The Judicial Branch has not yet determined the appropriate time period of incarceration for fees to be waived, but that is being currently discussed in the Ability to Pay Work Group and amongst the Courts.*
- ❖ *Give authority to the Judicial Branch to create court policy and judicial procedure for reviewing restitution cases for whom no one has a right to the restitution. To ensure fairness to victims and their families, this will require additional research on estate and bankruptcy law before the Judicial Branch can determine a final policy.*
- ❖ *Authorize the Judicial Branch to create a policy to write-off restitution when the amount is minimal, and the defendant has not been making payments or responding to correspondence. The Work Group recommends a mechanism for the State to find an alternative funding source to cover the remaining small restitution balances when appropriate; this would likely require a budget allocation and legislation.*

General Study Group Recommendations

- ❖ *When the Study Group and/or the General Assembly determines the final proposal package for fee reform, please consider appropriate enactment dates that take implementation timelines into consideration, so that the agencies have time to make programmatic and system changes as necessary.*
- ❖ *An assessment following implementation should be considered. What were the impacts on defendants, victims, restitution, state collections, the state budget, recidivism, etc.? This Work Group believes that a review is important at various stages of implementation, as fee reform is likely to be a phased effort.*

Fee Elimination Working Group

Unanimous Support

- ❖ *Enable retroactive write-off of obligations for Supervision Fee and Public Defender Fee*
- ❖ *Eliminate the Department of Correction's Interstate Compact Fee*
- ❖ *Eliminate the DELJIS Fund Fee and replace with Base Budget Funding of at least \$260,000.*
- ❖ *Eliminate the Victim Rights Fund Fee and replace with Base Budget Funding of \$192,100.*
- ❖ *Eliminate the CJC Videophone Fund Fee and recommend General Fund Pick-up*
- ❖ *Eliminate the Senior Trust Fund Fee with pick-up in the General Fund of \$15,000*
- ❖ *Eliminate the Substance Abuse Rehabilitation, Treatment, Education and Prevention ("SARTEP") Fund Fee with pick-up as needed in the General Fund.*
- ❖ *Eliminate the Court Security Fee with pick-up in the General Fund budget as the fiscal situation permits with base budget funding of approximately \$3 million.*

Non-Unanimous Support

- ❖ *Eventual elimination of all fees.*
- ❖ *Elimination of certain assessments on toll violations (Fund to Combat Violent Crime / Ambulance Fund).*
- ❖ *Review fees created by Court Rule, such as the CCP Jury Fee, CCP Non-Jury Fee, and the Superior Court Prosecution Fee.*

Restitution Working Group

No recommendations were formed.

Alternative Sanctions

Pre-Arrest Diversionary Programs

- ❖ *Recommendation: Delaware criminal justice stakeholders should catalog all pre-arrest diversion options available in Delaware, explore the viability of expanding eligibility for these programs, and create consistent guidelines for such programs statewide.*

Problem-Solving Courts

- ❖ *Recommendation: Delaware criminal justice stakeholders should review the fines, fees and other monetary obligations associated with PSCs to determine which obligations may be reduced, or eliminated.*

Community Service and Work Referral

- ❖ *Recommendation: Delaware criminal justice stakeholders should explore the expansion of community service and work referral opportunities.*

Payment Plans

- ❖ *Recommendation: Delaware Courts should examine the viability of centralizing court collections.*

Ability to Pay Working Group

Recommended Implementation Model

The Work Group offers the following implementation model as a fair and implementable starting option for the full Study Group's consideration:

- ❖ *Authorize the courts to consider a defendant's ability to pay in all courts and criminal cases.*
- ❖ *Authorize the courts to consider a defendant's ability to pay after sentencing by first permitting court clerks to apply certain presumptions of indigency when the defendant can show any of the following:*
 - *Receipt of means-tested, public assistance benefits, subject to available proof as identified by the courts, such as:*
 - *Medicaid, qualified Medicare benefits, SNAP, WIC, TANF, VA benefits, subsidized housing, LIHEAP, DART First State Reduced Fare card.*
 - *Representation by a public defender in the case for which the presumption is sought, pretrial incarceration in Delaware (level IV or V) for more than 3 days anytime in the 6 months prior to sentencing in the case for which the presumption is sought, or sentenced to incarceration in the case for which the presumption is sought.*
- ❖ *If there is evidence for a presumption of indigency, then all fines and fees could be waived (at least for a first offense).*
- ❖ *This implementation option simply applies an on/off switch for ability to pay based on presumptions of indigency. There is no need to ask about or verify income.*
- ❖ *If no presumptions of indigency apply, then the defendant would have the right to request an ability to pay hearing before a judicial officer. The court can provide the defendant with a form outlining the information and supporting documentation that the defendant could provide to aid the judicial officer's consideration of the defendant's ability to pay. Ideally, defense counsel or other advocates could assist defendants with the process of completing the form and obtaining documentation. The judicial officer would have full discretion, applying standards to be set by court rule or policy, to determine the defendant's ability to pay and to reduce or waive any amounts owed.*
- ❖ *Expand the ability to pay analysis to traffic cases processed through the Justice of the Peace Court's Voluntary Assessment Center (VAC). An online tool could be developed to adjudicate eligible traffic infractions similar to California's [MyCitations tool](#), which has been piloted in 16 California courts with [published outcomes](#) demonstrating success.*

Public Information Working Group

- ❖ *Create uniform information for all courts to use and establish both in courtroom practices and clerical/administrative processes that are reflective of each court's case type but also give a clear understanding of how payments are applied, debts are discharged, and the consequences of failure to attend to debt issues.*
- ❖ *Review and update information sources regularly.*
- ❖ *Criminal justice system partners should incorporate standardized information about payment of Criminal Justice Debt in their practices.*
- ❖ *Develop a centralized payment/debt collection process for Criminal Justice Debt to make the*

payment of such debt easier, more uniform, and, therefore, easier to understand.

- ❖ *Expand the use of VINE or another digital service to not only provide information about court appearance dates, but also payment due dates. Text capability is critical.*

Costs of Incarceration Working Group

No recommendations were formed.

Old Debt Discharge Work Group Report

Members	Meeting Dates
Evelyn Nestlerode (AOC)	May 22, 2023
William DiBartola	June 5, 2023
Dr. Tanya Whittle	July 13, 2023
Jason Smith	August 2, 2023
Kimberly Cooper (DOC)	August 8, 2023

The Old Debt Discharge Work Group was charged with reviewing aged and uncollectible accounts. It can be inefficient, unproductive and unfair to continue collection efforts for years and decades on people who can least afford it. At what point should debts be considered “uncollectible” and when should the State simply write off criminal justice fees, assessments, costs and fines?

Nonpartisan law and policy institutes have written recommendations on the discharging of old debt:

- The Brennan Center for Justice recommends that States should “pass laws purging old balances that are unlikely to be paid but continue to complicate the lives of millions, as some jurisdictions, including San Francisco, have done. This would also ensure that individuals who have been free and clear of the criminal justice system for many years are not pulled back in simply on the basis of inability to pay.”⁶
- The Fines and Fees Justice Center recommends that “Jurisdictions should conduct a customized analysis of unpaid criminal justice debt and debt collection rates to determine the appropriate age of debt to be discharged. FFJC recommends that fees should be deemed uncollectible two years after they are imposed.”⁷

In this report, the Work Group detailed the current Write-Off policies, reviewed areas of HB 244 that require clarification or clean-up, and reviewed when old debt is “uncollectible.”

Current Practices

- After a defendant is sentenced in a criminal case, each court (Superior Court, Family Court, Court of Common Pleas, and Justice of the Peace Courts)⁸ is initially responsible for its own money collections, and each court has slightly different practices.
- Aged accounts⁹ are passed by each court to the Office of State Court Collections (“OSCCE”), the Judicial Branch office that provides centralized cashing, collection services and bank transport services in pursuit of court-ordered financial assessments through a variety of State and private sector sanctions¹⁰ to ensure the enforcement of judicial branch orders.
- OSCCE specializes in handling older cases after each court has conducted initial attempts to

⁶ Matthew Menendez, Lauren-Brooke Eisen, Noah Atchison and Michael Crowley, *The Steep Costs of Criminal Justice Fees and Fines*, The Brennan Center for Justice, November 21, 2019

⁷ Fines and Fees Justice Center, *End Fees, Discharge Debt, Fairly Fund Government: FFJC Policy Guidance for Eliminating Criminal Legal System Fees and Discharging Debt*, January 2022

⁸ Does not include Alderman’s Courts.

⁹ The Judicial Branch plans on recommending a consistent definition of “aged accounts” for all courts using the information collected by the Study Group and following conversations with the other branches of Delaware government.

¹⁰ Working with the Courts, authorized collections sanctions include tax intercept, wage garnishment, and civil judgments. Though the suspension of driver’s licenses is no longer authorized for failure to pay fees and fines, it is unclear whether this is still an authorized sanction for failure to pay restitution.

collect the financial obligations. These orders, may include, but are not limited to, restitution, statutory fees, fines, and court costs.

- OSCCE assists in the collection of the Department of Corrections probationary fees by accepting payments online, at the payment centers and through the kiosks, and assists in the collection of Child Support orders through their payment kiosk program as well.

Defining the Term “Write Off”

There are two definitions for the term “write off”; as such, it is important to clarify the meaning for the purpose of this report. The recent Judicial Branch write offs and the Work Group recommendations all define “write offs” as removing the obligation from the case entirely and forgiving the debt. DELJIS includes documentation of the write off, but the debt will not show up anywhere as a financial obligation.

The State of Delaware Budget and Accounting Manual defines a “write off” as an uncollectible debt that has been placed in an inactive account, and the “reclassification of a full or partial account balance to an inactive status does not forgive the debt. The account balance remains subject to collection in the event the Organization determines circumstances have changed at a later date”.¹¹

Since the concern is that some fees may not be fair or reasonable to start with, the recommendations for write offs in this report should be interpreted to mean that debt should be forgiven, and the State will never attempt recovery even if future circumstances are changed.

- *Recommendation: The State of Delaware Budget and Accounting Policy should be updated to include a full write off option for debt forgiveness in defined circumstances.*

Recent Court Action on Writing-Off Aged Debt

Prior to 2021, the Judicial Branch had never written off aged debts, and there had never been any policy related to writing off debts after any length of time. The Chief Justice and the Administrative Office of the Courts met with the Secretary of the Department of Finance and the Director of the Office of Management and Budget on September 9, 2021, to discuss new Court Collections policies for aged accounts.

It was agreed that the Chief Justice has the authority to determine what is “uncollectible” and to write those debts off. Court Rules could be updated to reflect a policy change. The Chief Justice determined that any debts over 10 years old were uncollectible; in fact, over 85% of those debts had never seen a payment.

The Judicial Branch began its first-round of write-offs by examining cases that were sentenced before 2011, ten years before the write-off project began in 2021. The Judicial Branch wrote off fines and fees for these older cases but did not write-off restitution or probationary fees the courts collected on behalf of the Department of Correction, and thus did not have authority to write-off themselves. These probationary fees included:

- Supervision Fees under 11 *Del. C.* §6504(14) (repealed)
- Interstate Compact Fees under 11 *Del. C.* §4359

Breakdown of Cases Written off Since Summer 2021

¹¹ State of Delaware Budget and Accounting Policy, Section 9.4.4

In total, 58,935 cases and \$40,120,874 of uncollectible debt have been written off in Delaware since the summer of 2021.

Court	Number of		Notes
	Cases	Amount	
Superior	12,415	\$ 20,139,710	Completed August 2021
Court of Common Pleas	16,925	\$ 6,130,675	Completed August 2021
Family Court	0	\$ -	Old Cases Transferred to OSCCE January 2023
Justice of the Peace	13,546	\$ 1,655,783	Completed August 2021
OSCCE	9,021	\$ 4,472,184	
OSCCE - continued clean up, research for deceased defendants, etc.	4,387	\$ 6,138,838	Mix of restitution and non-restitution*
Continued Superior Clean-Up	2,641	\$ 1,583,684	Started May 2022
Total	58,935	\$ 40,120,874.00	

**Restitution was only written-off when the defendant was determined to be deceased.*

Options for Further Old Debt Discharge

Ideas for further Old Debt Discharge improvements with Work Group recommendations.

Should the Judicial Branch retroactively write off Juvenile Fees and Fines, Probationary Fees, and Public Defender Fees?

Most of the following were already eliminated in House Bill 244, but the bill was silent on retroactivity. It is this Work Group’s belief that HB 244 intended these fees and fines to be retroactively eliminated, but the law needs clarification.

When writing off obligations 10 years or older, the Judicial Branch did not write off any Department of Correction fees (Supervision Fee or Interstate Compact) as it is the Department of Correction who assesses those fees, and not the Courts. The Judicial Branch, therefore, determined that it was up to the Executive Branch to set that policy, and the Department of Correction was not comfortable until there was explicit instruction by the Legislature and the Executive Branch.

- *Juvenile Fees and Fines:* House Bill 244 eliminated fines and fees on juveniles but did not reference retroactivity. There is only \$213,148 in outstanding non-restitution obligations on juvenile defendants. An article by the Arnold Ventures argues that “Monetary penalties increase the likelihood that youth will reoffend. Young people who can’t pay end up on probation, face additional court dates, and can’t get a driver’s license. When they reach adulthood, they may face wage garnishment and bankruptcies that make it impossible to take out student loans.”¹² In other words, the effects of the monetary penalties can last for many years after the criminal justice experience.
- *Probationary Fees:* The Supervision Fee was eliminated in HB 244, but the bill was silent on retroactivity. It is recommended that this be clarified in clean-up legislation so that the existing fees are written-off. Approximately \$14.4 million is still owed from nearly 70,000 accounts as of January 1, 2023. The public is aware that the fee has been eliminated, so it is confusing to many when they are told that they still owe Supervision fees. The HB 244

¹² Michael Friedrich, Arnold Ventures, A Nationwide Campaign to End Juvenile Fines and Fees is Making Progress, October 18, 2022

fiscal note assumed that no Supervision fees, past or future, would be collected, so the revenue loss was accounted for in the original fiscal note.

The Interstate Compact fee was *not* addressed in HB 244. The Interstate Compact fee can be found in 11 *Del. C.* § 4359; the application fee is \$50. The Interstate Compact Fee is a fee paid by probationers in order to request that their probation's direct reporting be transferred to another state, although their probation is still being monitored administratively in Delaware. This is a frequent issue in Delaware, as many people who commit crimes in Delaware may reside in a neighboring state only a short distance away. In addition, even where probationers may have lived in Delaware their entire lives, many wish to move somewhere new to escape habits that had led them to justice-involvement, or to engage in rehabilitation or substance-abuse programs that are available elsewhere. Creating a financial barrier to transferring probation may stymie people's ability to rehabilitate and grow after justice-involvement.

It would be recommended that the Interstate Compact Fee and any outstanding balances be eliminated retroactively in clean-up legislation. In FY 2023, \$24,883 was collected; it is the understanding of the Work Group that this covers the total annual cost of the Compact for the State of Delaware. The amount collected is so low that this fee is feasible for elimination. Approximately \$33,700 is owed as of January 31, 2023. The Interstate Compact Fee is an application fee that is paid up-front, so outstanding obligations are likely for cases that were never transferred, in which case those accounts continued to be charged with the Supervision Fee.

- *Public Defender Fee:* The Public Defender fee was eliminated in HB 244, but the bill was silent on retroactivity. It is recommended that this be clarified in clean-up legislation so that the existing fees are written-off. Approximately \$1,887,108.32 million is still owed from nearly 19,279 accounts as of April 30, 2023. The public is aware that the fee has been eliminated, so it is confusing to many when they are told that they still owe the fee. The HB 244 Fiscal Note assumed that no Public Defender fees, past or future, would be collected, so the revenue loss was accounted for in the original fiscal note.
- *Recommendation: The Legislature should consider clarifying HB 244 to eliminate Juvenile Fees and Fines, Probationary Fees, and Public Defender Fees retroactively.*

Is the 10-year Court policy for write-offs the most appropriate timeline?

Please review Appendix B. for a cost breakdown of write-offs of aged cases.

Option A: Continue with the 10-year policy.

It has taken the Branch time to write-off the original set of aged cases and to continue researching cases. As such, more cases are now over 10 years old. If write-offs were updated again for 10 years, how much more could be written-off without a change of policy?

If the Judicial Branch were to continue to write-off accounts that are over 10 years old, they could write off over \$4.0 million; that is 15% of owed obligations (not counting restitution). About 33% of CCP and 41% of Superior Court cases have never seen a payment in the entire 10 years, and nearly all outstanding Voluntary Assessment Center cases have never seen a payment.

This would not be a change in court policy, but rather upkeep of the current policy.

Option B: Update policy to write-off aged debt at 7 years or 5 years.

Are fees uncollectible after 10 years, or would a shorter timeline for write-offs make more sense? And how many of those additional cases have been receiving payments (i.e., do we expect to ever

collect on these cases)?

The Old Debt Discharge Work Group reviewed cases that are 7 years old, and cases that are 5 years old (Appendix B). If the Courts were to write off cases that are over 7-years old, including all juvenile non-restitution fees, another \$10 million could be written off. (This would be the total amount written off, including those 10+ years; it is not in addition to the 10+ year table). Of remaining receivables, about 44% of the cases in Superior, 39% of CCP Court, and almost 97% of traffic cases have never received a payment in the 7+ years. The Courts would be writing off 37% of outstanding obligations.

If the Courts were to write off cases that are over 5-years old, including all juvenile non-restitution fees, nearly \$15 million could be written off (total, not in addition to 7-year or 10-year write-offs). Of remaining receivables, about 49% of the cases in Superior, 44% of CCP Court cases, and almost 95% of traffic cases have never received a payment. The Courts would be writing off 54% of owed obligations.

Seven years is a number frequently used in the financial and banking industries and could be a timeline that many constituents would find intuitive. For example, bankruptcies usually last 7 to 10 years, depending on the type of bankruptcy. Late payments remain on credit reports for 7 years. Documents for audits are often retained for 7 years. Therefore, 7 years may be a timeline that people could expect and remember.

- *Recommendation: The Judicial Branch should continue conversations with the Executive Branch to determine the most appropriate write-off timeline (5, 7, or 10 years) for “uncollectible” accounts. This should be a Judicial Branch policy determined by the Chief Justice and the collections experts, while having communications with the Executive Branch.*

Should state debt be automatically written off if someone is incarcerated?

The Fines and Fees Justice Center has recommended that a person must be deemed unable to pay if they are currently in custody, sentenced to custody for at least 6 months, or released from a term of at least 6 months in jail or prison within the past 12 months. A primary reason for this is that the Prison Policy Institute’s research found that unemployment rates among formerly incarcerated people are 5 times that of the general population despite evidence that formerly incarcerated people are actively seeking work at rates higher than the general population.¹³ Additionally, the Urban Institute found that 8 months after release, only 45% of people were employed, with only 65% having found even temporary employment during those first 8 months.¹⁴ Further documented research finds that formerly incarcerated individuals who find employment earn poverty-level wages.¹⁵

- *Recommendation: The legislature should consider authorizing the courts to waive (and also retroactively write-off) fees, fines, and assessments when incarceration of a certain time period is sentenced. Fines may be part of the sentence, but fees are unlikely to be affordable when incarceration is included in the sentence. The Judicial Branch has not yet*

¹³ Lucius Couloute and Daniel Kopf, Prison Policy Initiative, Out of Prison & Out of Work: Unemployment among formerly incarcerated people, July 2018.

¹⁴ Christy Visher, Sara Debus and Jennifer Yahner, Urban Institute Justice Policy Center, Employment After Prison: A Longitudinal Study of Releasees in Three States, October 2008.

¹⁵ Adam Looney and Nicholas Turner, The Brookings Institution, Work and opportunity before and after incarceration, March 2018.

determined the appropriate time period of incarceration for fees to be waived, but that is being currently discussed in the Ability to Pay Work Group and amongst the Courts.

Note: Community advocates to the Study Group advocated that “all fines and fees be written off if a person is 1) incarcerated for 1 week or more prior to sentencing for a misdemeanor, or 2) sentenced to 3-months or more.” This idea, however, would require further study to resolve various system issues and identify implications; it is not a formal recommendation of the Old Debt Discharge Work Group at this time.

Should the Judicial Branch have the authority to further review restitution?

The Judicial Branch is not currently authorized to write off restitution unless the person who was charged with restitution is deceased. Should the Branch also have authorization to write off restitution when the victim is deceased and no heir has come forward to lay claim, or when the restitution was ordered to a business that has since been sold, closed, gone through bankruptcy, or already used the debt as a tax write-off?

The Judicial Branch is currently authorized to write off restitution when the defendant is deceased, but there are no other circumstances when that is permitted. Yet there are times when the restitution no longer is applicable, such as when a business has already written-off their losses (the business can no longer accept the payment after they have discharged the debt), the victim is deceased, or when the business has closed and no owner can be located. Since these situations would need to be reviewed on a case-by-case basis (in accordance with jurisdictional and state laws) to determine whether the restitution should be transferred to another rightful person or business, this should be up to judicial review and court policy.

When payments on restitution are made, and the payments are not disbursed to anyone, the collections are submitted to the Department of Justice for the Victim Compensation Assistance Program.

- *Recommendation: Give authority to the Judicial Branch to create court policy and judicial procedure for reviewing restitution cases for whom no one has a right to the restitution. To ensure fairness to victims and their families, this will require additional research on estate and bankruptcy law before the Judicial Branch can determine a final policy.*

Should restitution be waived when the balanced owed is less than \$5 for any individually listed victim, and no payments have been made for six months or longer?

While the goal is to get victims all their owed restitution, there are situations when the effort of collecting the remaining restitution doesn't make sense for the return given every letter that the Judicial Branch sends to those individuals costs 97 cents (includes supplies, printing and postage costs), and the process of making payments also takes quite a bit of staff time as well. For example, if a defendant is making regular payments and just has \$4.37 left, then of course it would make sense to let that individual finish up the final payment(s). If, however, months have gone by and letters have not gotten any response, it may be time to stop chasing uncollectible and insignificant amounts.

In low dollar situations, therefore, it would save the state money to write off the restitution and find an alternative funding source to complete the restitution obligation, rather than to continue attempting to collect from the defendant.

- ❖ *Recommendation: Authorize the Judicial Branch to create a policy to write-off restitution when the amount is minimal, and the defendant has not been making payments or responding to correspondence. The Work Group recommends a mechanism for the State to*

find an alternative funding source to cover the remaining small restitution balances when appropriate; this would likely require a budget allocation and legislation.

General Study Group Recommendations

All change takes time, and the criminal justice system is not always the nimblest due to complicated processes and complex information systems. Additionally, the impact of proposed changes is often unknown or unpredictable. Therefore, the Old Debt Discharge Work Group also would like to include recommendations for the entire Study Group.

- *Recommendation: When the Study Group and/or the General Assembly determines the final proposal package for fee reform, please consider appropriate enactment dates that take implementation timelines into consideration, so that the agencies have time to make programmatic and system changes as necessary.*
- *Recommendation: An assessment following implementation should be considered. What were the impacts on defendants, victims, restitution, state collections, the state budget, recidivism, etc.? This Work Group believes that a review is important at various stages of implementation, as fee reform is likely to be a phased effort.*

Fee Elimination Work Group Report

Members	Meeting Dates
Evelyn Nestlerode (AOC)	May 22, 2023
Romain Alexander	June 6, 2023
Shante Hastings (DELDOT)	July 17, 2023
Lanie Clymer (DELDOT)	August 7, 2023
Norman “Jay” Jones (DVFA)	August 10, 2023
Lynne Kielhorn, Community Member	
Jason Smith	
Major Peter Sawyer	

The Fee Elimination Work Group was charged with reviewing and prioritizing what criminal fees, assessments and surcharges could be eliminated from the budget, determine if the fee-funded programs and services are essential State government services, and present the fiscal cost of covering the revenues in the Budget Act or other alternative ways.

A common recommendation of nonpartisan law and policy institutes that focus on fee reforms is to eliminate fees imposed by the criminal legal system.

- The Brennan Center¹⁶ recommends that “States and localities should pass legislation to eliminate court-imposed fees. Courts should be funded primarily by taxpayers, all of whom are served by the justice system.”
- The Fines and Fees Justice Center recommends that “All court fees, surcharges and costs should be eliminated, and where possible include budget provisions to backfill any revenue lost from eliminated fees”. They also recommend that “Government should be funded and budgeted for through general funds and equitable revenue sources.”¹⁷
- The National Center for State Courts says “On the criminal side, court leaders have a responsibility to ensure that the system is not overloaded with unreasonable financial obligation to fund other government services. For both criminal and civil cases, court leaders must work toward uniformity across the state and be the experts on whatever structure currently exists, while seeking a more principled and transparent approach.”¹⁸

Benefits of Eliminating Fees

- Fee elimination is one of the simplest solutions to overburdensome criminal justice fees. The elimination of fees doesn’t require the creation of any new processes. It would be counterproductive to create expensive processes to bring in less revenue.
- Eliminating fees would eradicate the disproportional impact that criminal justice fees have on low-income residents and low-income communities, though an “ability to pay” approach could also potentially lessen this disparity as well. Criminal justice fees have the effect of a flat tax on low-income communities.
- As there is a demographic overlap between communities of color and low-income communities, criminal justice fees often have a disproportional impact on Black and

¹⁶ Matthew Menendez, Lauren-Brooke Eisen, Noah Atchison and Michael Crowley, The Steep Costs of Criminal Justice Fees and Fines, The Brennan Center for Justice, November 21, 2019

¹⁷ Fines and Fees Justice Center, End Fees, Discharge Debt, Fairly Fund Government: FFJC Policy Guidance for Eliminating Criminal Legal System Fees and Discharging Debt, January 2022

¹⁸ Carl Reynold and Jeff Hall, 2011-2012 Policy Paper Court Are Not Revenue Centers, Conference of State Court Administrators

Hispanic constituents as well.¹⁹ The elimination of fees would eradicate this effect.

- The Courts should not be the State’s revenue generator. From the April 20, 2023, letter on updated guidance on criminal justice fees from the Department of Justice: “As the Department has previously observed, “[c]ourts, prosecutors, and police should be driven by justice—not revenue.”²⁰
- Fines and fees are an inefficient source of revenue as it takes resources devoted to collecting and enforcing fees and fines, often from those who cannot afford to pay.
- Criminal justice fees can be an unstable revenue generator, especially when there are recessions, pandemics, etc.
- Enforcement efforts for fees and fines collections by law enforcement and the courts may misdirect important criminal justice resources away from public safety issues.
- Criminal justice debt can reduce people’s abilities to cover the costs of basic needs for their households, impacting children, health and even public safety.
- Fees, fee revenues and fee-funded programs can be difficult - or impossible - to understand for constituents, even when studying the Budget Act and our revenue reports. Eliminating fees and supporting state programs through the general tax base is a more simple and transparent approach.
- Eliminating fees that raise revenues without addressing public safety may promote public trust. From the April 20, 2023, letter on updated guidance on criminal justice fees from the Department of Justice: “Notably, in addition to raising serious legal and practical concerns, assessment of unaffordable fines and fees often does not achieve the fines’ and fees’ stated purposes. In many cases, unaffordable fines and fees undermine rehabilitation and successful reentry and increase recidivism for adults and minors. And to the extent that such practices are geared toward raising general revenue and not toward addressing public safety, they can erode trust in the justice system.”²¹

Challenges of Eliminating Fees

- The biggest and most obvious challenge is the cost of replacing the fee revenues that pay for essential government services.
- It is not acceptable to merely eliminate fees without fully covering the cost of services.
- Other options, such as Ability to Pay, would retain accountability, likely retain the vast majority of revenue collections, and still reduce the disproportionate effects of fees.
- According to our representative member from the Volunteer Firefighter’s Association, many of the organization’s leadership take pride in their alternative funding sources. While EMS services receive funding from the State’s Grants-in-aid Bill and from fees, they are not included in the State’s annual operating budget. The representative member argued that their funding comes from people who may use their services more often; i.e., those who are not abiding by traffic laws. He reported that less than 50% of their budget comes state and county governments – the rest of is from fundraising, grants, and hall rentals. EMS services need other sources of funding to make up for the shortfall after insurance payments.

Which fees should be considered for elimination and which fees should be

¹⁹ Fines and Fees Justice Center, End Fees, Discharge Debt, Fairly Fund Government: FFJC Policy Guidance for Eliminating Criminal Legal System Fees and Discharging Debt, January 2022

²⁰ Vanita Gupta, *Dear Colleague* letter, U.S. Dept. of Justice, Apr. 20, 2023.

²¹ Vanita Gupta, *Dear Colleague* letter, U.S. Dept. of Justice, Apr. 20, 2023.

prioritized? What criteria should be considered?

The Work Group discussed the following questions:

- Should the State of Delaware first eliminate the largest fees because they have the largest impact?
- Should the State first eliminate the smaller fees that impact many people, don't save the state very much money, and "nickel and dime" the public for services they don't understand?
- Should the State prioritize the fees that collect such small annual amounts that it doesn't seem worth the cost of administering the fee and fund?
- Should the State consider the fees that do not bring in the amount of revenue needed for the services they fund?
- For fees that have already been eliminated going forward (Supervision Fee, Public Defender Fee), should we eliminate the fees retroactively or continue to collect on those previously assessed fees?
- Should Delaware prioritize eliminating fees that are not uniformly applied?
- Should the State consider eliminating fees that the potential to create a conflict of interest?
- Should Delaware consider eliminating fees that could create barriers to reentering citizens?

These are all important considerations, and it is likely that many stakeholders would rank those considerations differently. The truth is that even in good fiscal years, the benefit to eliminating fees is in competition with many other positive objectives to help people, provide additional services, build better and safer facilities, etc. And in years with less overall revenue, it becomes very difficult to add funds to the budget without expanding government services.

In making our fee elimination recommendations below, we add cost/benefit detail so that legislators have the information they need to balance the importance of eliminating fees with other competing needs.

We are likely entering a year with limited resources; in June 2023, the Delaware Financial Advisory Committee (DEFAC) estimated that revenues in FY 2024 will be 3.8% lower than FY 2023 revenues. We prioritized the "nickel and dime" fees, and the fees that do not bring in enough revenue to provide the services that they are supposed to cover.

Since these are essential government services, it is the recommendation of the Work Group that any eliminated fees are replaced with General Funds. Grant funds tend to be for new programs and temporary in nature.

Work Group Recommendations

Recommendations for Legislative Consideration #1 and #2

Supervision Fee & Public Defender Fee – Recommend Retroactive Write-Off of Obligations

Both the Supervision Fee and the Public Defender Fee were eliminated in HB 244. The Bill, however, was silent on retroactivity. The Controller General’s Fiscal Note for HB 244 assumed that there would be no collections of these fees already assessed, however, it was realized that the legislation did not explicitly allow for the retroactive elimination of the fees. Therefore, the Work Group determined that this proposal is more of a housekeeping measure to clarify the original intent of HB 244.

While our working group unanimously agrees with this recommendation, the Group discussed the pros and cons of such a recommendation. For example, these fees were assessed as part of the sentence order, and therefore those people were obligated to pay. Many people did pay those fees, so it can be argued that those who did the right thing and paid are being punished, and those who did not comply with the sentence order are being rewarded.

Regardless of that discussion, the Working Group felt that, since the fees were determined to be unfair, there is no reason to continue to collect on those fees.

Please review Appendix C to review the fiscal note for HB 244 and reference the assumed loss of revenue for the Supervision Fee and the Public Defender fee. As of January 1, 2023, there was approximately \$14.4 million still owed from nearly 70,000 accounts in Supervision Fees. As of April 30, 2023, there was approximately \$1.9 million still owed from approximately 19,000 accounts in Public Defender fees.

How is the revenue from Supervision Fee and the Public Defender Fee used?

- The revenues from both fees are deposited to the General Fund.

What is the recommendation and why?

- The lack of retroactivity was an oversight in the original bill.
- The loss of revenue was already assumed.
- The fees were already determined to be unfair and unnecessary.

Recommendation for Legislative Consideration #3

Eliminate the Department of Correction’s Interstate Compact Fee

How is the revenue from the Interstate Compact Fee used?

- Found in 11 *Del. C.* § 4359, the Interstate Compact Fee is intended to “defray costs under the Compact” and imposes an application fee of \$50.

Does the Interstate Compact application fee bring in enough to cover the cost of the Program?

- In FY 2023, \$24,883 was collected, which covers the State’s cost of \$20,629 to be part of the Compact. There is approximately \$33,700 owed (as of January 31, 2023). The Interstate Compact Fee is an application fee that is paid up-front, so outstanding obligations are likely for cases that were never transferred, in which case those accounts continued to be charged with the Supervision Fee.
- The Interstate Compact Fee is a fee paid by probationers in order to request that their probation’s direct reporting be transferred to another state, although their probation is still

being monitored administratively in Delaware. This is a frequent issue in Delaware, as many people who commit crimes in Delaware may reside in a neighboring state only a short distance away. In addition, even where probationers may have lived in Delaware their entire lives, many wish to move somewhere new to escape habits that had led them to justice-involvement, or to engage in rehabilitation or substance-abuse programs that are available elsewhere. Creating a financial barrier to transferring probation may stymie people's ability to rehabilitate and grow after justice-involvement.

What is the recommendation and why?

- This fee brings in less than \$25,000 annually and therefore could be budgetarily feasible to eliminate. Even if the entire fee were not eliminated, it makes sense to write-off the past obligations as those applicants were probably also charged with the Supervision Fee without the transfer of their cases.

Recommendation for Legislative Consideration #4

Eliminate the DELJIS Fund Fee and replace with Base Budget Funding of at least \$260,000.

How is the revenue from the DELJIS Fee used?

- The DELJIS Fee covers DELJIS operating costs, including contractual programming for maintenance and system improvements.

Does the DELJIS Fee bring in enough revenue for the program?

- No, the DELJIS fee was supposed to provide DELJIS with an additional \$260,000 ASF operating costs, but in FY 2022 only \$116,255 was collected. DELJIS does not have a balance in the holding account and can only spend annually what is collected. DELJIS needs the entire \$260,000 in their budget.

What is the recommendation and why?

- We recommend that the DELJIS Fund Fee be considered high priority for elimination, with full spending authority picked up by the General Fund for the following reasons:
 - a. Revenues are not able to provide DELJIS with needed funds.
 - b. This is a \$1 "nickel and dime" fee; the average citizen who gets this fee tacked onto a traffic ticket or something relatively minor has no idea what "DELJIS" is.
 - c. The fiscal note of \$260,000 for General Fund pick-up is lower than many of the other fees.

Recommendation for Legislative Consideration #5

Eliminate the Victim Rights Fund Fee and replace with Base Budget Funding of \$192,100.

How is the revenue from the Victim Rights Fund used?

- The Victim Rights Fund is used for victim notifications and other victim expenses, such as interpreters, travel and experts.

Does the Victim Rights Fund bring in enough revenue for the program?

- No, the Fund has spending authority of \$192,100, yet only brings in about \$25,000 in fee revenue. This is a line which can have unpredictable spending needs depending on each unique case, and experts in particular can come with particularly high costs a single case. They could use the full amount of funding that was anticipated when the ASF spending authority was set, and they have been looking for increased General Funds for this purpose.

What is the recommendation and why?

- We recommend that the Victim Rights Fund be considered high priority for elimination, with full spending authority picked up by the General Fund for the following reasons:
 - a. Revenues are not able to provide DOJ with needed funds for victims.
 - b. The fiscal note of \$192,100 for General Fund pick-up is lower than many other fees.
 - c. This fee targets only those who are caught not wearing seat belts but is used for victims of all types of criminal offenses.

Recommendation for Legislative Consideration #6

Eliminate the CJC Videophone Fund Fee and recommend General Fund Pick-up

How is the revenue from the CJC Videophone Fee used?

- The Criminal Justice Council and the Office of Defense Services utilize these funds to pay for the Videophone services.

Does the Videophone Fee bring in enough revenue for the program?

- Even though the Videophone Fee brings in less than the \$212,500 that they are authorized to spend, the Fee brings in between \$100,000 and \$125,000 annually, which is roughly the amount currently needed to run the program.

What is the recommendation and why?

- This is a \$1 “nickle and dime” fee that impacts many; it would only cost about \$125,000 to replace this Fee with General Funds.
- The Videophone Fund is a cost-saving fund, and it should be funded without being dependent on people committing crimes. Despite having a small budget, the Videophone Fund avoided inmate transportation costs estimated at over \$7 million in FY 21.

Recommendation for Legislative Consideration #7

Eliminate the Senior Trust Fund Fee with pick-up in the General Fund of \$15,000

How is the revenue from the Senior Trust Fund Fee used?

- Funds are purposed for senior citizen programs through community service organizations and are dispersed through the DHSS Director of Aging. However, FY2018-2021 Senior Trust Fund - Spending Plan Request memos propose utilizing these funds in a variety of ways including dispersal of mini-grants to senior centers and by holding a statewide resource and activity fair.

Does the Senior Trust Fund Fee bring in enough to cover the cost of the Program?

- In fiscal year 2022 the Fee brought in \$8,335.

What is the recommendation and why?

- Recommendation is to eliminate this fee. It is not known whether replacement is needed.
 - a. The approximate \$10,000 collected annually is not worth the costs of administering this fund.
 - b. This fee is likely not administered uniformly since it requires knowing the victims age and is so seldomly assessed that it’s easy to forget.
 - c. Please note: It is not known whether DHSS would support elimination of this fee without replacement in the budget.

Recommendation for Legislative Consideration #8

Eliminate the Substance Abuse Rehabilitation, Treatment, Education and Prevention (“SARTEP”) Fund Fee with pick-up as needed in the General Fund.

How is the revenue from the SARTEP Fund used?

The SARTEP Fund collects money through a fee that is applied to any violation or conviction under 16 *Del. C.* §§ 4751-4758 (Possession of a Controlled Substance, Drug Dealing, etc.), 4761 (Illegal Possession and Delivery of Noncontrolled Prescription Drugs), or 4771-4774 (Possession of Drug Paraphernalia), or 21 *Del. C.* § 5177 (Driving Under the Influence). 16 *Del. C.* § 4802A(a). The SARTEP Fund Fee is 15% of any “fine, penalty or forfeiture” in an applicable case, and when a fine, penalty or forfeiture is suspended, the SARTEP Fund fee “shall not be suspended.”

According to Code, the SARTEP Fund is used “only for the provision of and coordination of substance abuse rehabilitation treatment, education and/or prevention services”. 16 *Del. C.* § 4803A(b). The funds are administered by the permanent treatment access committee of SENTAC, with approval by the Delaware State Clearinghouse Committee.

Does the Fund bring in enough revenue for the program?

- In fiscal year 2022 the Fee revenue totaled \$31,439. From the limited research this Work Group has done, it does not appear that this fee funds a specific substance abuse treatment program. The Funds go to the Department of Health and Social Services, Division of Substance Abuse and Mental Health; the Work Group recommends discussions with that organization who had no representation on our Study Group.

What is the recommendation and why?

- The administrative process set up in Code may no longer exist. Our research indicates that the Criminal Justice Council does not have input into the SARTEP Fund.
- Judge Robert Surlles, who leads the Drug Court in the Court of Common Pleas, said that the fee never felt “right” as most of the participants are not in a position to pay.
- The Work Group recommends eliminating the SARTEP Fund Fee and to work with DSAMH to determine how much funding needs to be replaced with General Funds in the operating budget.

Recommendation for Legislative Consideration #9

Eliminate the Court Security Fee with pick-up in the General Fund budget as the fiscal situation permits with base budget funding of approximately \$3 million.

How is the revenue from the Court Security Fee used?

- The Court Security Fee covers 31.5 ASF FTEs in the Judicial Branch as well as other operating and one-time costs related to court security.

Does the Court Security Fee bring in enough revenue for the program?

- No. The total Spending Authority to cover those costs in FY 2023 is \$2,921,100, but only \$1,538,251 was collected in FY 2022. There is a balance from previous years and position turnover that helps to keep the program sustainable. Because most of the expense is from Personnel, it is critical that the full funding be available.

What is the recommendation and why?

- We recommend that the Court Security Fee be considered for elimination as the fiscal

situation permits, with full spending authority picked up by the General Fund for the following reasons:

- a. Current annual collections are lower than current annual expenditures; expenditures have been covered to date by previous balances in the Court Security Fund primarily due to personnel turnover/vacancies.
- b. There can be a perceived conflict of interest when the courts are assessing the fees and retaining the fees for operations.
- c. The fee of \$10 makes a significant impact on the cost of every conviction.

Other Fees Considered for Elimination (Non-Unanimous Support)

All Fees

There were opinions that the Fee Elimination Work Group should recommend the elimination of all fees, even if it could not happen all at once. Fees which are imposed to raise revenues for state services are effectively a “flat tax” often imposed on the least able to afford it. Other members preferred to take the approach of recommending the elimination of certain fees, while converting other fees to an “Ability to Pay” or other alternative approach. Additionally, some Working Group members thought that, if fees were eliminated, the fines for the offenses should be reviewed as many of our fines are considered to be relatively low, although no official comparison has been made to confirm that assertion.

Certain Assessments on Toll Violations

A good case was made that the Fund to Combat Violent Crime (State Police and Local Law Enforcement) and the Ambulance Fund should not be imposed on toll violations. The cost of a \$1 unpaid toll is \$51 with these additional fees immediately, and then goes up to \$88.50 if not paid in 42 days. Data does not show that toll violators necessarily use more police and ambulance service than others. It is often more of a mistake or the lack of available cash than an offense.

Toll Violation Assessments

- Passenger Car Base Toll: \$0.50, \$1, \$3, \$4, or \$5.60 depending on roadway and day/time
- Administrative Fee: \$25
- Volunteer Ambulance Company Fund: \$10
- Fund to Combat Violent Crimes: \$15
- **Total = \$51 (for a \$1 unpaid toll)**
- If unpaid after an additional 42 days, an \$25 civil penalty and \$12.50 surcharge is applied bringing the **total to \$88.50 (for a \$1 unpaid toll)**

Reasons the assessments on toll violations didn't make the Work Group's top recommendations:

- A primary focus of this group is to make sure that people don't get caught up in the criminal justice system. Toll violations are purely civil and the courts and law enforcement are not involved in the collections of this ticket.
- The cost to cover services from the General Fund and eliminate the Volunteer Ambulance Company and Fund to Combat Violent Crimes assessments from toll violations is \$5,866,600 annually. It is recognized that this would be a heavy lift for the budget.

Fees Created by Court Rule

The community representative on the Work Group strongly advocated for consideration of fees created by Court Rule. The Courts have the authority to create fees via Court Rules. Specifically, a “court may, in its discretion, make a reasonable allowance for any service not expressly provided for in [chapter 10].” (10 *Del. C.* § 8504). Fees for each court can be found in their Court Rules, which are available online.²²

The Work Group focused on statutory criminal fees for which the legislature has authority to change. While many of the fees created by court rule are civil in nature and go to the General Fund, there are a few fees in particular which concern the advocates. The fees go to the General Fund, though the budget process authorizes spending authority which is tied to the collection of fees.

The advocates from the Work Group and greater Study Group are encouraging the Courts to prioritize their fees with the same analysis that the Work Group applied to statutory fees.

The community representatives specifically encourage the Courts review the following fees:

Court of Common Pleas’ Jury Fee and Non-Jury Fee

- This fee is \$55 per charge for any conviction in which a defendant waived their right to a jury trial, and \$135 per charge for any conviction for which a defendant did not waive their right to a jury trial. Defendants are charged the Jury Trial or the Non-Jury Trial Fee regardless of whether or not they have a trial. Fees are not applied if the defendant is acquitted.
- Because these court fees are not itemized in the judiciary’s accounting systems, it may not currently be possible to separate out how much the courts collect from each fee. However, AOC explained that the Jury Trial Fee and Non-Jury Trial Fee are sometimes waived post sentencing, and AOC has determined that these fees, along with other fees, are included in a revenue category called “Court Costs” which collected \$478,368 in FY 2022. Thus we can deduce the approximate scale of revenue loss, if the Jury Trial Fee and Non-Jury Trial Fee were eliminated, to be less than half a million dollars.
- The advocates encourage the Courts to review the fairness of this fee, especially since it may be seen as encouraging defendants from requesting their right to a jury trial.

Superior Court’s Prosecution Fee

- This is a \$100 fee assessed in Superior Court when there is “indictment by true bill [without] previous commitment and “New information from attorney general’s office”. On a defendant’s itemized sentencing order, these fees show up simply as “PROSECUTION FEE ORDERED.”
- The advocates are concerned that the fee may not be uniformly applied and encourage the Courts to review this fee as it is a confusing charge which can appear as “unfair” to the public.

Summary

While the most ideal approach – generally considered best practice – would be to start over and never have criminal justice fees in the first place, it is an unfortunate reality that there are many of them that collectively contribute millions to the State budget. The State budget currently depends on revenues from these fees. The Fee Elimination Work Group understands that the General

²² [DE Judicial Branch: Rules of the Delaware State Courts.](#)

Assembly is tasked with the difficult balance of reducing the hardships and improving fairness for its constituents while providing services with the least tax burden to citizens. The elimination of criminal justice fees comes with a cost to the State budget. The Work Group sought to find solutions that seemed the most feasible given their lower cost to switch-fund or because of their inadequate revenues, while making an impact on Delaware citizens. These recommendations should be seen as feasible options for the next several years; the Work Group assumes that once various changes take place, more review should take place on remaining fees.

Please review Appendix D., which lists the major statutory and other criminal justice surcharges. This is not intended to be a comprehensive list of all fees.

Restitution Work Group Report

Members

Addie Asay (Family Court)

Christopher Ciecko

Bill DiBartola

Eliza Hirst (ODS)

Mariann Kenville Moore (DCADV)

Evelyn Nestlerode (AOC)

Linda Carmichael (Superior Court)

Meryem Dede

Barbie Fischer (Del. Center for Justice)

Kristine Iannelli

Gayle Lafferty

Rev. Rita Paige

Restitution differs substantially from fines or fees. Restitution “compensate[es] for loss” and is “paid by a criminal to a victim”²³ Its intent is neither punishment nor to collect money for government services—it is to make a victim whole again, to the extent that is possible. The Restitution Work Group was tasked to research and make recommendations about restitution in Delaware courts. The Judicial Branch members of the Work Group believed the mission of the group was to review current practices and consider ways to improve the collection of restitution for victims.²⁴ Unlike other work groups, the Restitution Work Group did not have written analysis criteria, but instead restitution discussions came up naturally within the Study Group when talking generally about recent reforms and court collections efforts.²⁵ This Work Group aimed to analyze how restitution is currently functioning within Delaware Court systems, pinpoint problems, and recommend solutions, where possible.

Summary of the Current Restitution System

In any Delaware case where a criminal defendant harms a victim, the defendant may be ordered to pay restitution, or money compensation to that victim.²⁶ Restitution shall be “in such amount as to make the victim whole, insofar as possible, for the loss sustained.”²⁷ In cases of theft or property damage, the restitution is the “value of the property or property rights lost to the victim and or the value of any property which has diminished in worth as a result of the actions of [the defendant.]”²⁸ In any property case, either the police or the victim, themselves, prepare a “loss statement.”²⁹ The court then determines “the nature and amount of restitution” based on the evidence presented.³⁰ After most cases in Delaware involving restitution, a defendant will find themselves owing restitution, fees, and sometimes also a fine. Payments the defendant makes are statutorily supposed to go first to the Victim Compensation Fund, next to restitution, and lastly to other fines and fees in the order outlined by statute.³¹

²³ *Restitution*, Black’s Law Dictionary (11th ed. 2019).

²⁴ The Judicial Branch members are supportive of improvements to the handling and collection of restitution for crime victims. This includes working with government partners to improve collection policies and procedures that align with best practices and utilizing scarce State resources most efficiently and effectively on behalf of victims. The Judicial Branch members do not support any actions that would eliminate or reduce a defendant’s responsibilities to make any victims of their crimes whole.

²⁵ See Paul Kiefer, *Delaware Policymakers Confront Unintended Results While Mulling Further Court-Imposed Debt Reforms*, Delaware Public Media (April 20, 2023), <https://www.delawarepublic.org/politics-government/2023-04-20/delaware-policymakers-confront-unintended-results-while-mulling-further-court-imposed-debt-reforms>.

²⁶ 11 Del. C. § 4106(a) (Restitution for property damage or loss).

²⁷ 11 Del. C. § 4204(9).

²⁸ 11 Del. C. § 4106(a).

²⁹ 11 Del. C. § 4106(b).

³⁰ 11 Del. C. § 4106(b).

³¹ 11 Del. C. § 4106(c) (“In the event a convicted offender is ordered by the court to pay fines, costs or other

Once a defendant begins making payments, money is disbursed to victims “within 90 days of receipt or whenever the accumulated amount of the restitution payments received is \$50 or more, whichever event first occurs.”³² Work Group member Ms. Kenville-Moore from the Delaware Coalition Against Domestic Violence (“DCADV”) shared that victims and survivors that DCADV works with have reported that in the past sometimes restitution checks were less than \$50, and because restitution payments are often slow in coming, many victims received very small payments sporadically up to even decades past when a crime happened.

Under statute, when the court is unable to send restitution to a victim for five years past when it received the payment, the court deposits the money in the Victim Compensation Fund.³³ If a victim comes forward to whom the court was previously unable to send restitution payments, under statute the victim may seek a “refund” from the Victim Compensation Fund Board.³⁴

Delaware has only a small number of restrictions to restitution. As of April 2023, with the enactment of HB244, property insurance providers cannot receive restitution, though they are able to pursue civil judgements to recover losses.³⁵ Delaware does not analyze a defendant’s ability to pay restitution, and there are no limits to the size of a restitution order in either adult or juvenile cases. Delaware courts retain jurisdiction over a case until restitution is paid in full, and the court may only write off restitution “when the court receives evidence that the defendant is deceased”³⁶ and under no other circumstances in adult cases.

The Courts and victim advocacy groups report that many victims of crime in Delaware are not getting paid restitution. There are several explanations as to why. First, many defendants are not paying restitution for a variety of reasons. As a part of the research of this Work Group, the Office of State Courts Collection (“OSCCE”) analyzed its cases and found that it has approximately 28,041 impacted victims with outstanding restitution, which represents \$95,800,404.26 in funds due. This reflects only impacted victims in cases that are at least ten years old—all other collections are handled by each court, individually, for which this Work Group does not have data. Of those impacted victims, OSCCE divides the accounts into three categories:

- 1,399³⁷ are **Insurance Companies** for \$9,142,434.64 in funds due (only 8.27% of what was ordered on these cases has been paid; 119 with no payments received 8.50%)
- 10,636 are **Businesses** for \$51,918,338.80 in funds due (only 15.01% of what was ordered on these cases has been paid; 4548 with no payments received 42.76%)
- 13,572 are **Individuals** for \$34,735,503.13 in funds due (only 15.94% of what was ordered on these cases has been paid; 4852 with no payments received 35.75%)

This reflects a large number of cases where defendants are not paying restitution, and a significant number where defendants in fact never paid *any* restitution. Notably, these numbers may not reflect defendants who may have received significant incarcerated sentences, including life sentences, who likely may not be able to make restitution payments.

Some victims are also not getting paid restitution because the court system is unable to contact

financial obligations along with restitution, payments shall first be applied to Victim Compensation Fund, next to pay restitution and then to the other payments ordered to be made.”); *see also* 11 *Del. C.* § 4101 (payment order of certain fees).

³² 11 *Del. C.* § 4106(d).

³³ 11 *Del. C.* § 4106(d).

³⁴ *Id.*

³⁵ *Id.*, at (f)

³⁶ 11 *Del. C.* § 4104(d).

³⁷ Numbers are approximate. Reports reflective of accounts as of April 2023.

them to do so. At the outset of a case, Courts have the correct name and address of victims. However, as cases age, some victims move without anyone notifying the courts of the victim’s new address. OSCCE also analyzed how many accounts it has categorized as unable to receive restitution checks. Based on notifications received from the Courts at the time of transfer to OSCCE (at ten years old), returned correspondence, and its research to date, OSCCE reports the following:

- Approx 786 victim files are marked with **Bad Address**
- Approx 463 victim files are marked with **Unknown Address**
- Approx 178 victim files are marked with **Expired Checks**
- Approx 3728 victim files are marked with **Escheat**

Notably, some of the “Escheat” cases are not truly cases with no locatable victim. OSCCE sometimes adds accounts to this category temporarily where a restitution payment needs to be delayed, either because it’s too small for a payout or for any other myriad reasons.

When OSCCE receives a returned check or is otherwise unable to locate a victim, they employ several tools to attempt to locate victim address information, including searching DELJIS, which incorporates DMV records and other government databases, and even internet searches. OSCCE has been working diligently on this exact issue, and in the first months of 2023 very few of OSCCE’s distributed payments were returned:

January 2023	Collected/issued 1752 restitution payments	42 returned
February 2023	Collected/Issued 1659 restitution payments	10 returned
March 2023	Collected/Issued 1691 restitution payments	14 returned
April 2023	Collected/Issued 1545 restitution payments	17 returned

Of OSCCE’s most recent restitution distributions, OSCCE believes that very few did not reach their intended recipients.

Youth Restitution

Restitution as ordered against young people deserves special consideration.³⁸ In Delaware, when a young person is found delinquent, Family Court may order the child to pay monetary restitution “for out of pocket costs, losses or damages. . . .”³⁹ In addition, where a court finds by a preponderance of the evidence that the child’s parent or guardian “knew of the child’s delinquent nature; and . . . failed to take reasonable measures to control the child;” the court may order the parent or guardian to pay up to \$5,000 in restitution, themselves.⁴⁰ In practice, some public defenders⁴¹ report that this parent liability provision is rarely, if ever, imposed, as it’s understood

³⁸ See Reimagining Restitution: New Approaches to Support Youth and Communities, *available at* <https://debtorsprison.jlc.org/documents/JLC-Reimagining-Restitution.pdf> (hereinafter “Reimagining Restitution”).

³⁹ 10 *Del.C.* § 1009(c)(5).

⁴⁰ *Id.* at (c)(6).

⁴¹ Many thanks to the following for their input on this section: Office of Defense Services Chief of Legal Services Lisa Minutola, Assistant Public Defender Alanna Farber of the Young Adult Unit, Assistant Public Defender and former Family Court Commissioner Samantha Lukoff, Assistant Public Defender and Youth Defense Unit Supervisor Lauren Mahler, and Assistant Public Defender, Child Welfare Law Specialist, and former Deputy Child Advocate Eliza Hirst.

that children have little ability to pay restitution and it is thus their parents and families paying restitution directly, regardless of to whom the court order is addressed. Delaware statutes provide one carve out for restitution as ordered against children, that “in the absence of objections by the victim” the child’s restitution may be discharged “in an appropriate community service arrangement”⁴² Some public defenders again report that this provision is also rarely, if in fact ever, used. However, prosecutors and defense attorneys (the bulk of whom are public defenders) regularly work out “deals” whereby prosecutors agree to not ask that children pay restitution or the full known amount of restitution. This is, of course, is negotiated in consultation with victims.⁴³ Some public defenders report they regularly negotiate restitution for children using ability to pay among other arguments.

Where prosecutors and defense counsel do not agree on restitution, there is nothing statutorily requiring a Family Court judge to consider a child’s ability to pay,⁴⁴ and public defenders report that almost no Delaware Family Court judges will entertain such arguments. There is no cap on how much money in restitution a child can be ordered to pay directly,⁴⁵ and once ordered, there is no process for discharging restitution a child is unable to pay beyond the community service exception at the obliging of the victim.

Delaware does not statutorily obligate courts to provide payment plans for restitution, even for children, although in practice payment plans are almost always used. Public Defenders report that monthly payments are often as low as \$20/month, but that payment plans vary widely by court officer and case. Typically, payment plans are established at the time of a child’s sentencing, and usually involve monthly payments. When a child is known to have few or no resources, judicial officers sometimes delay the start of payments so the child can have an opportunity to “save up.” Sometimes the Court also pushes out juvenile restitution orders until the child reaches 18, and all collection efforts are stalled until that time. Other Work Groups, most notably the Ability to Pay Work Group, more thoroughly outline the process by which payments are handled by Family Court.

A 2013 study⁴⁶ found that for fines, fees, and restitution assessed against children in Delaware in 2011 and 2012, less than half (46%) were paid in full and 10% had received capiases by the time of the report in 2013. In addition, the percentage of children with unpaid balances was generally higher the younger the child, with 64% of 14-15 year-olds having unpaid balances but 22% of 19 year-olds still having unpaid balances.

As a part of this Work Group’s research, DELJIS pulled information about the current state of youth restitution in Delaware. At the time the data was pulled,⁴⁷ adults as old as 35 still owed restitution from when they were adjudicated delinquent in Family Court, and adults as old as 46

⁴² *Id.* at (8).

⁴³ 11 *Del. C.* § 9405 (“the prosecutor shall confer with a victim before . . . agreeing to a negotiated plea or pretrial diversion.”).

⁴⁴ Delaware is one of twenty-nine states that does not require judges to consider a youth’s “ability to pay” when ordering restitution. Reimagining Restitution at 9.

⁴⁵ Only five states and three territories in the United States cap the dollar amount a child can be ordered to pay in restitution. Wisconsin has the lowest cap at \$250, which only applies to youth under fourteen. Wis. Stat. § 938.34(5). Four jurisdictions, Maryland, Arkansas, the District of Columbia, and Guam, have the highest restitution cap at \$10,000. Md. Code. Ann., Crim. Proc. § 11-604(b); Ark. Code § 9-27-331(e) (applies per victim, so restitution as against a single defendant can easily surpass \$10,000); D.C. Code § 16-2320.01(c)(1); 9 Guam Code §§ 80.50 (adult); 80.91 (applying section to juvenile cases); Guam’s cap is on a scale by degree of crime.

⁴⁶ Final Report of the Juvenile Justice Collaborative (JJC) Workgroup Regarding Financial Obligations Assessed to Juveniles, Appendix [[A]].

⁴⁷ Data was pulled June 16, 2023.

still owed restitution from cases they had picked up as emerging adults.⁴⁸

Court	Outstanding Restitution	Oldest Offender	Oldest Receivable
Family Court (Under 18)	\$816,200.76	35	9/15/2003
Superior Court (Under 18)	\$210,304.07	24	10/7/2015
CCP (Ages 18-21)	\$683,011.86	46	7/17/1997
Superior Court (Ages 18-21)	\$3,803,162.69	31	9/27/2013

The Work Group also gathered data from the past five years about how long it takes as a mean and median for young people to pay off their restitution:

Mean Payoff Days	Court/Age	2018	2019	2020	2021	2022
	Family Court (Under 18)	512	415	378	301	135
	Superior Court (Under 18)	1031	978	0 ⁴⁹	0	0
	CCP (Ages 18-21)	408	524	377	270	142
	Superior Court (Ages 18-21)	727	553	645	414	215

Median Payoff Days	Court/Age	2018	2019	2020	2021	2022
	Family Court (Under 18)	369	205	240	262	77
	Superior Court (Under 18)	1089	623	0	0	0
	CCP (Ages 18-21)	292	286	191	247	122
	Superior Court (Ages 18-21)	514	494	127	292	195

Unsurprisingly, youth under 18 charged in Superior Court, who are youth facing only the most serious charges, took substantially the longest to pay off their restitution, but all young people across courts took substantial time to pay off their restitution. Of note, assuming many young people faced probation sentences that are capped at one year, many likely took much longer than the punitive portion of their sentence to pay off their restitution. This both means that young people are burdened with restitution payments long after the “punishment” portion of their sentence has ended, and that victims of crimes committed by young people are waiting a very long time to receive their restitution.

In total, young people had relatively small restitution orders, when compared to many of the other sizable costs this Study Group has been analyzing.

Court	2018 Restitution	2019 Restitution	2020 Restitution	2021 Restitution	2022 Restitution
Family Court (Under 18)	\$130,371.63	\$145,617.31	\$61,573.11	\$86,872.64	\$48,982.47
Superior Court (Under 18)	\$27,764.95	\$33,368.03	\$12,228.32	\$13,034.83	\$30,054.96
CCP (Ages 18-21)	\$78,793.96	\$137,530.20	\$38,431.18	\$51,554.72	\$100,031.74
Superior Court (Ages 18-21)	\$386,482.72	\$279,052.94	\$159,203.04	\$220,330.61	\$346,050.42

Notably, some of these numbers have significantly decreased over the past five years. While Superior Court restitution ordered against 18-21 year olds is relatively similar in 2022 than it was in 2018, restitution against children under 18 in Family Court is almost a third of what it was in

⁴⁸ See Appendix B for full data. Notably, this data does not include cases transferred to the Office of State Court Collection, which means it does not include cases over 10 years old.

⁴⁹ 0’s reflect that no people in these category had paid off their restitution at the time the data was pulled.

2022. Work Group members report that this is a result of a policy change in how restitution is negotiated in cases involving children, and that prosecutors have begun making a concerted effort to not ask for restitution amounts beyond what a child is able to pay.

A large percentage of the restitution ordered each year over the past five years against young people has gone uncollected.

Court	2018 % uncollected	2019 % uncollected	2020 % uncollected	2021 % uncollected	2022 % uncollected
Family Court (Under 18)	56%	75%	72%	76%	86%
Superior Court (Under 18)	70%	98%	100%	90%	100%
CCP (Ages 18-21)	44%	59%	45%	46%	81%
Superior Court (Ages 18-21)	71%	81%	95%	90%	96%

Despite that restitution orders are relatively small compared with other criminal justice financial obligations; these numbers still reflect a significant number of victims who are not receiving restitution.

Victims' Compensation Assistance Program

Delaware runs a Victims' Compensation Assistance Program ("VCAP"), which provides restitution to victims of certain crimes without these victims needing to wait for direct payments from offenders. VCAP is funded through a federal grant, probation interest, subrogation reimbursements,⁵⁰ restitution payments, and an 18% surcharge levied on all criminal offenses.⁵¹ VCAP has an annual operating budget of \$800,000, and in FY21 made 2,691 payments to and on behalf of victims, totaling \$1,903,295.95 out to victims.⁵² The bulk of these payments went to victims in federal cases, with \$1,274,777.02 going to federal crime victims, and only \$628,518.93 going to state crime victims.⁵³

Only a relatively small number of victims qualify for VCAP help, and for those victims only certain expenses qualify. VCAP provides financial help to victims for medical and dental expenses, mental health treatment, income loss, funeral or burial expenses, moving or relocation expenses, temporary housing, the cost of changing locks, doors or windows to make a residence safe, and replacing items seized as evidence by police.⁵⁴ To be eligible for compensation, victims must have reported the crime to law enforcement within 72 hours, filed a VCAP application within one year of the crime, cooperated with law enforcement agencies, cooperated with VCAP staff and provided all information requested, and not have caused or contributed to their own injury or death.⁵⁵ VCAP provides compensation to victims of homicide, sexual offenses, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, unlawful use of firearms, stalking and endangering the welfare of a child.⁵⁶ Most notably, VCAP does not compensate for

⁵⁰ 1 Del. Admin. Code § 301, 27.1-5 (detailing where VCAP shall be refunded if a claimant later recovers restitution from another source, such as from an insurance award or a civil claim).

⁵¹ 11 Del. C. § 9016(a-b); *see also* FY 2021 Annual Report Victims' Compensation Assistance Program, *available at* <https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2022/06/FY-2021-ANNUAL-REPORT-SIGNED.pdf>.

⁵² FY 2021 Annual Report Victims' Compensation Assistance Program, at 5.

⁵³ *Id.*

⁵⁴ For a full list of covered expenses, *see* 11 Del. C. § 9002(10); and <https://attorneygeneral.delaware.gov/vcap/compensation/>.

⁵⁵ 11 Del. C. § 9010.

⁵⁶ 11 Del. C. § 9002(6) (defining "crime").

lost, damaged, or stolen property.⁵⁷ This means victims of property crimes are not eligible for help through VCAP.

VCAP compensation can be processed and received by a victim before a defendant is fully adjudicated of the crime. Once a person is convicted of the underlying offense, however, VCAP, itself, as an agency “may assert a claim for reimbursement of the Victims’ Compensation Fund as restitution from the criminal defendant.” In such an instance, VCAP must submit an affidavit to the court, and the defendant is entitled to a hearing, if so desired.⁵⁸

VCAP’s eligibility requirements prevent some victims from seeking help through the fund. In particular, Ms. Kenville-Moore emphasizes that the line between “victim” and “offender” is often not a bright-line, and the requirement that victims have not “contributed” to a crime and have “cooperated” with law enforcement excludes some from eligibility.

Level I – Restitution Only

Probation in Delaware is limited to two years for certain violent felonies, 18 months for certain substance abuse offenses (Title 16), or one year for everything else,⁵⁹ with one notable exception. These time limitations do not apply where “the sentencing court determines on the record that a longer period of probation or suspension of sentence is necessary to ensure the collection of restitution ordered . . .,” in which case, the defendant serves “Accountability Level I—Restitution-Only” probation (hereinafter “Level I – Restitution Only”).⁶⁰ Such probation is “unsupervised” and the conditions are “limited to those that are necessary to ensure or facilitate the collection of restitution.”⁶¹ While this level of supervision by statute is “unsupervised”, the Department of Correction monitors these cases for compliance with restitution orders, returns inquiries by victims, encourages payments by those under this supervision, and sends correspondence to the state’s various Courts related to compliance or lack of compliance with this level of supervision. A defendant can only violate Level I – Restitution Only if they violate an applicable restitution order.⁶² Specifically, Probation reports that Level I – Restitution Only Probationers have only two conditions of their supervision:

You must make regular payments of \$ _____ per month for court-ordered restitution according to the payment plan established either by the Court, the Office of State Court Collections Enforcement, or Probation and Parole. YOU CAN BE CITED FOR VIOLATION OF PROBATION FOR FAILING TO MAKE REGULAR PAYMENTS FOR YOUR COURT ORDERED RESTITUTION.

You must notify Level I Operations (located at the Probation and Parole Office in the county in which you were sentenced) of any changes in your address, employment, or financial status.

There are a relatively small number of probationers on Level I – Restitution Only. However, some Delaware Courts appear to sentence defendants to Level I – Restitution Only at much higher rates than others.⁶³

⁵⁷ 11 *Del. C.* § 9002(10). (defining “pecuniary loss”).

⁵⁸ *Id.*

⁵⁹ 11 *Del. C.* §4333(b).

⁶⁰ *Id.*, at (d)(3).

⁶¹ 11 *Del. C.* § 4204(10).

⁶² *Id.*

⁶³ Numbers reflect as of June 2, 2023.

County	Court	No. of Restitution-Only Probationers
New Castle County	Court of Common Pleas	2
	Superior Court	106
	Family Court	0
Kent County	Court of Common Pleas	61
	Superior Court	460
	Family Court	1
Sussex County	Court of Common Pleas	2
	Superior Court	134
	Family Court	0

As of June 2, 2023, there were a total of 747 people on Level I – Restitution Only. By comparison, the Department of Correction reports the following numbers for total Probation and Parole Admissions and Releases for the past five years:⁶⁴

Probation and Parole Admissions and Releases by Fiscal Year ¹					
	2018	2019	2020	2021	2022
Admissions	12,345	11,193	9,064	6,383	9,011
Releases	12,798	12,025	11,235	8,842	7,753

¹ Probation & Parole Admissions and Releases include admissions and releases to a District Office. These counts do not include admissions or releases to Home Confinement or Pretrial Services.

Level I – Restitution Only thus makes up somewhere around roughly less than 10% of all probation cases. Probation reports that some probationers have their restitution made into a civil judgement *and* are put on Level I – Restitution Only, while others are not.

Probation’s case management system cannot report specific statistics about the length of time probationers remain on Level I – Restitution Only, but of the people on Level I – Restitution Only as of June 2, 2023, the person with the shortest term was 3 months and 9 days, while 374 people had term lengths that were marketed as “indefinite.” Where people were serving Level I – Restitution Only with “indefinite” term lengths, the courts that sentenced them to Level I – Restitution Only provided no maximum expiration date to their probation.

The Department of Correction regularly sends correspondence to sentencing authorities who have ordered Level I – Restitution Only. Sometimes this is via a progress report when a person has fulfilled the financial obligations ordered in a Level I – Restitution Only sentence. Other times it is because a probationer is reaching the maximum expiration date of their sentence or there may be an allegation that a person has violated “an applicable restitution order” and the Department of Correction submits a Violation of Probation report to the sentencing authority for consideration.

Probation reports that Level I – Restitution Only does not have the same enforcement tools (graduated sanctions) allowed by Delaware Code for higher levels of probation supervision.⁶⁵

⁶⁴ Delaware Department of Correction 2022 Annual Report, https://doc.delaware.gov/assets/documents/annual_report/DOC_2022AnnualReport.pdf.

⁶⁵ 11 Del. C. § 4334.

Level I – Restitution Only is an administrative caseload and supervision is limited to monitoring a person’s compliance with the financial order imposed by the sentencing court.

Level I – Restitution Only was created in 2003 with Senate Bill No. 50, the “Probation Reform Law.”⁶⁶ The Probation Reform Law aimed to reduce the number of probationers on community supervision and the number of people incarcerated in Delaware by providing courts more options, “turn[ing] a two level system into a five level system.”⁶⁷ Level I – Restitution Only was created to reduce these populations, but it did not “intend[] that the accountability of offenders that owe restitution be reduced.”⁶⁸ Specifically, Level I – Restitution Only aimed to function as follows:

- To facilitate the collection of restitution, but not so as to overburden the Department of Correction, the sentencing court may impose a Level I – Restitution Only sanction.
- Unless there are other active criminal sentences, the Level I – Restitution Only cases are carried on Level I caseloads, and the sentencing judge is notified periodically of the status of payment.
- If a defendant fails to maintain the schedule of payments, they can be scheduled for a violation of probation hearing to modify the conditions or be placed on a contempt calendar by the court.⁶⁹

Workgroup members report that Level I – Restitution Only, created under SB 50 and SB 150, was envisioned to help resolve oversight concerns with out-of-state defendants being able to avoid accountability to the financial obligation aspects of judicial orders. Level I – Restitution Only created an “administrative” probation that would leave the case under criminal jurisdiction, without any extensive conditions of probation, so the Court(s) could bring a defendant back to the State to address non-compliance with payment of restitution orders. Due to vastly different jurisdictional law and Interstate Commission for Adult Offender Supervision (ICAOS; more commonly referred to as the Interstate Compact), permitting a defendant to leave the state of Delaware prior to the payment of their court ordered restitution creates collections barriers. Approximately, 35% of the OSCCE’s defendants reside out of state which requires OSCCE to overcome various collection barriers in an attempt to obtain restitution payments.

⁶⁶ S.B. 50, 142nd Leg., (De. 2003).

⁶⁷ First Year Assessment of the 2003 Probation Reform Law’s Impact on the Administration of Justice in Delaware, Jan. 15 2005, at 1, *available at* <https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/sb50-sb150-min.pdf> (hereinafter “Probation Reform Law Impact Report”).

⁶⁸ *Id.* at 8.

⁶⁹ *Id.*

Alternative Sanctions Work Group Report

Members

Lisa Minutola	Kolawole Akinbayo (DOC)
Addie Asay	Linda Carmichael (Superior Court)
Christopher Ciecko	Hon. Alan Davis, Chief Magistrate
Stephanie Fitzgerald	Kristine Iannelli
Hon. Alicia Howard, Commissioner	Maj. Peter Sawyer
Minda Thompson (AOC)	

The Alternative Sanctions Work Group was given two tasks: 1) analyzing and studying options for alternative sanctions; and 2) analyzing and exploring changes to the payment plan processing. These tasks require review of the alternative sanctions already operating in Delaware and how payment plans currently work within the Delaware Courts, as well as recommendations for improvement or expansion of these options.

It is important to note that the Fines and Fees Justice Center (FFJC) recommends that jurisdictions implement 1) ability to pay assessments, 2) payment plans, and 3) community service as alternatives to fines, fees, and monetary sanctions in unison to provide the best results⁷⁰. The Ability Pay Work Group is separately exploring how ability to pay assessments can be implemented in Delaware. Their findings and recommendations should be considered in tandem with the Alternative Sanctions Work Group's report.

There are a multitude of alternative sanctions both nationally and in Delaware. Alternative sanctions such as treatment, training, or education are commonly used in Community Courts or other therapeutic courts in lieu of fines and fees.

In 2016, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) formed a National Task Force on Fines, Fees and Bail Practices to address the ongoing impact of criminal legal debt on economically disadvantaged communities and draft model statutes and court rules for setting, collecting, and waiving court-imposed payments.⁷¹ In February of 2021, the National Task Force developed the Principles on Fines, Fees and Bail Practices⁷² with input from a variety of stakeholders. These principles are designed to be a point of reference for state and local court systems in their assessment of current court system structure and state and local court practice and can be used as a basis for developing more fair, transparent, and efficient methods of judicial practice regarding bail practices and the imposition and collection of legal financial obligations.

Principle 6.5 addresses alternative sanctions:

- Courts should not charge fees or impose any penalty for an individual's participation in community service programs or other alternative sanctions. Courts should consider an individual's financial situation, mental and physical health, transportation needs, and other factors such as school attendance and caregiving and employment responsibilities, when deciding whether and what type of alternative sanctions are appropriate.

Alternative sanctions take many forms and vary widely by state. A recent illustrative catalog of alternative sanctions programming was developed by the National Center for State Courts

⁷⁰ This guidance can be found in the FFJC's report: [First Steps Toward Equitable Fines and Fees Practices: Policy Guidance on Ability-to-Pay Assessments, Payment Plans, and Community Service - Fines and Fees Justice Center](#)

⁷¹ [Fines & Fees | NCSC](#)

⁷² [Principles on Fines, Fees, and Bail Practices \(Feb. 2021\) | NCSC](#)

(NCSC)⁷³. These programs generally fall into three categories:

- Pre-arrest diversionary programs
- Problem-solving courts
- Community service and work referral

Pre-Arrest Diversionary Programs

Pre-arrest diversionary programs by their very nature divert individuals from ever entering the criminal justice system. Fines, fees, or other monetary assessments are not imposed since the individual is never arrested or adjudicated of a crime. The creation or expansion of pre-arrest diversionary programs in Delaware would naturally decrease the criminal legal debt imposed. The goal is to provide individual accountability while avoiding arrest and is generally reserved for low-level offenses. These programs also have other prosocial benefits and negate the need for an individual to seek an expungement or pardon of their criminal record, a process which itself may be time consuming and resource intense.

Delaware already offers some pre-arrest diversionary programs which include, but are not limited to, the Juvenile Civil Citation Program, the Delaware Police Diversion Program, and the New Castle County Police Hero Help Program, as described below.

Juvenile Civil Citation Program

The Juvenile Civil Citation Program⁷⁴ is codified under 10 Del. C. § 1004A. Youth who are alleged to have committed a delinquent act may be issued a civil citation at the discretion of a law enforcement officer. Most misdemeanor charges are eligible for the program if the youth has not previously been adjudicated. Youth referred to the program are given a risk assessment and recommendations to participate in counseling, treatment, community service, or other interventions based on the risk assessment. If a youth complies with the program, an arrest warrant is never filed.

Delaware Police Diversion Program

The Delaware Police Diversion Program⁷⁵ is a collaboration between the Delaware State Police (DSP), the Division of Substance Abuse and Mental Health (DSAMH), and the Department of Justice (DOJ). The program offers prompt and personal services for individuals experiencing mental health crises or substance abuse disorders. The program provides real-time intervention and diversion from the criminal justice system.

Officers may refer individuals suspected of committing certain low-level offenses to treatment as an alternative to arrest and incarceration. DSAMH, in collaboration with its Crisis Intervention Services, operates the program and fills a void for police allowing them to refer individuals who may have a behavioral health disorder but do not need immediate crisis treatment.⁷⁶ The eligibility criteria for the program per the MOU is as follows:

- **General Eligibility:** Individuals whose actions could result in being charged with one of the following low-level crimes: criminal nuisance; criminal mischief; criminal trespass; disorderly conduct; graffiti; loitering; low-level drug possession or possession of drug

⁷³ *Alternative Sanctions and Amnesty Programs*, Updated July 2019 found at [alternative-sanctions.pdf \(ncsc.org\)](https://www.ncsc.org/alternative-sanctions.pdf)

⁷⁴ [Juvenile Civil Citation - DSCYF - State of Delaware](#)

⁷⁵ [With a Team, You're Never Alone: Promoting Recovery Through PDP - Delaware State Police - State of Delaware](#)

⁷⁶ [Piloting a State Police Diversion Program: Delaware \(nasmhpd.org\)](#)

paraphernalia; prostitution; public intoxication; or shoplifting.⁷⁷

- **Exclusions:** Any of the following shall exclude someone from diversion under this MOU.

Prior conviction for the crimes set on Schedule A or within the last ten years

A conviction, or current charges for, a crime against a child, the infirm, or the elderly

A conviction for a sex offense or if the criminal history reflects violent offenses

Where an individual is currently under involuntary commitment or on probation/parole

When an individual has at least one pending felony charge in Delaware

The officer has probable cause to believe the individual violated an order of protection

Individual is currently enrolled or failed to complete PDP previously

The current potential charge relates to a domestic situation

NCC Police's Hero Help Program

The Hero Help Program⁷⁸ is a collaboration of the New Castle County Division of Police, DOJ, and DSAMH to provide drug and/or alcohol addiction treatment to qualifying adults who either contact the police and ask for treatment assistance or are allowed entry in lieu of a criminal arrest. Individuals must meet the eligibility requirements and sign the program agreement form to be entered into the Hero Help Program. An individual does not need to be justice-involved to participate in the program.

Hero Help participants are streamlined into a 24-hour observation bed facility where they complete a nursing intake and are given a clinical assessment by a licensed counselor. Based on medical and clinical need, participants are given an individualized care plan and triaged to an appropriate next level of care. As a participant progresses towards meeting their goal of sustained recovery, the Hero Help Program provides legal advocacy, as appropriate, for victimless misdemeanor offenses. Hero Help is available to:

- Delaware residents
- Adults 18 or older
- Those struggling with addiction
- Voluntary participants
- Those ready to commit to improving their health

Problem Solving Courts

Problem-Solving Courts (PSCs or Treatment Courts) seek to address the underlying issues that justice involved individuals face through case management and a collaborative, multidisciplinary approach. Individuals agree to participate in and abide by the requirements of the court program. If successful, the charges are dropped or dismissed resulting in no adjudication for the participant. Fines and fees may be assessed, and restitution owed. Depending on the court program, however, individuals may be responsible for the expenses associated with program mandates, such as drug treatment, mental health treatment, or other counseling.

The Center for Justice Innovation (previously known as the Center for Court Innovation) has published more information on the underlying principles of Problem-Solving Courts.⁷⁹ PSCs that

⁷⁷ The offenses were pre-approved by the DOJ and the schedule of offenses is attached as *Exhibit A*.

⁷⁸ [HERO HELP | New Castle County, DE - Official Website \(newcastlede.gov\)](https://www.newcastlede.gov/hero-help)

⁷⁹ [PRINCIPLES \(innovatingjustice.org\)](https://www.innovatingjustice.org/principles)

utilize evidence-based practices have been shown to reduce recidivism.⁸⁰

Pursuant to 11 *Del. C.* § 4204, the Delaware Courts are authorized to impose any special condition including “participation in a drug/alcohol outpatient treatment program, job training program, mental health treatment program, education program, community service program or other like programs. With regard to any such programs, the offender may be ordered to pay a fee covering, in whole or in part, the costs of such program and such fees shall be based upon the offender’s ability to pay therefor.”⁸¹

The Delaware Court system operates several such courts throughout the state as noted below; this information was gathered through survey responses from the Delaware Courts.

Justice of the Peace Court

- Statutory Truancy Court:⁸² Truancy court is a statutorily established program using a progressive model and judicial discretion. Fees may be involved if there are care providers in truancy and the person does not qualify for assistance.
- Community Court: See the below section on the Court of Common Pleas for information regarding Community Court.
- Driving Improvement Classes: These classes typically require fees, which are paid to third parties and not waivable.

Court of Common Pleas

The Court of Common Pleas (CCP) currently operates the Community Court Program and the DUI Treatment Court Program. CCP also works in conjunction with Superior Court for the Mental Health Program, the Drug Diversion Program, and the Veterans Treatment Court, and utilizes a Mediation Program, the First Offenders Program for DUIs, and Probation Before Judgment. Community service may be ordered as part of a sentence. Additional information regarding the programs’ eligibility parameters can be found in the CCP survey answers attached as Exhibit B.

- Community Court Program⁸³: Community Court currently hears cases in New Castle County Court of Common Pleas but has plans to narrow the catchment area to high-needs zip codes in Wilmington. The Community Court Program utilizes mandates that can include social services and community services. Social services are based on needs determinations in areas such as education, housing, employment, mental health, and/or substance abuse treatment. Eligibility parameters for entry into Community Court include specific misdemeanor charges, waiving rights to a speedy trial, and notification to victims, if needed. Eligibility parameters for mandates include willingness to participate and whether the resources exist.

⁸⁰ *Illinois Criminal Justice Information Authority*, [An Overview of PSC and Implications for Practice](#)

⁸¹ 11 *Del. C.* § 4204(c)(8)

⁸² [Truancy Court - Justice of the Peace Court - Delaware Courts - State of Delaware](#)

⁸³ [Community Court Project - Administrative Office of the Courts - Delaware Courts - State of Delaware.](#)

Fees Associated with Community Programs

Program	Associated Costs	Notes
Community Court Program	Not assessed if completed.	Individuals may be required to pay the costs associated with any treatment recommendations and restitution.
Drug Diversion Program	\$200 Drug Fund Fee	Participants may use personal insurance to cover the cost of treatment. If a participant does not have insurance, the treatment provider works with the participant to obtain Medicaid coverage. The participant can also work with DSAMH to procure funding for treatment.
DUI Court Treatment Program	\$750 Fine	Additional costs are costs of prosecution and statutory surcharges. The participant must have an ignition interlock device (IDD) installed on their vehicle at the participant's expense. IDD's cost \$70.00 for installation and \$75.00 per month to rent the equipment. ⁸⁴ Upon completion of the program, a portion of the financial obligation may be waived.
First Offenders Program	\$250 Program Fee	Additional costs are costs of prosecution and statutory surcharges. The participant must complete a DUI Evaluation and Referral Program-approved (DERP) DUI program which is to be paid at the individual's expense. The DMV may require an ignition interlock device installed on their vehicle at the participant's expense.
Probation Before Judgment	Vary	The possibility of a fine, the cost of prosecution, all statutory surcharges, and/or having to complete community service hours. The participant may be required to pay restitution to the victim if applicable. Fines and costs may be waived.
Mental Health Program	No associated fees	This may include a fine, the cost of prosecution, and all statutory surcharges which can possibly be waived upon graduation from the program.
Veterans Court	No associated fees	This may include a fine, the cost of prosecution, and all statutory surcharges which can possibly be waived by the presiding judge.
Mediation	No associated fees	Successful mediation may result in paying restitution, completing a course of instruction, or a treatment program.

Family Court

- **First Offender's Domestic Violence Diversion Program:** Those who choose to enter the First Offender's Program must enter a plea of guilty to the offense. The Court will not enter a judgment of guilt. With the consent of the individual, the Court may defer formal sentencing and place the individual on probation for one year. The Court will set special conditions, which may include counseling, restitution, or no contact with the victim.

When the terms and conditions of probation are satisfied, Family Court will dismiss the charges against the individual. There will be no finding of guilt and no conviction. If the individual violates any term or condition of probation, a sentence review hearing will be held. If the individual fails to appear for the hearing or a judicial officer finds that the individual violated the terms or conditions, the judicial officer will find the individual guilty

⁸⁴ [DMV Driver Improvement Services;](#)

on the original charges and will proceed with sentencing.

- **Probation Before Judgment:** Those who choose to enter the First Offender's Program must enter a plea of guilty to the offense. The Court will not enter a judgment of guilt. With the consent of the individual, the Court may defer formal sentencing and place the individual on probation for one year. The Court will set special conditions, which may include counseling, restitution, or no contact with the victim.

When the terms and conditions of probation are satisfied, Family Court will dismiss the charges against the individual. There will be no finding of guilt and no conviction. If the individual violates any term or condition of probation, a sentence review hearing will be held. If the individual fails to appear for the hearing or a judicial officer finds that the individual violated the terms or conditions, the judicial officer will find the individual guilty on the original charges and will proceed with sentencing.

- **Statutory Truancy Court:** Truancy Court is a statutorily established program, using a progressive model, and judicial discretion. Fees may be involved if there are care providers in truancy and the person does not qualify for assistance.

Superior Court

Problem-solving court initiatives are not new to Superior Court. Superior Court's Drug Court began full operation in April 1994 and expanded into the country's first statewide program in 1997. In 2014, the Criminal Justice Council of the Judiciary ("CJCJ") studied, evaluated, and made recommendations regarding all the problem-solving courts. The CJCJ recommendation that Superior Court's Drug Court be consolidated with CCP's Drug Court into one adult Drug Court administered by CCP was finalized by the Chief Justice's Order dated July 15, 2022.

Since the implementation of its statewide Drug Court, Superior Court has expanded its PSCs with the addition of Reentry Court, Mental Health Court, and Veterans Treatment Court (the first statewide Veterans Court in the nation). In addition, the Superior Court utilizes community service where appropriate. See the above section for the Court of Common Pleas for a description of the PSCs financial obligations.⁸⁵ Delaware PSCs also follow standards established by the *Delaware Problem-Solving Courts Best Practice Standards* report.⁸⁶

- **Mental Health Court:** Delaware Mental Health Court services were addressed as part of an overall efficiency re-organization. On December 1, 2015, the Court of Common Pleas and the Superior Court launched a unified statewide adult Mental Health Court. Previously both the Court of Common Pleas, which handles misdemeanor cases, and the Superior Court, which handles felony cases, each had their own problem-solving court that focused on defendants with mental health issues. The new, unified court now handles both the caseloads jointly, overseen by Superior Court. By combining both courts into one, the result will be a more effective and efficient allocation of resources for the court system and will better address the particularized needs of persons with severe mental health issues in the criminal justice system, thereby improving outcomes. Combining the courts will also allow the Delaware Court system to develop and maintain consistent, predictable, and measurable statewide standards for adults with mental health issues in the criminal justice system and ensure that the Mental Health Court is following the best, evidence-based practices statewide. This unified approach will also ensure that Mental Health Court operates in a

⁸⁵ Additional information on the Superior Court's PSCs may be found at [Problem-Solving Courts - Superior Court - Delaware Courts - State of Delaware](#)

⁸⁶ [Delaware Problem-Solving Courts Best Practice Standards](#), 2018

manner that respects the needs of key agency partners such as Probation and Parole and Treatment Access Services Center (TASC), allowing them to attend a single proceeding rather than attend similar proceedings on different days in different courts.

- Veterans Treatment Court: The Superior Court's Veterans Treatment Court began in February 2011, as the first statewide program to have both a diversion and a probation track. A comprehensive, in-depth program manual was published and updated in 2014.⁸⁷ The Veterans Treatment Court involves the Delaware Superior Court, Department of Veterans Affairs, DOJ, Office of Defense Services, and TASC. Based on the drug and mental health court models, this Court works with veterans charged with nonviolent felonies and misdemeanor crimes referred by the Attorney General's Office or the Office of Defense Services. Once a referral is made, the veteran is offered the opportunity to participate in the Court on a voluntary basis. If the veteran chooses to participate, the veteran will have their charges deferred pending successful completion of a treatment plan, at which time the charges will be dismissed. To reach this point, veterans must comply with court ordered treatment and appear in court for progress assessments on a regular basis. Failure to comply will result in sanctions which can range from an admonishment all the way to termination from the program.

Stressful combat duty in Iraq and Afghanistan do not necessarily end for veterans after they return home. Many return with post-traumatic stress syndrome or other mental health issues. In addition, there may be drug or alcohol abuse caused or exacerbated by their military service. Now home, they may have difficulty with readjustment to civilian life and become involved in criminal activity. The U.S. Department of Justice estimates that approximately 10% of adults arrested have served in the military. Delaware veterans in this situation can participate in a court that can help address the mental health and addiction issues that led to their involvement in the criminal justice system.

To support veterans through this process, volunteer mentors, who are also veterans, help participants get to appointments and undertake other necessary steps. Assistance is also provided by the Veterans Administration which provides a coordinator who determines eligibility for veteran's benefits and will enroll the veteran in programs and services needed to comply with court orders and to otherwise get their lives back in order. For those who are determined not to be eligible for Veterans Administration benefits, TASC will provide similar treatment services.

- Reentry Court.⁸⁸ In February 2000, the Office of Justice Programs (OJP) launched a Reentry Court Initiative (RCI) to explore a new approach to improving reintegration into the community. The Reentry Court concept draws on the Drug Court model, using judicial authority to apply graduated sanctions and positive reinforcement and to marshal resources to support the individual's reintegration. The goal is to establish a seamless system of accountability and support services throughout the reentry process. Central to this effort is the development of strategies to improve the tracking and supervising of individuals upon release using a case management approach and to provide the services that will help individuals reconnect with their families and the community, including employment, counseling, education, health, mental health, and other essential services that support successful reintegration. Important core elements of a reentry court include: 1) assessment of individual needs and planning for release; 2) active judicial oversight of individuals during period of supervised release, including use of graduated and parsimonious sanctions for

⁸⁷ https://courts.delaware.gov/superior/pdf/veterans_court_manual_2014.pdf

⁸⁸ [Superior Court Report on Reentry \(2003\)](#).

violation of release conditions; 3) a broad array of supportive services with community involvement; and 4) positive judicial reinforcement of successful completion of reentry court goals.

New Castle County Superior Court has become a successful component of the Court's PSC programs. The Reentry Court partners with the Department of Correction, which operates all of the state's jails and prisons, as well as probation. In addition, the Court partners with the Hope Achievement Center, which supplies case managers to support the program. Case managers work with individuals while they are in custody to prepare for their life after incarceration. Upon release from secure confinement, individuals are under intensive probation supervision. In addition, they must attend the Hope Achievement Center and comply with various strictures, including job requirements, substance use counseling, curfews, and peer support. The program lasts between 6 and 12 months, depending on individual motivation and success.

Community Service and Work Referral

In 2019, the Center for Justice Innovation (previously known as the Center for Court Innovation) published *Court-Ordered Community Service: A National Perspective*.⁸⁹ The report found that community service was often ordered as a component of, rather than an alternative to, traditional community-based sentencing, combining the community service with monetary sanctions and probation. Its findings confirmed that while community service was firmly entrenched in jurisdictions across the country, there was significant room for expansion of community service and its use in lieu of monetary sanctions. The report provides strategies that jurisdictions can utilize to expand the use of community sanctions including 1) addressing “local culture” that limits community service to only certain types of low-risk individuals, 2) strengthening connections between courts and community service programs to improve supervision and compliance, 3) diversifying service work options beyond the traditional manual labor including incorporating technology to allow for online programs that will address issues such as transportation or lack of options in rural areas and 4) standardizing fine to work conversion rates.

Community service is defined under 11 *Del. C.* § 4302(3)⁹⁰ and is intended to serve as both punishment and rehabilitation for the individual while also making the community whole. The Delaware Courts have authority under 11 *Del. C.* § 4204(c)(8) to impose community service upon sentencing. The imposition of community service is governed by 11 *Del. C.* §4322A:

- (a) A court may impose a period of community service, as defined in this chapter, either as a condition of probation or as the *sole sanction imposed at sentencing*⁹¹.
- (b) The specified number of hours of community service shall be fixed by the court, but in no case shall the total number of hours imposed exceed the maximum term of incarceration provided by law for the instant offense. In cases where no incarceration is provided by law, the number of hours of community service fixed by the court shall not exceed 100.
- (c) In the event that community service is imposed by the court as a condition of probation, noncompliance with the community service order shall constitute a

⁸⁹ [Center For Justice Innovation: Court-Ordered Community Service \(2019\)](#).

⁹⁰ “Community service” means the performance of work or service for a nonprofit or other tax-supported entity by an offender without pay for a specified period of time. Such service is intended as a symbolic form of restitution meant to serve as an appropriate means of punishment and rehabilitation of the offender and as a means of addressing the community’s need to be made whole.

⁹¹ Emphasis added.

violation of the conditions of probation.

(d) In the event that community service is imposed as the sole sanction by the court, noncompliance with the community service order shall constitute criminal contempt.

(e) The Department⁹² shall, by the promulgation of regulations or other appropriate standards, administer and enforce the terms of all court orders involving the imposition of community service.

Community service may also be used to discharge monetary obligations that have been imposed. Pursuant to 11 Del. C. § 4105, when a person is unable to pay or fails to pay a fine, costs, or restitution, the court may order the person to report to the Department of Correction (DOC) to work a number and schedule of hours necessary to discharge the fine, costs, or restitution imposed. The hourly rate shall be established according to the prevailing federal minimum wage and used to compute the amount credited to any person discharging fines, costs, and restitution. When the number of hours worked equals the number of hours imposed by the court, DOC shall certify this fact to the appropriate court, and the court shall proceed as if the fines, costs, and restitution had been paid in cash. Fines, costs, and restitution successfully worked off shall not be considered as receivables of the court, but the records shall show the hours worked. Failure to comply with an order of the court for work referral shall be punishable as civil contempt. Information regarding the imposition of work referral was gathered through survey answers from DOC and the Delaware Courts.

Department of Correction

DOC oversees individuals referred to community service and work referral pursuant to DOC Policy 3.1 (attached as *Exhibit C*). The supervising officer either determines that work referral or community service is appropriate, or an order is received from the court. Participants must sign a liability waiver. Individuals will be assigned a job site. If currently on probation, the supervising officer will keep track of the hours. Failure to complete work referral will be referred to the supervising officer or court if the person is not on probation. If on probation, the supervising officer will determine whether a violation is to be filed. Successful completion is reported to the supervising officer or court along with the dollar amount worked. Restitution may be worked off as part of work referral. The individual's criminal history, instant offense, medical/mental health history, or other unforeseen issues that preclude the person from participating in community service or work referral are reported to the court.

The survey answers from DOC (attached as *Exhibit D*) provide more specifics on community service and work referral.

Justice of the Peace Court

The Justice of the Peace Court utilizes work referral. It is typically used only for fines and fees. The Court judges will usually ask an individual if they wish to participate in work referral when other options, such as payment plans, have failed. If the individual elects work referral, the Court simply makes a referral to DOC. The Court takes into consideration factors such as age, mental illness, and physical disabilities when considering work referral. Additional information on the Justice of the Peace website⁹³ provides as follows for those who are unable to pay a fine:

“If you do not believe that you will be able to pay a fine for which you are sentenced, you

⁹² Department of Correction

⁹³ [Justice of the Peace Court: Info for Defendants.](#)

should tell the judge. The judge may ask you to sign a deferred payment plan under which you agree to pay your fine over time. Or, the judge may order you to report to the Department of Corrections for work referral instead of paying your fine. (Assessments for the Victim's Compensation Fund and Restitution cannot be paid off through work referral.)

“If you have signed a deferred payment plan and are not able to make a deferred payment, you should contact the Court before your next payment is due so that your deferral schedule can be revised, or you can be assigned to work referral.

“Failure to pay a fine as ordered may result in your being found in contempt (for which a fine and/or jail sentence may be imposed) or it may be treated as a violation of probation.”

Court of Common Pleas

The Court of Common Pleas offers work referral as an alternative to paying fines and statutory surcharges excluding the Victims Compensation Fund Fee and the Video Phone Fee. Work referral hours can only be used towards restitution with the approval of a judge. All individuals who have outstanding financial obligations to the Court are eligible for work referral. The individual is signed up for work referral in the clerk's office through CJIS. They are given the work referral form and told to report to the probation office. Participants are allowed to work at any non-profit organization as approved by the Community Work Programs Coordinator. The hourly rate is determined by the state's current minimum wage. The hours are monitored by the Community Work Programs Coordinator who will notify the Court of the number of hours that were performed. Each hour applied reduces the amount owed by the current minimum hourly wage.

Family Court

Although not extensively utilized, Family Court may order an individual to participate in the DOC's Work Referral Program as an alternative way to pay off eligible fines, fees, and costs. Work referral is not available for restitution. All individuals who have outstanding financial obligations to the Court are eligible for work referral. The Court would enter an order directing the individual to report to the applicable DOC office. DOC monitors compliance and reports back to the Court.

Superior Court

The Superior Court uses work referral where appropriate. Generally, work referral is used for fines and fees only. Restitution obligations may be sent to work referral only if the restitution is payable to the State. If the Court orders work referral as an option or DOC identifies work referral as an option, DOC handles who is eligible, etc. The Court would consider these factors such as age, mental illness, or physical disability if brought to the Court's attention by DOC in their recommendation.

Payment Plans

A recent report from the Wilson Center for Science and Justice and the Fines and Fees Justice Center, *Debt Sentence: How Fines and Fees Hurt Working Families*, looked nationally at the impact of fines and fees on not just the extremely poor, but on average working families. The median household income in the impacted survey was \$60,000. Research cited in the report found that even individuals with average incomes struggle to pay their court fines and fees, which then made it difficult to afford expenses such as housing, food, childcare, and transportation. Both essential and nonessential hardships were considered as a way to understand the scale of the impact.⁹⁴ The report classified hardships related to housing, food, employment, health, childcare,

⁹⁴ [Fines and Fees Justice Center: Debt Sentence - How Fines and Fees Hurt Working Families \(2023\).](#)

and transportation as essential hardships; nonessential hardships impacted education, other bills or expenses, and leisure. Negative impacts occurred for both personal relationships and mental health with over 65 percent of the sample citing stress related to outstanding fines and fees. This harm extended to friends, family members, and even the larger community with risk factors seen for poor health, including depression and depressive symptoms, anxiety, poor psychological well-being, and other mental disorders.

When fines and fees must be imposed, reasonable payment plans are necessary to ensure that people can still meet their own needs, as well as the needs of their families, while paying off their court debt. Payment plans should not include additional fees or down payments. Payment plans should consider an individual's financial circumstances and hardships and be income based.⁹⁵

The Delaware Courts have discretion under 11 *Del. C.* § 4204(d) to authorize the payment of a fine in installments. Delaware does not have a centralized payment center or payment plan policy. Rather, each court determines payment plans on a case-by-case basis. Information regarding payment plans in Delaware was obtained through questions and answers from the Delaware Courts. Section D of the Ability to Pay Work Group's report provides additional information and history regarding the Delaware Courts Assessment and Collection Process and is incorporated by reference. Public information regarding how to make payments is published online.⁹⁶

Office of State Court Collection Enforcement (OSCCE)

OSCCE "pursues the collection of court-ordered financial assessments through a variety of State and private sector sanctions to ensure the enforcement of judicial branch orders. These orders may include, but are not limited to, restitution, statutory surcharges, fines, and court costs."⁹⁷ However, not all court-ordered financial assessments are sent to OSCCE for collection. Each court maintains its own process for the collection of court-order financial assessments.

Per an email from William DiBartola, Collections Administrator, OSCCE's payment plans work as follows:

"Everything is automated unless the client personally visits or contacts an AOC\OSCCE office.

1. When a case is transferred to AOC\OSCCE, the system first looks to see if we have an established case on a payment plan, if so, it places the new case on "Hold" status.

2. If there is no payment plan in place.... It will assign a payment plan of 10% of the current balance, with a \$50 minimum for non- restitution cases and \$100 minimum on restitution cases, but a \$300 maximum payment. All letters state if the client wishes to discuss their case/payment plan to contact our office, listing our triage phone number to contact.

If the receivable balance is \$3000 or greater, the client is sent a letter stating you have a large obligation, and we want to work with you. Please contact our office to set up an appointment to establish an affordable payment plan, and we include a financial affidavit to assist them in putting their finances on paper for discussion. It also states if they do not contact our office within 15 days, they will be assigned the

⁹⁵ [Fines and Fees Justice Center: First Steps Toward More Equitable Fines & Fees Practices \(2020\).](#)

The FFJC guidance also provides that before any payment plan is established, an ability to pay assessment be conducted along with appropriate waiver or reduction of the amount owed.

⁹⁶ [Delaware Courts: Make an ePayment.](#)

⁹⁷ [Delaware Courts: OSCCE.](#)

maximum payment of \$300/month.

3. If a client contacts our office to discuss their payment plan, and states they cannot afford the request payment, all staff have the authority to lower the payments to \$25 for non-restitution cases and \$50 for restitution cases based on verbal communication.

If a client requests further reduction or is asking for some extremely low payment versus a significant amount of receivable, then we require some type of proof (financial affidavit). In these cases, we can verify child support claims, credit reports and wage earnings, and the client must visit an office and meet with a case manager as these individuals have the accesses to the verifiable databases.

4. If at any time a client is incarcerated, the system places the account in “Hold” status, and when the person is released, it kicks off the incoming new case process. Once a case is paid in full the system automatically grabs the next available oldest case and kicks off the incoming new case process. We only deal with once case at a time, and the system adjusts accordingly for incarceration, changes in outstanding receivable due and client situation accordingly.”

Justice of the Peace Court

The Justice of the Peace Court’s Policy Directive 222 from 2005 (attached as Exhibit E) governs Deferred Payment Plans. Deferred payment plan may be established based on the published schedule. However, it is within the judge’s discretion whether a deferred payment plan is appropriate and whether to use the published schedule.

The Justice of the Peace Court’s Policy Directive 19-262 from 2019 (attached as Exhibit F) governs the transfer of civil traffic offense penalties and costs to OSCCE. Once all other alternatives for collection have been exhausted, the case may be transferred to OSCCE. The judge may order work referral. If an individual refuses or fails to complete work referral, the matter may be transferred to OSCCE. The judge may either transfer to OSCCE or order transfer of the case to the civil judgment docket. OSCCE will attempt to collect for 2 years. At the end of this time if the case has not been fully paid or if there are no active payments, a cost closure report will be sent to the Justice of the Peace Court with a recommendation to deem the case uncollectible. This decision is within the judge’s discretion.

Court of Common Pleas

Court of Common Pleas judicial officers frequently order fines, cost of prosecution, statutory surcharges, and restitution when an individual has entered a guilty plea or has been found guilty of an offense. These orders are conveyed to Customer Service where they are entered into CJIS to populate a payment agreement.

Court staff and judicial officers will work with the individual to determine a periodic payment schedule. The payment agreement is recorded in CJIS to track payments and due dates. Often, individuals have multiple fines. When this occurs, fines are scheduled to be paid one at a time, the oldest case scheduled first except for restitution and PBJ cases which are put in priority status. As it currently stands, this is done manually by the Customer Service Department.

CJIS has numerous fiscal functions that enable court staff to manage and track all court levied assessments. Payments accepted through CJIS include:

- Cash
- Money Orders
- Checks (Personal, Certified, Cashier)
- Credit Cards: In-person (DELJIS), over the phone (IVR system), online

(courtpay.delaware.gov). Available 24 hours a day, 7 days a week.

All forms of payments are accepted in any county regardless of the county of jurisdiction. Cash and credit card payments are also accepted at kiosks located at the DMV or probation offices.

The Court of Common Pleas does not have a set fee schedule. Each case is addressed on an individual basis and court staff has a certain amount of autonomy to make arrangements. Based on the individual's financial means and ability to pay, the Court has several avenues to explore in order to collect these monetary assessments:

- Payment extensions
- Reduced monthly payment installments
- Work Referral Program
- Wage attachment

When an individual does not make a payment by the due date, the Court of Common Pleas will mail out a "Notice of Failure to Pay a Court Assessment." This notice explains the options available noted above and advises the individual they have 30 days to contact the Court for assistance. If the individual does not reach out to the Court in that time, they will be scheduled for a mandatory in-person appearance to address the non-payment. At that time, the individual will have the opportunity to work out a new agreement with the judge. If the individual does not appear for the hearing, a failure to appear *capias* could be issued.

In an effort to purge the system of uncollectable fines, court staff follows certain guidelines to determine if a fine is eligible to be discharged:

- Fines \$100 or less with the age of the case 2022 or prior and no restitution owed.
- Fines \$250 or less with a disposition date of 08/2011 or prior and no restitution owed.
- Fines of any amount with a disposition date of 2008 or prior and no restitution owed.
- Any Municipal Court fines, regardless of the amount or restitution owed.
- At any time, a judicial officer may order fines discharged or transferred to OSCCE.

Family Court

Judicial officers have the discretion to establish payment plans for adult individuals during sentencing or any hearing. A judicial officer may also advise the individual to see Court staff to set up a payment plan. Based on Court guidelines, Family Court staff have the authority to establish or modify adult payment plans upon an individual request unless a judicial officer has ordered that a Motion to Modify is required. Family Court staff will discuss with an individual their ability to pay and will enter a payment plan consistent with that while not going below Family Court's established minimum monthly amounts. The monthly minimum for restitution is dependent on the outstanding restitution amount with the lowest monthly installment being \$5.00 (for restitution of less than \$20.00) and the highest monthly installment being \$75.00 (for restitution above \$1,600). The monthly minimum for fines, fees, and costs is \$5.00.

Staff may make downward modifications no more than three times. Any additional modifications would require the individual to file a motion. A motion is also required if the individual requests a modification that goes below Family Court guidelines.

Superior Court

Previously, all Superior Court collections were handled through OSCCE. In August of 2021, the Superior Court and OSCCE implemented a new collections process. The collection process for

cases less than 10 years old are now handled by the Court. Active collection efforts were directed to cases for which the individual was not on currently probation or incarceration and began with the individual's oldest case.

Since December of 2022, all cases in DOC status (those on probation or incarceration) are entered into a hold status and all collection efforts are managed through probation. Probation is responsible for establishing and monitoring the payment plan while an individual is on DOC status. Once an individual is no longer on DOC status, a notice letter is automatically sent to the individual for the oldest case. When that case is paid in full, the payment plan will roll to the next oldest case. The initial collection letter specifies an initial payment amount and the due date. The letter includes the accounting department's phone number for the appropriate county. The initial due date is set 30 days from the date of the letter. Subsequent payments are due every 30 days after the first payment is received. The initial payment is created automatically by the Criminal Justice Information System (CJIS) based on the Superior Court parameters. The payment will be 10 percent of the balance but cannot be less than \$10 or more than \$300. If the individual is unable to pay the amount set, the person is advised to contact the Court, as the payment schedule can be adjusted upon request and submission of supporting information. Examples of approved adjustments include individuals needing payment dates shifted to a different part of a month or adjustments to lower payment amounts due to proven difficulties in paying the higher amount.

For additional information regarding the Superior Court's Collection Process, see the Superior Court's memo from August 2021, attached as Exhibit G.

Department of Correction

Per DOC Policy 7.5 (attached as Exhibit H), the Department of Correction establishes payment schedules for all individuals with court ordered payments and supervision fees through an Acknowledgment Form that includes the total amount owed, the time frame for payment of the total obligation, the monthly payment amount due (minimum \$20.00 per month) and the date the first payment is due.

Assigned officers are responsible for monitoring these payment schedules and ensuring that individuals make full payment of their obligations 30 days prior to the maximum expiration date or other period specified by the court.

Administrative Office of the Courts

Per the Administrative Office of the Courts (AOC), the Courts are undertaking a major technology project that will implement a single, cloud-hosted solution to provide e-filing, case management, and document management in all Delaware Courts for both civil and criminal cases. Once the solution is fully implemented, it will provide a centralized payment processing and collections platform to make it easier for both court staff and clients to understand the complete view of a person's outstanding court-imposed financial obligations. That solution is years away, however. In the meantime, the Delaware Courts are working together with DELJIS to develop a user-friendly interface to allow those with court-imposed criminal justice debt to access information online to help individuals understand what they owe on all open cases.

Conclusions and Recommendations

Pre-Arrest Diversionary Programs

- ❖ *Recommendation: Delaware criminal justice stakeholders should catalog all pre-arrest diversion options available in Delaware, explore the viability of expanding eligibility for these programs, and create consistent guidelines for such programs statewide.*

The Civil Citation Network (CCN) provides resources including tool kits, documents, forms, and MOUs for model pre-arrest diversionary programs, catalogs the available programs nationwide, and provides training and consultation with interested jurisdictions.⁹⁸ Delaware criminal justice stakeholders should explore a partnership with CCN to achieve this goal.

Problem Solving Courts

- ❖ *Recommendation: Delaware criminal justice stakeholders should review the fines, fees and other monetary obligations associated with PSCs to determine which obligations may be reduced, or eliminated.*

Any program fees should be assessed based on ability to pay as authorized under 11 Del. C. § 4204(c)(8). Other areas to explore and consider adopting as appropriate would be peace making circles and increased educational opportunities.⁹⁹ Any program offered would have to be evaluated and monitored to ensure that all eligible candidates are given an opportunity to participate and dedicated funding for such purpose should be integrated into the program.

Community Service and Work Referral

- ❖ *Recommendation: Delaware criminal justice stakeholders should explore the expansion of community service and work referral opportunities.*

However, the following barriers exist limited number of community service opportunities; existing restriction to participate in available community opportunities due to past or pending criminal status; and staff and financial resources dedicated to state and community partners to ensure the coordination, supervision, and completion of community service mandates. The Center for Justice Innovation provides guidance to jurisdictions to implement best practices for community service alternatives.¹⁰⁰ The Delaware Courts should also develop consistent standards regarding eligibility for work referral and which monetary assessments may be discharged through work referral. The FFJC provides additional guidance that jurisdictions may adopt when implementing best practices.¹⁰¹

Payment Plans

- ❖ *Recommendation: Delaware Courts should examine the viability of centralizing court collections.*

Currently, the Delaware Courts do not maintain a centralized collection system. Therefore, individuals may be simultaneously subject to multiple payment plans from different courts with varying monthly payments. Payment plans:

- Should include all debts owed to the court and require the individual to pay one payment per month toward all financial assessments owed.
- Should prioritize restitution over fines and fees.
- Should consider an individual's financial circumstances and be income based.
- Should not include additional fees or down payments.
- Should be able to access information on all financial obligations owed to Delaware Courts in one location.

⁹⁸ [Civil Citation Network](#)

⁹⁹ See [Peacemaking Circles](#) and [Diversion through Arts Education](#)

¹⁰⁰ [Center for Justice Innovation: Community Service Mandates in the United States \(2019\).](#)

¹⁰¹ [Fines and Fees Justice Center: Court-Ordered Community Service.](#)

Ability to Pay Work Group Report

Members

Evelyn Nestlerode (AOC)	Judge Alan Davis
Bill DiBartola	Commissioner Alicia Howard
Lisa Minutola	Linda Carmichael (Superior Court)
Andrea Godfrey (OMB)	Stephanie Fitzgerald
Addie Asay	Gayle Lafferty
Lynne Kielhorn, Community Member	Rev. Rita Paige
Jason Smith	

The Ability to Pay Work Group was asked to research and make recommendations for whether, when, and how Delaware courts should consider an individual’s personal financial circumstances and their ability to pay when imposing or collecting Criminal Justice Debt.

The Ability to Pay Work Group met regularly over the course of several months. The Work Group surveyed the national legal and policy landscape on ability to pay and, with the assistance of staff from the Fees and Fines Justice Center (“FFJC”), reviewed models of how the ability to pay analysis has been implemented in other state courts. In considering the best policies and practices for ability to pay recommended by the FFJC,¹⁰² the Work Group reviewed the Delaware courts’ current practices for assessing and collecting Criminal Justice Debt and identified particular challenges for Delaware in implementing the FFJC’s recommended policies and practices. The Work Group considered opportunities for improvements—keeping the recommended best practices in mind—in outlining the following recommendations and decision points for the Study Group’s consideration.

National Legal and Policy Landscape

One important reform—which has been consistently recommended by reform advocates but was not included in HB 244—is codification of the requirement that courts assess and collect Criminal Justice Debt based on a person’s ability to pay.¹⁰³ The legal and policy arguments in favor of analyzing a person’s ability to pay when imposing or collecting Criminal Justice Debt are several:

- The Fourteenth Amendment of the Constitution prohibits a court from incarcerating a

¹⁰² This policy guidance, which is attached to this report as Exhibit A, also can be found at https://finesandfeesjusticecenter.org/content/uploads/2020/11/FFJC_Policy_Guidance_Ability_to_Pay_Payment_Plan_Community_Service_Final_2.pdf.

¹⁰³ It should be noted at the outset that, if the General Assembly decides that Delaware courts must or may consider a defendant’s ability to pay fees or fines, it will require the amendment of existing statutes that currently mandate the imposition of minimum fines or prohibit the waiver of certain fees and the engagement of the agencies who currently rely on money received from Criminal Justice Debt collections to fund necessary operations. As one example, 11 *Del. C.* § 9016(a) currently requires that the courts levy an 18% penalty on every fine, penalty and forfeiture imposed or \$10 per offense per conviction to fund the Victim’s Compensation Assistance Program.

Furthermore, as currently enacted, the law requires that, even if the fine, penalty or forfeiture is suspended, in whole or in part, the VCAP penalty must not be suspended. If ability to pay is enacted, it would require amendment of this statute and also possibly the replacement of current VCAP assessments with general fund money.

person for nonpayment of fees and fines without first conducting an ability to pay determination and establishing that the failure to pay is willful.¹⁰⁴

- The Eighth Amendment of the Constitution prohibits the imposition of excessive fines.⁸ There is guidance from the U.S. Department of Justice stating that whether a fine is excessive should be determined by an individual’s personal and financial circumstances because a \$300 fine to one person may be a minor inconvenience; but a \$300 fine to another person may present an insurmountable obstacle.¹⁰⁵
- The American Bar Association held that incarcerating or threatening to incarcerate an individual for failure to pay Criminal Justice Debt without making a meaningful inquiry into the individual’s ability to pay violates a judicial officer’s ethical obligations under Rules 1.1 and 2.6 of the Model Code of Judicial Conduct.¹⁰ The same ABA Opinion also concluded that meaningful inquiry into ability to pay is required by Rules 1.2, 2.2, and 2.5 as a fundamental element of procedural justice necessary to maintain the integrity, impartiality, and fairness of the administration of justice and the public’s faith in it.¹⁰⁶
- Some advocates argue that implementing sliding scale fines based on a person’s ability to pay would not only end disproportionate punishment of the poor but would more effectively incentivize people of financial means to obey the law.
- There is some evidence to show that sliding scale fines can increase both collection rates and total fine revenue¹⁰⁷ while also drastically reducing the amount of court resources allocated to collection efforts.¹⁰⁸

Ability to Pay Implementation in Other State Courts

According to the National Center for Access to Justice’s (“NCAJ”) website,¹⁰⁹ there are currently twelve states that require courts to consider a defendant’s ability to pay when assessing Criminal

¹⁰⁴ *Bearden v. Georgia*, 461 U.S. 660, 668-69 (1983) (revocation of defendant’s probation for failure to pay fine and restitution was found unconstitutional absent an inquiry into the defendant’s ability to pay).

¹⁰⁵ See Gupta, V., *Dear Colleague* letter, U.S. Dept. of Justice, at 5 (Apr. 20, 2023) (noting “Regardless of whether it is constitutionally required [by the Eighth Amendment], consideration of an individual’s economic circumstances is a logical approach because fines and fees will affect individuals differently depending on their resources.”), available at <https://www.justice.gov/opa/press-release/file/1580546/download>.

If a defendant is determined to be unable to pay fees and fines in any amount, the guidance suggests that courts should be permitted to consider other reasonable and proportionate alternative sanctions, such as community service or work programs. Alternative sanctions are the focus of a different Work Group and are not discussed in detail in this report.

¹⁰⁶ *Id.* at 8-9.

¹⁰⁷ The Brennan Center study, *supra* n.5, reviewed sliding scale fines implemented in Germany, in Staten Island, New York, and in Maricopa County, Arizona and found the data substantiated that the use of sliding scale fines drastically reduced the number of short-term prison sentences while increasing the amount of fines collected as well as the amount of people fully paying off their Criminal Justice Debt. Maricopa County also saw a drop in their recidivism rate from 17 to 11 percent.

¹⁰⁸ The Brennan Center study concluded that, on average, the jurisdictions they studied spent \$0.41 for every dollar of Criminal Justice Debt collected, based on incomplete cost data that only included in-court and jail costs. If true costs were measured – including the cost of warrant enforcement, license suspension processing, and probation and parole compliance efforts – the total spent would be even higher. The study further noted that the Internal Revenue Service spends just \$0.34 for every *hundred dollars* collected in taxes meaning that the costs of collecting Criminal Justice Debt is 121 times more expensive than what the IRS spends to collect taxes, making Criminal Justice Debt an inefficient means of raising revenue.

¹⁰⁹ See <https://ncj.org/state-rankings/justice-index/fines-and-fees>.

Justice Debt (i.e., both fines and fees) in all case types at the time of sentencing.¹¹⁰

Additionally, the NCAJ found that another eighteen states require courts to consider a defendant's ability to pay, "in part," depending upon: location of the court;¹¹¹ the type of debt (i.e., fine, fee or restitution);¹¹² the type of case (e.g., felonies only, specific felonies, or traffic only);¹¹³ or timing (e.g., upon enforcement¹¹⁴ or upon completion of sentence.)¹¹⁵ Other jurisdictions allow courts discretion to consider ability to pay¹¹⁶ or permit defendants to request an ability to pay hearing.¹¹⁷ Delaware falls in the very small minority of states whose courts impose Criminal Justice Debt in all cases without regard to a person's ability to pay.¹¹⁸

Even in those states that require or permit courts to consider a person's ability to pay at any point in time, there often are no clear, uniform standards about how courts should conduct the proceeding, the evidence to consider, and the criteria to gauge what the person actually is able to pay. Moreover, the impact of the judicial officer's determination that a person is unable to pay their Criminal Justice Debt is not consistent from jurisdiction to jurisdiction. In Rhode Island, for example, if a judicial officer determines that the defendant is unable to pay Criminal Justice Debt, the judicial officer has discretion in every case to modify or waive all Criminal Justice Debt according to the defendant's specific circumstances. In Arizona, however, if a judicial

¹¹⁰ Those states are Arizona (see Az. Supr. Ct. Admin. Order 2017-80), Indiana (see Ind. Code 33-37-2-3; Ind. Code 35-38-1-18), Montana (see Mont. Stat. § 46-18-232; Mont. Stat. § 46-18-231), Nebraska (see Neb. Rev. Stat. § 29-2206(1)(a)), New Jersey (see N.J. Stat. § 2D:44-2), New Mexico, (see N.M. R. Mag. Ct. RCRP Rule 6-207.1), North Dakota (see N.D. Cent. Code § 12.1-32-05), Oklahoma (see Okla. Ct. Crim. App. R. 8.1), Rhode Island (see R.I. Gen. Laws § 12-21-20, which was amended in 2022, to allow indigent defendants meeting certain presumptive criteria to request a waiver of all fees and to allow non-indigent defendants to request an ability to pay determination "during sentencing or any time after disposition"), Texas (see Tex. Code Crim. Proc. Art. 42A.655; Tex. Code Crim. Proc. Art. 42.15), Utah (see Utah Courts, Uniform Fine Schedule (2022); Utah Code § 77-32b-104), and Washington (see State v. Blazina, 344 P.3d 680 (Wash. 2015)).

¹¹¹ **South Dakota** only mandates ability to pay assessments at sentencing in Minnehaha County.

¹¹² **Hawaii, Kansas, Maine, Missouri, Ohio, Oregon, Pennsylvania, South Carolina, and Wisconsin** only require consideration of a defendant's ability to pay at sentencing as to the amount of the fine, but not fees. In **North Carolina**, ability to pay is only required to be considered when the court sets the restitution amount, although a defendant is permitted to file a motion for resentencing if unable to pay fines and fees. **Wyoming** only requires courts to conduct an ability to pay assessment for a few types of fines and fees, but not all.

¹¹³ The states that require a court to consider a defendant's ability to pay only in certain types of cases are: **Kentucky** (fines in felony cases only), **Louisiana** (felony cases only), **Nevada** (minor traffic offenses only or upon default), and **New York** (fines in felony cases, although defendants can file a motion for resentencing in any case type if unable to pay fines and fees).

¹¹⁴ **Michigan** only requires judicial officers to assess a defendant's ability to pay at the time of enforcement for unpaid fines and fees.

¹¹⁵ **Connecticut** is the only state that requires the court to consider a defendant's ability to pay after the defendant has served any term of imprisonment.

¹¹⁶ The states that allow judicial officers discretion to consider ability to pay are **Alabama, Alaska, and Georgia**.

¹¹⁷ The states that allow defendants to request an ability to pay hearing are: **Arkansas, Colorado, Illinois, Iowa** (must be requested within 30 days of sentencing or waived), **Maryland, Minnesota, New Hampshire, Tennessee, and West Virginia**.

¹¹⁸ The other states are **California, the District of Columbia, Florida, Idaho, Massachusetts, Mississippi, Vermont, and Virginia**. California did pass legislation in 2019 mandating courts to consider ability to pay in all cases, however, the bill was vetoed by the Governor. Later, the California Judicial Council created an online ability to pay calculator for traffic violation cases only. The California General Assembly passed a law in 2021 mandating that each of California's 58 trial courts offer the online calculator in making ability to pay determinations by June 30, 2024.

officer determines that a defendant meets certain hardship eligibility criteria, the judicial officer will grant a 25% or 50% reduction in the fines and fees.

Because the standards for the ability to pay analysis vary widely, the Fees and Fines Justice Center issued its recommended set of guidelines for states to consider for adoption in order to maintain consistent, predictable outcomes across judicial officers and courts within a given state.

FFJC's Ability to Pay Recommended Policies and Practices

FFJC's full report containing its recommended policies and best practices is attached hereto as Exhibit A. Above all, FFJC argues for the elimination of all fees imposed in the criminal justice system and for the imposition of fines only in cases when the sentence does not include a term of incarceration or supervision.¹¹⁹ Additionally, FFJC's position is that any fine imposed should be both tailored to the offense and proportionate to an individual's financial circumstances. The FFJC advocates that jurisdictions adopt and implement ability to pay policies in conjunction with policies on payment plans and community service.

FFJC's recommended policies can be summarized as follows:

Courts have an affirmative, nonwaivable duty to determine that a person has the current ability to pay Criminal Justice Debt before assessing any fine, fee, or other monetary sanction.

- A defendant must be given notice and an opportunity to be heard on the issue of their ability to pay.
- A defendant must be able to seek a recalculation if their financial circumstances change.

Courts must apply presumptions that some individuals do not have the ability to pay and, if a presumption applies, waive all fees in the courts' discretion and impose the lowest fine allowed by law. A defendant's circumstances leading to a presumption of inability to pay are:

- Receives needs-based public assistance;
- Has spent any period of time in a residential mental health facility in the preceding six months;
- Earns less than 100% of HUD's "very low" individual income limit for public housing;¹²⁰
- Has a developmental disability;
- Has a total or permanent physical disability;¹²¹
- Is a minor (presently or at time offense was committed);
- Was homeless in the preceding six months;
- Is currently in custody for at least 6 months or was released from a term of at least six

¹¹⁹ First Steps Toward More Equitable Fines and Fees Practices: Policy Guidance on Ability-to-Pay Assessments, Payment Plans, and Community Service, Fees & Fines Justice Center at 2 (2020), found at https://finesandfeesjusticecenter.org/content/uploads/2020/11/FFJC_Policy_Guidance_Ability_to_Pay_Payment_Plan_Community_Service_Final_2.pdf.

¹²⁰ HUD's "very low" income limit is established at 50% of the median family income for a defined geographic region. For residents of New Castle, Kent, and Sussex Counties, the "very low" income limits for a family of four are, respectively, \$55,800, \$40,850, and \$44,450.

¹²¹ It is not apparent from the FFJC guidance attached as Appendix A if the disability must be one that prohibits or limits the disabled person's ability to work.

months in prison within the past 12 months;

- Is eligible for representation by a public defender.

If there is no applicable presumption, the court must calculate the person's current total monthly income (including wages and excluding child support and SSI) and determine the number of persons in the family. FFJC advises that the court use the information provided by the defendants:

- If the defendant's income falls below 400% of HUD's "very low" income limit,¹²² all fees should be waived and the fine should be reduced by 25% (if income is greater than 300% but less than 400%), by 50% (if income is greater than 200% but less than 300%), or by 75% (if income is greater than 100% but less than 200%) depending on the defendant's income vis-à-vis the very low income limit.
- After determining the defendant's ability to pay and assessing the fine and fees, the court must offer payment plans and alternative methods of fulfillment, such as community service.

Delaware Judicial Branch Current Assessment and Collection Practices

As previously noted, Delaware does not currently statutorily mandate or permit courts to consider a defendant's ability to pay at the time of sentencing. This does not mean, however, that Delaware courts never consider a defendant's ability to pay when collecting Criminal Justice Debt and restitution. Before outlining the current assessment and collection practices by the courts,¹²³ it is helpful to provide a brief history of how Criminal Justice Debt came to be an issue across the country and how Delaware's collections efforts came to exist as they are.

Brief History of Court-Ordered Debt and Debt Collection Efforts

In the 1980s, under the Reagan administration, the federal government drastically reduced funding to State and local governments.¹²⁴ Moreover, the so-called "War on Drugs" led to an era of mass incarceration that saw prison populations multiply, which drastically reduced States' tax bases.¹²⁵ These dual factors led State and local governments to replace this lost funding and to cover the increasing costs of the criminal justice system by imposing more and more fees on court "users."¹²⁶ Issues then arose around how to collect these new court-ordered debts.

¹²² In New Castle, Kent, and Sussex Counties, 400% of HUD's very low limit for a family of four would be, respectively, \$223,200, \$163,400, and \$177,800. Under the FFJC's recommendations, any defendant with a family of four making less than this amount would be entitled to a reduction of their fine and the elimination of all fees.

¹²³ Unlike many other states, Delaware has never utilized third-party collection agencies to collect court-imposed debt. The use of private, third-party vendors has been criticized because of predatory collection practices used by some private collection agencies. See generally American Bar Association, *Privatization of Services in the Criminal Justice System* (June 2020), available at [ABA Privatization Report \(June 2020\). privatization-report-final-june-2020.pdf](#). With proper legal safeguards, however, the use of third-party vendors could aid Delaware in the collection of restitution owed by defendants living outside the State. Currently, collection of restitution from out-of-state defendants is minimal because available enforcement mechanisms are limited.

¹²⁴ Thomas Edsall, *Oct. 1, 1981: That Day is Finally Here—Reagan's Budget Cuts Begin*, Wash. Post, Oct. 1, 1981, available at <https://www.washingtonpost.com/archive/politics/1981/10/01/oct-1-1981-that-day-is-finally-here-reagans-budget-cuts-begin/c4872e17-43c4-46a6-8d4e-6804027678c0/>.

¹²⁵ Betsy Pearl, *Ending the War on Drugs: By the Numbers*, Center for American Progress (June 27, 2018), available at <https://www.americanprogress.org/article/ending-war-drugs-numbers/>.

¹²⁶ See Brennan Center Study, *supra* n.5, at 6.

In Delaware, as part of the FY1984 Budget Act, the General Assembly authorized the establishment of five positions within the Department of Correction for the purposes of establishing a collections program. In 1991, the Sentencing Accountability Commission (SENTAC) created the Centralized Collections Committee to study the procedures used to collect court-ordered criminal debt and to make recommendations for improvements. Those recommendations included centralizing collections in one agency and utilizing a computerized system so the collection agency could promptly update, manage, and reconcile accounts.¹²⁷

Ultimately, in 1995, the Department of Correction transferred five positions to the Administrative Office of the Courts to establish the Office of State Court Collections Enforcement. The Committee's final report envisioned that the new central collections unit would take over the cashier duties and functions performed in all the courts, as well as those performed by the DOC. A report issued by the State Auditor in 1999 noted that the Committee's vision of a centralized collection unit for all courts was never achieved because the individual courts continued to retain and collect on their accounts, and OSCCE only collected on those limited accounts that the courts willingly transferred to it.¹²⁸

In 2002, the Court Resources Task Force established by Chief Justice Veasey issued a final report recommending, among other things, that OSCCE be expanded to undertake collections responsibility for all the courts under policies established by the Council of Court Administrators, the Presiding Judges, the Supreme Court, and the Chief Justice.¹²⁹ This recommendation noted the need for additional positions and increased operating funds for OSCCE.

The vision of OSCCE acting as the sole and centralized collections unit for all the courts has never been achieved. Today, OSCCE performs dual functions for the courts. First, OSCCE acts as a central cashiering agent, accepting payments in person, via the internet, and centrally located kiosks on behalf of the Justice of the Peace Court, the Court of Common Pleas, Superior Court, the Department of Correction, and the Division of Child Support Enforcement (at kiosk locations only).¹³⁰ All payments accepted are based on payment arrangements made between the defendant and the individual court/agency. Second, OSCCE functions as a specialized collections agent for the courts. OSCCE's operations as a specialized collections agent are outlined more fully below.

Current Collection Practices by the Courts and OSCCE

It is important to note that, in April 2020, after the COVID-19 pandemic led Chief Justice Seitz to declare a judicial state of emergency, the Judicial Branch placed a moratorium on the active collection of most court-imposed debt. During the moratorium, which was lifted in September 2021, the Chief Justice directed the Courts and OSCCE to review their collection accounts and write off aged, uncollectible non-restitution debt. As a result of this directive, the Judicial Branch wrote off over 43,000 inactive, non-restitution accounts that were 10 years or older.¹³¹

¹²⁷ Central Collections Committee, Final Report and Recommendations, at 5-7 (Oct. 29, 1992) (copy on file with the Delaware Administrative Office of the Courts ("AOC")).

¹²⁸ R. Thomas Wagner, Delaware State Auditor, *Judicial Court System – Management Controls Over Revenue and Accounts Receivable*, at 9-12 (Mar. 31, 1999) (copy on file with the Delaware AOC).

¹²⁹ Court Resources Task Force, Final Report, at 3 (Nov. 26, 2002) (copy on file with the Delaware AOC).

¹³⁰ OSCCE is currently working with Family Court to begin accepting payments beginning in Q3 of 2023.

¹³¹ The press release announcing the lifting of the collections moratorium can be found [here](#). Before the Chief Justice's directive during the pandemic to write-off accounts older than 10 years, neither the courts nor OSCCE

The following synopses of current collection practices were provided by the Courts and OSCCE, respectively, in preparing this report:

Superior Court

Superior Court's collection efforts are directed only to cases¹³² where the defendant is not on probation or incarcerated. If the defendant is on probation or incarcerated, all his/her cases will be put in "hold" status. If the defendant has multiple cases in the Superior Court, ONLY the oldest case will be sent a letter regarding collections, all other cases will remain on "hold" status.

Basic Collection Process

Superior Court's initial collection letter sets the initial payment and the due date. Initial payments are created automatically by CJIS based on Superior Court's parameters (10% of balance due but not less than \$10 or more than \$300). This letter states that if the defendant is unable to pay the amount set forth in the letter to please contact the Court. Each letter includes Superior Court's accounting phone number for the appropriate county.

The collections due date (initial) is 30 days from the date of the letter (initial). After the initial payment is received, payments are due 30 days from the Court's receipt of the payment. For example, if a \$25 monthly payment is due on 2/15/2023 and the payment is received early on 2/5/2023, then the next payment is now due on 3/5/2023.

Dunning Notices

- If no payment is received within 30 days from the due date, a dunning notice is sent. This dunning notice is sent again at 60 days and at 90 days if no payment is received.
- If 120 days passes without a payment the case is put on hold, a collection memo is sent to the Judicial Officer asking that fees and fines be deemed uncollectible, a civil judgment be entered on restitution and for collection efforts to cease. The tax intercept program remains in place for these cases. The case would be sent to OSCCE after 10 years for restitution collection efforts. If a defendant makes a payment on a case after 120 days, the payment will be applied, and the payment process will resume as set forth above.

Newly Sentenced Cases

Since December 2022 if a defendant is on probation or incarcerated (DOC status) all Superior Court's collection efforts are put on hold. Collection efforts are managed through the defendant's Probation Officer who sets up a payment plan with the defendant. Once the defendant is no longer on DOC status, the defendant is automatically sent an initial notice letter related to the defendant's oldest case. When the oldest case is paid in full, the payment plan automatically rolls to the defendant's next oldest case.

Ten-Year-Old Cases Sent to OSCCE

The beginning of each month a list of cases that are 10 years old are sent to each county's accounting department. Each county's accounting department verify the joint and several cases are reconciled, non-restitution cases are deemed uncollectible per judicial review and the

had a policy governing the write-off of uncollectible accounts. Thus, the massive write-off effort in 2021 included accounts dating back to the 1980s.

¹³² Case(s) is being used instead of defendant as a defendant may have multiple cases.

restitution cases are charged off to OSCCE. The Superior Court case sent to OSCCE is assigned a new case ID which ends with an “o” to distinguish it as an OSCCE case. OSCCE then restarts the collection process.

Adjustments to Payment Plans

A defendant can contact the court and request adjustment to their payment date or payment amount. The Court will review the request along with any information provided as to the reason the payment amount is too high and can adjust accordingly. Further, if a defendant misses a payment, they can call the Court and let them know the reason why they missed the scheduled payment.

Court of Common Pleas

Court of Common Pleas Judicial Officers frequently order fines, cost of prosecution, statutory surcharges, and restitution when an individual has entered a guilty plea or has been found guilty of an offense. These orders are conveyed to Customer Service where they are entered into CJIS to populate a payment agreement.

Court staff and Judicial Officers will work with the defendant to determine a periodic payment schedule. The payment agreement is recorded in CJIS to track payments and due dates. Often, defendants have multiple fines. When this occurs, fines are scheduled to be paid one at a time, the oldest case scheduled first with the exception of restitution and PBJ cases which are put in priority status. As it currently stands, this is done manually by our Customer Service Department.

CJIS has numerous fiscal functions that enable court staff to manage and track all court levied assessments. Payments are accepted in any county regardless of jurisdiction, and cash and credit card payments are also accepted at kiosks located at the DMV or probation offices. Payments accepted through CJIS include:

- Cash
- Checks
- Money Orders
- Credit cards (available to be made 24 hours a day, 7 days a week and can be done in person via DELJIS, phone, or online through courtpay.delaware.gov then posted to CJIS)

The Court of Common Pleas does not have a set fee schedule. Each case is addressed on an individual basis and court staff has a certain amount of autonomy to make arrangements. Based on the defendant’s financial means and ability to pay, the court has several avenues to explore in order to collect these monetary assessments:

- Payment extensions
- Reduced monthly payment installments
- Work referral program
- Wage attachment

When a defendant does not make a payment by the due date, the Court of Common Pleas will mail out a “Notice of Failure to Pay a Court Assessment”. This notice explains the options available noted above and advises the defendant they have 30 days to contact the court for

assistance. If the defendant does not reach out to the court in that time, they will be scheduled for a mandatory in-person appearance to address the non-payment. At that time, the defendant will have the opportunity to work out a new agreement with the judicial officer. If the defendant does not appear for the hearing, a failure to appear *capias* could be issued.

In an effort to purge the system of uncollectable fines, court staff follows certain guidelines to determine if a fine is eligible to be discharged:

- Fines \$100 or less with the age of the case 2022 or prior and no restitution owed.
- Fines \$250 or less with a disposition date of 08/2011 or prior and no restitution owed.
- Fines of any amount with a disposition date of 2008 or prior and no restitution owed.
- Any Municipal Court fines, regardless of the amount or restitution owed.
- At any time, a Judicial Officer may order fines discharged or transferred to the Office of State Court Collections (OSCCE).

Family Court

Judicial officers have the discretion to establish payment plans for adult defendants during sentencing or any hearing. A judicial officer may also advise the defendant to see Court staff to set up a payment plan. Based on Court guidelines, Family Court staff have the authority to establish or modify adult payment plans upon a defendant's request unless a judicial officer has ordered that a Motion to Modify is required. Family Court staff will discuss with a defendant their ability to pay and will enter a payment plan consistent with that while not going below Family Court's established minimum monthly amounts. The monthly minimum for restitution is dependent on the outstanding restitution amount with the lowest monthly installment being \$5.00 (for restitution of less than \$20.00) and the highest monthly installment being \$75.00 (for restitution above \$1,600). The monthly minimum for fines, fees, and costs is \$5.00.

Staff may make downward modifications no more than three times. Any additional modifications would require the defendant to file a motion. A motion is also required if the defendant requests a modification that goes below Family Court guidelines.

When a defendant fails to make a scheduled payment, a dunning notice is sent to the defendant. The dunning notice informs the defendant that they have failed to make a required payment. The letter informs the defendant that if the defendant does not make a payment or set up a new payment schedule within 15 days, a failure to pay *capias* may be issued. The letter further informs the defendant that if they have any questions, they can contact the Family Court cashier office. Finally, the letter provides information on making a payment online. The dunning letter and *capias* paperwork are automatically created by the system.

If a defendant does not make a payment or set up a new payment schedule, the system will create the *capias* paperwork. Staff will review each case on the list to determine if the defendant is detained or has a sentence review pending – if either, the failure to pay *capias* is bypassed and the payment is deferred. If neither of those scenarios applies, the paperwork is submitted to a judicial officer for review. The judicial officer can sign the order for the failure to pay *capias* or enter a different order (for example, deferring the payment again, waiving costs, or scheduling a hearing). After the *capias* is issued, a defendant may come to the courthouse and make a payment or enter into a new payment plan at which point staff would clear the *capias*. If a defendant is picked up on the *capias*, the defendant would appear before a judicial officer who has the

discretion on how to handle the failure to pay – this may include creating a new payment plan or discharging outstanding fines and fees.

Justice of the Peace Court

Inability to Pay Upon Plea at Time of Initial Appearance

- Judicial officers may start with a “How can you pay today: check, cash, or charge?”
- Judicial officers explain that a time-to-pay installment option is available if full payment of the fine cannot be made that day;
- Judicial officers may ask questions about whether the defendant is actively working or receiving pay, and about frequency of pay;
- Judicial officers may inform the defendant of the work referral option if the defendant offers a very low installment amount (i.e. \$5.00 or \$10.00 per month);
- Judicial officers may accept a very low installment amount if they deem that a larger installment amount and work referral are unreasonable options (i.e. transportation to a work referral site is not available, single parent does not have reliable child care, etc.);
- Judicial officers may create a staggered payment plan for a defendant who has existing multiple payments due to JP Courts (the payment plan for a subsequent case begins the month after the expiration of an existing payment plan, keeping the amount and frequency of all installment plans the same);
- Judicial officers may suspend (if permitted by statute) fines and fees (i.e. a defendant has been or will be incarcerated for a substantial time, is in or is scheduled to be in a long-term inpatient substance abuse treatment program, is currently incapable of working, etc.);
- Judicial officers should inform defendants of the consequences of a failure to pay according to the agreed-upon plan.

Failure to Pay Agreed Upon Payment Plan:

- *Prior to Due Date*
 - a. Clerks may reset payments when a defendant calls in or appears in person and requests time to be extended because of inability to pay by the due date;
 - b. Judicial officers will usually work out a new time-to-pay agreement (TTP) in accordance with the defendant’s expressed ability to pay, being as flexible as possible in response to the defendant’s prompt response to the Court;
 - c. Judicial officers should inform or reiterate to defendants the consequences of a failure to pay according to the agreed-upon plan;
 - d. Judicial officers may accept a partial payment as payment in full, suspending the remainder as statutorily permitted.
- *After First FTP Capias Has Been Issued*
 - a. Clerks do not reset payment plans after a capias has been issued;
 - b. Judicial officers may have a more in-depth discussion with the defendant about why a fine has not been paid as agreed upon;
 - c. Judicial officers may work out a new TTP agreement with the defendant or order work referral depending upon the circumstances the defendant presents.
- *After Multiple FTP Capiases Have Been Issued*

- a. Judicial officers may order the defendant to work referral unless the defendant presents the Court with a reasonable explanation as to why they cannot do work referral;
- b. Judicial officers may order a wage garnishment; however, these rarely work as defendants often change jobs prior to the completion of payment in full or another court has an existing wage garnishment upon the defendant, so this is not often ordered;
- c. Judicial officers may create a new TTP agreement that the defendant states will work for them;
- d. Judicial officers may accept a partial payment as payment in full, suspending the remainder as statutorily permitted;
- e. Judicial officers may suspend all remaining fines and fees.

Failure to Complete Work Referral or Wage Garnishment

- Judicial officers will order a *capias* for “Failure to complete work referral (or wage garnishment)” upon receipt of information from the work referral office (or from the employer) stating such;
- Judicial officers, when the defendant comes before the court, may re-order work referral, re-order wage garnishment, create a new TTP agreement, accept partial payment as payment in full with a suspension of any remaining fines and fees, or simply suspend all remaining fines and fees;
- Judicial officers may cite the defendant with civil contempt of court, but should only do so if the defendant has had at least one FTP *capias* and the work referral office has supplied documentation that the defendant did not report or did not complete the required hours;
- Judicial officers may set a civil contempt of court hearing date commensurate with the balance owed;
- Judicial officers may, at the time of the civil contempt of court hearing, dismiss the contempt of court charge and release the defendant;
- Judicial officers may, at the time of the civil contempt of court hearing, accept a guilty plea, release the defendant, and suspend all remaining fines and fees;
- Judicial officers may, depending upon the defendant’s circumstances, decide NOT to cite the defendant with a civil contempt of court charge, due to a determination that the defendant did not willingly refuse to pay and did not willingly refuse to complete work referral (or wage garnishment);
- Judicial officers may, depending upon the defendant’s circumstances, decide NOT to cite the defendant with a civil contempt of court charge, due to a determination that the defendant will, with great likelihood, never make payment in full AND to a subsequent acknowledgment that incarcerating the defendant with a civil contempt of court charge will not only not produce payment, but will cost the state to house and keep the defendant and could cause harmful ramifications for the defendant.

Office of State Court Collections Enforcement

As a cashiering agent, OSCCE provides strategically placed centralized cashiering options through payment centers and payment kiosks in support of the Courts’ independent collection

efforts, which includes clients serving active probation periods. As a specialized collections agent, OSCCE pursues the collection of cases referred to its office by the Justice of the Peace, Family Court, Court of Common Pleas, Superior Court and Chancery Court.

The Established Process

- Once a case reaches 10 years of age, it is referred to AOC\OSCCE for specialized collections. Currently, OSCCE waives all non-restitution debt in accordance with the Chief Justice's policy.
- Upon case transfer, a "Welcome to OSCCE" letter is sent to the client letting them know they have been transferred to our agency.
- For accounts less than \$3000, the system generates an automated payment plan of 10% of the amount owed, not to exceed \$300, with a minimum of \$50 for non-restitution and \$100 for restitution cases.
- For accounts greater than \$3000, OSCCE includes a financial affidavit for the client to fill out and ask them to make an appointment with the office so we can work together on setting an appropriate payment amount. They are also advised, if there is no communication received from them, they will be set at the \$300/month limit due to the amount owed.
- If a client at any time contacts and states they can't afford the assigned payment plan, staff are authorized to go as low as \$25/month for non-restitution cases and \$50/month for restitution cases. If a client wishes to go below these amounts or asks for a significantly low payment plan based on the monies owed, OSCCE requires the completion of a financial affidavit.
- Dunning Letters are sent at the 31, 61 and 91 day delinquent marks to remind the client they missed their payments and are behind in payments. Before the collections clean-up that the Judicial Branch undertook during the pandemic moratorium, OSCCE would institute wage garnishment, tax and lottery intercept, or civil judgment proceedings against clients who remained in a delinquent status beyond 90 days. Since the lifting of the moratorium, OSCCE currently only institutes tax and lottery intercepts against delinquent clients. OSCCE and the courts are working together to update and reinstate these collection processes following the recent implementation of HB244.
- This program is maintained through Client/Victim Interactions, Payment Plans, Work Programs, State Refund/Tax Lottery Intercepts, Wage Garnishments and Civil judgments.

Should Ability to Pay be Implemented in Delaware? If so, How?

The consensus of the Ability to Pay Work Group is that consideration of a defendant's ability to pay makes sense and is a matter of fairness. However, there are many policy decisions around the implementation of the ability to pay analysis that need to be made. Because the Ability to Pay Work Group has many court representatives who firmly believe that the Judicial Branch does not have a role in legislative policymaking, many in the Work Group are not comfortable making specific recommendations on these decision points. Nonetheless, we offer the following questions and options for consideration by the full Study Group with information about the pros and cons of each decision.

What Case Types Should be Subject to an Ability to Pay Analysis?

The FFJC's guidance advocates for the elimination of all fees and for the imposition of fines only in cases when the sentence doesn't include a term of incarceration or supervision. If Delaware were to adopt and implement that guidance, then the ability to pay analysis would likely only be undertaken in minor traffic cases and some misdemeanor cases because most (if not actually all) felony and many misdemeanor sentences involve a term of incarceration or supervision.¹³³

Assuming, for purposes of this report, that the current state of fees and fines in Delaware will not change, there are different approaches that could be taken in considering how to implement the ability to pay analysis. As noted previously, some states limit the ability to pay analysis only to felony cases, while some limit the analysis to traffic offenses. Given that this Work Group cannot predict how implementing the ability to pay analysis will impact the State's revenues,¹³⁴ one option would be to take a phased approach and begin the implementation of ability to pay in one specific court or one specific case type to allow for data collection around the impact of the ability to pay analysis on the collection of Criminal Justice Debt as well as restitution for victims.¹³⁵ If the impact on revenues or restitution collection is not a concern to the Study Group, however, then the Ability to Pay Work Group can offer no legal or policy reason to limit the ability to pay analysis to only specific case types.¹³⁶

What Types of Debt Should be Subject to an Ability to Pay Analysis?

Because there is a separate Restitution Work Group, we have not included restitution in our definition of Criminal Justice Debt¹³⁷ and instead have limited our definition to fines and fees. Because criminal fines are punitive in nature, judicial officers use their discretion (in most cases)¹³⁸ in crafting an appropriate penalty tailored to a particular defendant. Fees, on the other hand, are statutorily mandated in most instances and thus are tacked on to the end of a sentencing order without the exercise of judicial discretion. Thus, there is a logical basis to distinguish between these types of debt in determining whether and when the ability to pay analysis should

¹³³ Under the [SENTAC](#) sentencing guidelines, the only crimes for which the presumptive sentence does not include a term of incarceration or probation are Class B misdemeanors, unclassified misdemeanors, and violations.

¹³⁴ As a point of reference, for FY19, the State collected about \$22 million in revenue from the collection of Criminal Justice Debt.

¹³⁵ Taking a phased approach would also allow the courts and affected criminal justice partners the opportunity to test new processes and procedures on a smaller scale before broadening the impact. Even with a phased approach, any statutory change requiring or permitting ability to pay should have a delayed implementation date in order to give the courts sufficient time to change their processes, procedures, and systems, to develop a communication plan, and to train judicial officers and staff appropriately.

¹³⁶ According to the Justice of the Peace Court, if the ability to pay analysis is not easily automated or implemented in a way that can be simplified and completed at sentencing or immediately thereafter (and would require a further hearing before a judicial officer), it will disrupt that Court's operations due to the high volume of cases the Court handles. Thus, if a phased approach to implementing ability to pay is approved (either by court or by case type), there are operational and budgetary reasons for putting Justice of the Peace Court or its traffic cases at the end of a phased implementation.

¹³⁷ Determining the amount of restitution owed based on a defendant's ability to pay would require multiple statutory changes and likely would be quite controversial because it would negatively impact crime victims while positively impacting convicted criminals.

¹³⁸ Some criminal fines and sentences are mandatory by statute, thus limiting a judicial officer's discretion on the punishment to impose.

apply to both fines and fees.¹³⁹

The FFJC guidance, because it argues for the elimination of all fees, only advocates for a judicial officer's consideration of a defendant's ability to pay in imposing criminal fines. While most states seem to require or permit consideration of a defendant's ability to pay as to both fines and fees, there are some jurisdictions that limit the analysis only to fines and not fees. There is at least one state that only requires an ability to pay assessment as to a few specific types of fines and fees, but not to all.

Because a non-mandatory criminal fine is an integral part of a judicial officer's discretionary sentencing decision, an ability to pay analysis as to a criminal fine arguably may only be conducted by a judicial officer. Depending on when and how the ability to pay analysis must be conducted, utilizing judicial officer resources to conduct this analysis could impact the cost of implementing the analysis because of the strain it could place on criminal justice resources. For instance, if a judicial officer is required to consider a defendant's ability to pay before imposing sentence, then the Department of Justice, the Office of Defense Services, or the defendant would have to provide evidence in support of (or against) the defendant's ability to pay.¹⁴⁰ There is an unknown resource cost to this additional evidentiary burden.¹⁴¹ Moreover, if that evidence was not provided at the time of sentencing, then hearings would need to be continued, which could greatly impact the court's operational costs and slow down the administration of justice. If the Study Group decides that an ability to pay analysis must be conducted before sentence is imposed regardless of operational costs, then the Working Group sees no legal or policy argument to limit the judicial officer's required analysis only to fines and not fees, or vice versa.

If the Study Group concludes that the ability to pay analysis could be conducted in the first instance after sentence is imposed—which many states allow—then there could be a cost-saving argument for limiting the ability to pay analysis only to fees and not to fines.¹⁴² While the assessment and review of a nonmandatory fine¹⁴³ requires the exercise of judicial discretion, the

¹³⁹ One point that the Ability to Pay Work Group wants to highlight for further consideration by the Study Group is that some statutory fees (e.g., Victim Compensation Fund fee) are imposed as a percentage of the fine that the judicial officer imposes. As noted earlier in this report, these fees may require separate review and statutory changes depending on how the ability to pay analysis is implemented.

¹⁴⁰ The FFJC argues that the court must accept the defendant's evidence on this issue, which presumably would include the defendant's testimony alone in the absence of any written proof. This means the State would bear the burden of proving the defendant's ability to pay and presumably would require a judicial officer to accept the veracity of a defendant's testimony in the absence of any supporting or contrary evidence. Such a mandate seems to fly in the face of a judicial officer's role and responsibility for making credibility determinations.

¹⁴¹ According to Rhode Island's State Court Administrator, when the Rhode Island legislature statutorily mandated in 2020 that ability to pay be considered by judges at the time of sentencing, the Rhode Island courts and their criminal justice partners found the mandate difficult to implement. This led to a statutory change that allowed the courts to consider ability to pay "at sentencing or immediately thereafter."

¹⁴² Rhode Island's implementation of ability to pay allows for court staff to apply certain presumptions of a defendant's inability to pay to fees only. If defendants want their inability to pay to be considered as to their criminal fines, they must request a hearing before a judge. According to Rhode Island's State Court Administrator, this bifurcated approach did not impact its court operations in a significant enough way to require additional court staff or judges. Although the new approach has only been in effect for one year, Rhode Island has not seen a significant increase in the request for ability to pay hearings on criminal fines. It is important to note, however, that the information about Rhode Island and its experience implementing ability to pay is merely illustrative and is being provided without the Working Group having conducted any in-depth analysis of the Rhode Island Judicial Branch's administrative structure compared to Delaware's.

¹⁴³ There is some data from DELJIS from 2018 to suggest that Delaware judicial officers do not impose a fine in a

assessment of fees arguably does not. Thus, if the ability to pay analysis was limited to fees and could be conducted after sentencing, it would be possible to utilize trained court staff rather than judicial officers to conduct this analysis, as discussed more fully below.

When Should the Ability to Pay Analysis be Conducted?

As noted above, the decision about when the ability to pay analysis must be conducted will have a significant impact on the cost of implementing the analysis. The FFJC's position is that the analysis must be conducted before the sentence is imposed. Requiring the ability to pay analysis before the sentence is imposed, however, will have significant operational costs in Delaware and slow down the administration of justice in criminal cases, in the view of Judicial Branch members of the Work Group.

Many states allow the analysis to be conducted after sentencing has occurred, either with or without a motion and either before or after default of payment. Rhode Island, for one example, permits defendants post-sentencing to file a financial statement with supporting documentation. Court staff review these filings. If the defendant provides evidence of receiving public assistance or if the defendant was represented by a public defender or court-appointed counsel,¹⁴⁴ court staff will automatically waive all fees.¹⁴⁵ If the defendant does not meet either of those criteria, but still cannot afford to pay their fees, the defendant can request a hearing before the judicial officer. The defendant may also request the judicial officer at the hearing to reconsider the amount of any criminal fine imposed.

In the view of the Work Group, allowing consideration of a defendant's ability to pay after sentencing would be easier and more cost effective to implement than requiring the analysis to be conducted at the time of sentencing.¹⁴⁶ If certain presumptions of indigency were statutorily permitted, however, some of those presumptions could be applied at sentencing in a manner that would not overwhelm the justice system.¹⁴⁷

A practical option for Delaware would be to implement a model like Rhode Island's and permit court clerks, upon receipt of the defendant's supporting documentation, to apply presumptions of indigency post-sentencing. If no presumptions of indigency apply, then the defendant would have the right to request an ability to pay hearing with a judicial officer.¹⁴⁸

substantial majority of criminal cases. Given time constraints, the Ability to Pay Work Group was not able to substantiate or update the data provided, but it is a point that is worthy of further research.

¹⁴⁴ As a matter of efficiency, the application of the presumption of indigency based on the public defender's representation of a defendant is one that could be applied by the judicial officer at sentencing, thus obviating the need for the defendant to make a further application for waiver after sentencing.

¹⁴⁵ If the Rhode Island court sentenced the defendant to 30 days or more of jail time, all fees are automatically waived at the time of sentencing.

¹⁴⁶ One fact noted by OSCCE is that, until a defendant is sentenced, OSCCE is not permitted to have access to Department of Labor records, the Division of Child Support Enforcement records, or credit reports. Thus, if the courts wanted to independently substantiate a defendant's claims of indigency by using these tools, it could not do so at or before the time of sentencing.

¹⁴⁷ The Office of Defense Services expressed a particular concern about the optics of presuming indigency and waiving fees for those represented by a public defender at the time of sentencing compared to those defendants who have exercised their constitutional right to represent themselves but may also be indigent. The latter defendants would be required to take the extra step of filing for an ability to pay waiver post-sentencing.

¹⁴⁸ It should be noted that, while the application of presumptions post-sentencing may obviate the need for a further hearing in many cases, allowing defendants to file for an ability to pay hearing before a judicial officer

Should Presumptions be Applied? If So, Which Ones? What Proof is Required?

The FFJC advocates for applying several presumptions about a defendant's inability to pay Criminal Justice Debt. Specifically, the FFJC argues that a defendant should be presumed to be unable to pay under the following circumstances:

- Receives needs-based public assistance;
- Has spent any period of time in a residential mental health facility in the preceding six months;
- Earns less than 100% of HUD's "very low" individual income limit for public housing;¹⁴⁹
- Has a developmental disability;
- Has a total or permanent physical disability;
- Is a minor (presently or at time offense was committed);
- Was homeless in the preceding six months;
- Is currently in custody for at least 6 months or was released from a term of at least six months in prison within the past 12 months;
- Is eligible for representation by a public defender.

The members of the Work Group generally agree that applying certain presumptions about a defendant's inability to pay makes sense when applied in the criminal case for which the presumption is sought. Further discussion, analysis, and legal changes would be necessary, however, if the presumption of indigency were to be applied retroactively to all of a defendant's active court orders imposing Criminal Justice Debt, which the Working Group did not consider as an option. Of the presumptions advocated by the FFJC, some are more easily proved than others. The FFJC advocates that the defendant's sworn statement that a presumption applies is the only proof that should be required. The consensus of the Work Group members, however, is that the defendant should bear some burden to provide evidence to substantiate the claim of indigency.

The Work Group agrees that court staff could easily apply a presumption of indigency if the defendant can show any of the following:

- Receipt of means-tested, public assistance benefits, subject to available proof as identified by the courts, such as: Medicaid, qualified Medicare benefits, SNAP, WIC, TANF, VA benefits, subsidized housing, LIHEAP.
- DART First State Reduced Fare Card¹⁵⁰
- Representation by a public defender in the case for which the presumption is sought;
- Pretrial incarceration in Delaware (defined as level IV or V) for more than 3 days anytime

could have a significant (but unknown) impact on the operations of both the Court of Common Pleas and the Justice of the Peace Court, which are high-volume courts.

¹⁴⁹ HUD's "very low" income limit is established at 50% of the median family income for a defined geographic region. For residents of New Castle, Kent, and Sussex Counties, the "very low" income limits for a family of four are, respectively, \$55,800, \$40,850, and \$44,450.

¹⁵⁰ DART's long-form application for a reduced fare card requires certification of a disability by a medical professional. The short-form application allows proof of receipt of Medicare or proof of age 65 or older.

in the 6 months prior to sentencing in the case for which the presumption is sought;

- Sentenced to incarceration in the case for which the presumption is sought.

If a presumption of indigency applies, then a policy decision must be made about the impact of the presumption on the amount of Criminal Justice Debt owed. In Rhode Island, for example, if a presumption of indigency applies, the court staff will waive *all* fees (but not fines, which can only be done after a judicial officer's review). In Arizona, on the other hand, if a defendant meets certain indigency criteria, then fines and fees will be reduced by either 25% or 50% depending on the defendant's level of poverty using the Federal Poverty Guidelines.¹⁵¹

Can a Defendant be Found Unable to Pay If No Presumptions of Indigency Apply?

If no presumption of indigency applies, the FFJC advocates that the Court should still be required in every case to determine a defendant's ability to pay by calculating their current monthly income (including wages but excluding child support and social security income). Although FFJC makes such recommendations and some other jurisdictions are trying this, it seems overly complicated to require income calculations in all cases. Instead, a good option for Delaware is, if no presumptions of indigency apply, then the defendant would have the right to request an ability to pay hearing before a judicial officer. To streamline this process, the courts could provide forms in advance to defendants identifying the types of evidence that will be considered in the judicial officer's analysis of the defendant's ability to pay (such as proof of income, debts, and expenses). Ideally, defense counsel or other advocates could aid this process through education efforts and by providing assistance to defendants with form completion.¹⁵² The judicial officer would have full discretion to determine the defendant's indigency and determine the amount the defendant can afford based on the evidence and applying standards established by court policy or rule.¹⁵³

Conclusion

The consensus of the Ability to Pay Work Group is that consideration of a defendant's ability to pay makes sense and is a matter of fairness. The Work Group recognizes that the implementation of ability to pay could impact the agencies that receive funding through the collection of Criminal Justice Debt and that engagement and education around ability to pay will be necessary. Moreover, significant statutory changes will be required.¹⁵⁴ Furthermore, the Work

¹⁵¹ If the presumption of indigency permits a waiver of anything less than 100% of the amount owed, then there may be significant programming changes required in both DELJIS's CJIS application and JIC's CMS application. Given time constraints, the Ability to Pay Work Group did not consult with DELJIS or JIC about this possibility.

¹⁵² One issue that was raised is the inclusion in the court's public record of the defendant's sensitive, personally identifiable information in support of the request for a waiver or reduction of Criminal Justice Debt. This issue would need to be considered further and addressed.

¹⁵³ The FFJC advocates that the sentencing court should determine a defendant's ability to pay by calculating the defendant's income and determining the number of people in the defendant's household. If the defendant's income falls below 400% of HUD's "very low" income limit for their size household, all fees should be waived and the fine should be reduced as follows: by 25%, if income is greater than 300% but less than 400%; by 50%, if income is greater than 200% and less than 300%; and by 75%, if income is greater than 100% but less than 200%. Notwithstanding the FFJC's recommendation, the Ability to Pay Work Group agreed that judicial officers should be given the discretion to decide the amount of fees and fines to be waived and that the standards to be applied to that decision should be determined by court rules or policies.

¹⁵⁴ As part of the Study Group's consideration of further Criminal Justice Debt reforms, Study Group could also consider eliminating statutory mandatory minimum fines so judges have true discretion when imposing fines.

Group recognizes that, depending on how ability to pay is implemented in Delaware, the impacts on criminal justice resources (including court staff and judicial resources) could be far-reaching. If further legislative reforms are enacted, the Ability to Pay Work Group recommends that any ability to pay legislation have a future effective date that gives the Judicial Branch and its criminal justice partners sufficient time to update processes, programming, and procedures and to communicate with affected agencies and community members about the changes. In order to limit system impacts, the Work Group offers the following implementation model as a fair and implementable starting option for the full Study Group's consideration:¹⁵⁵

- *Authorize the courts to consider a defendant's ability to pay in all courts and criminal cases.*
- *Authorize the courts to consider a defendant's ability to pay after sentencing by first permitting court clerks to apply certain presumptions of indigency when the defendant can show any of the following:*
 - *Receipt of means-tested, public assistance benefits, subject to available proof as identified by the courts, such as:*
 - *Medicaid, qualified Medicare benefits, SNAP, WIC, TANF, VA benefits, subsidized housing, LIHEAP, DART First State Reduced Fare card.*
 - *Representation by a public defender in the case for which the presumption is sought, pretrial incarceration in Delaware (level IV or V) for more than 3 days anytime in the 6 months prior to sentencing in the case for which the presumption is sought, or sentenced to incarceration in the case for which the presumption is sought.*
- *If there is evidence for a presumption of indigency, then all fines and fees could be waived (at least for a first offense).*
- *This implementation option simply applies an on/off switch for ability to pay based on presumptions of indigency. There is no need to ask about or verify income.*
- *If no presumptions of indigency apply, then the defendant would have the right to request an ability to pay hearing before a judicial officer. The court can provide the defendant with a form outlining the information and supporting documentation that the defendant could provide to aid the judicial officer's consideration of the defendant's ability to pay. Ideally, defense counsel or other advocates could assist defendants with the process of completing the form and obtaining documentation. The judicial officer would have full discretion, applying standards to be set by court rule or policy, to determine the defendant's ability to pay and to reduce or waive any amounts owed.*
- *Expand the ability to pay analysis to traffic cases processed through the Justice of the Peace Court's Voluntary Assessment Center (VAC). An online tool could be developed to adjudicate eligible traffic infractions similar to California's [MyCitations tool](#), which has been piloted in 16 California courts with [published outcomes](#) demonstrating success.*

¹⁵⁵ The advocacy community members of the Work Group believe, as a future goal, that the presumptions of indigency should be broadened and the ability to pay process further simplified to the benefit of indigent defendants. As a starting point, however, the whole Work Group agrees that the implementation model offered in this report is reasonable and fair.

Public Information & Communication Work Group Report

Members

Judge Alan Davis	Christina Dirksen
Commissioner Alicia Howard	Spence Price
Linda Carmichael, Superior Court	Maria Whiting, ODS
Lois Sampson, Court of Common Pleas	
Addie Asay	
Rebecka Steiner	
Allison Abessinio, DOJ	

The Public Information and Communication work Group was asked to research the current status of, and make recommendations for improvement to, Delaware's systems for informing criminal legal system users of their Criminal Justice Debt. In the course of the Work Group's efforts, the Study Group added to the Working Group's mission, by asking it to examine some of the information dissemination practices regarding ancillary consequences in the criminal justice system not related directly to debt, such as loss of license.

The Public Information and Communication Work Group initially met and developed a strategy for analyzing the current state of public information dissemination regarding Criminal Justice Debt. The Work Group reviewed the Delaware criminal justice system's key mechanisms for providing information to system users about their debt, and the Work Group considered opportunities for improvements and presents the following recommendations and decision points for the Study Group's consideration.

Please Review the Appendix for Additional Resources

Current State of Criminal Justice Debt Information Distribution to System Users

In Courtroom and Clerical/Administrative Information Dissemination Practices

The following summaries of current information dissemination practices were provided by the Courts and OSCCE, respectively, in preparing this report.

Superior Court

In Courtroom Notification

Although the Judges and the attorneys will mention costs, those costs are not added up at the time the Judges impose sentences. The Judge states that the person is to "pay the costs". If a fine is entered, the Judge does state the amount of the fine in handing down the sentence. In Superior Court in all counties, every defendant is provided with a copy of their sentencing order and that order has the full breakdown of costs and fines. The defendants have a copy of that order when they leave the courtroom.

Clerical and Administrative Processes

- *General:* Superior Court's collection efforts are directed only to cases where the defendant is not on probation or incarcerated. If the defendant is on probation or incarcerated, all his/her cases will be put in "hold" status. If the defendant has multiple cases in the Superior Court, ONLY the oldest case will be sent a letter regarding collections, all other cases will remain on "hold" status.

- *Basic Collection Process:* Superior Court’s initial collection letter sets the initial payment and the due date. Initial payments are created automatically by CJIS based on Superior Court’s parameters (10% of balance due but not less than \$10 or more than \$300). This letter states that if the defendant is unable to pay the amount set forth in the letter to please contact the Court. Each letter includes Superior Court’s accounting phone number for the appropriate county. Due date (initial) is 30 days from the date of the letter (initial). After the initial payment is received, payments are due 30 days from the Court’s receipt of the payment.
- *Newly Sentenced Cases:* Since December 2022 if a defendant is on probation or incarcerated (DOC status) all Superior Court’s collection efforts are put on hold. Collection efforts are managed through the defendant’s Probation Officer who sets up a payment plan with the defendant. Once the defendant is no longer on DOC status, the defendant is automatically sent an initial notice letter related to the defendant’s oldest case. When the oldest case is paid in full, the payment plan automatically rolls to the defendant’s next oldest case.

Court of Common Pleas

In Courtroom Notification

After sentencing, the Court of Common Pleas Judicial Officers will state on the record that the defendant must pay a fine (if ordered), cost of prosecution, statutory surcharges, and restitution. However, they do not specify each individual surcharge. These orders are then conveyed to the Customer Service Clerks where they will enter all financial information into CJIS to populate a payment agreement.

Clerical Practices & Forms

Court staff and Judicial Officers will work with the defendant to determine a monthly payment schedule. The payment agreement is recorded in the CJIS to track payments and due dates. Often, defendants have multiple fines. When this occurs, fines are scheduled to be paid one at a time, the oldest case scheduled first, apart from restitution and PBJ cases which are put in priority status. As it currently stands, this is done manually by our Customer Service Department. Along with monthly payment agreements, defendants also have the option to complete work referral to pay off their fines. Typically, Work Referral is only applicable to cases that does not have restitution ordered.

Administrative & Automatic Processes

When a defendant does not make a payment by the due date, a “Notice of Failure to Pay a Court Assessment” letter will automatically be mailed to the defendant. This notice explains the options available and advises the defendant they have 30 days to contact the court for assistance. If the defendant does not reach out to the court in that time, they will be scheduled for a mandatory in-person “contempt” hearing to address the non-payment. At that time, the defendant will have the opportunity to work out a new agreement with the judge. If the defendant does not appear for the hearing, a failure to appear capias could be issued.

Family Court

In Courtroom Notification

During sentencing, a judicial officer reviews with the defendant the assessed fines and fees. The

Judicial Officer may implement a payment plan based on the defendant's ability to pay or may instruct the defendant to discuss setting up a payment plan with Court staff.

Clerical Practices & Forms

As a part of the sentencing order, Family Court includes a *Notice to All Defendants* information sheet. The Notice explains that the fines, costs, restitution, and fees are part of the criminal sentence, and it provides information on how and where payments can be made. The Notice further informs the defendant of the actions the Court may take if payments are not made. Defendants who are instructed to discuss setting up a payment plan with Court staff will meet with staff following sentencing.

Administrative & Automatic Processes

If a defendant fails to make a scheduled payment, a dunning letter is sent to the defendant. The dunning letter informs the defendant that they have failed to make a required payment. The letter informs the defendant that if the defendant does not make a payment or set up a new payment schedule within 15 days, a failure to pay *capias* may be issued. The letter further informs the defendant that if they have any questions they can contact the Family Court cashier office. Finally, the letter provides information on making a payment online.

Following a dunning letter, if a defendant does not make a payment or set up a new payment schedule, the system will automatically create *capias* paperwork. Staff will review each case on the list to determine if the defendant is detained or has a sentence review pending – if either, the failure to pay *capias* is bypassed and the payment is deferred. If neither of those scenarios applies, the paperwork is submitted to a judicial officer for review.

Justice of the Peace Court

In Courtroom Notification

- Judicial officers may start with a “How can you pay today: check, cash, or charge?”
- Judicial officers explain that a time-to-pay installment option is available if full payment of the fine cannot be made that day;
- Judicial officers may ask questions about whether the defendant is actively working or receiving pay, and about frequency of pay;
- Judicial officers may inform the defendant of the work referral option if the defendant offers a very low installment amount (i.e. \$5.00 or \$10.00 per month);
- Judicial officers may accept a very low installment amount if they deem that a larger installment amount and work referral are unreasonable options (i.e. transportation to a work referral site is not available, single parent does not have reliable child care, etc.);
- Judicial officers may create a staggered payment plan for a defendant who has existing multiple payments due to JP Courts (the payment plan for a subsequent case begins the month after the expiration of an existing payment plan, keeping the amount and frequency of all installment plans the same);
- Judicial officers may suspend (if permitted by statute) fines and fees (i.e. a defendant has been or will be incarcerated for a substantial time, is in or is scheduled to be in a long-term inpatient substance abuse treatment program, is currently incapable of working, etc.);
- Judicial officers should inform defendants of the consequences of a failure to pay

according to the agreed-upon plan.

Failure to Pay Agreed-Upon Payment Plan

- Judges will usually work out a new time-to-pay agreement (TTP) in accordance with the defendant's expressed ability to pay, being as flexible as possible in response to the defendant's prompt response to the Court;
- Judges should inform or reiterate to defendants the consequences of a failure to pay according to the agreed-upon plan;
- Judge's may accept a partial payment as payment in full, suspending the remainder as statutorily permitted.

After First Capias Has Been Issued

- Judicial officers may have a more in-depth discussion with the defendant about why a fine has not been paid as agreed upon;
- Judicial officers may work out a new TTP agreement with the defendant or order work referral depending upon the circumstances the defendant presents.

After Multiple FTP Capiases Have Been Issued

- Judicial officers may order the defendant to work referral unless the defendant presents the Court with a reasonable explanation as to why they cannot do work referral;
- Judicial officers may order a wage garnishment; however, these rarely work as defendants often change jobs prior to the completion of payment in full or another court has an existing wage garnishment upon the defendant, so this is not often ordered;
- Judicial officers may create a new TTP agreement that the defendant states will work for them;
- Judicial officers may accept a partial payment as payment in full, suspending the remainder as statutorily permitted;
- Judicial officers may suspend all remaining fines and fees.

Failure to Complete Work Referral or Wage Garnishment

- Judges will order a capias for "Failure to complete work referral (or wage garnishment)" upon receipt of information from the work referral office (or from the employer) stating such;
- Judges, when the defendant comes before the court, may re-order work referral, re-order wage garnishment, create a new TTP agreement, accept partial payment as payment in full with a suspension of any remaining fines and fees, or simply suspend all remaining fines and fees;
- Judges may cite the defendant with civil contempt of court, but should only do so if the defendant has had at least one FTP capias and the work referral office has supplied documentation that the defendant did not report or did not complete the required hours;
- Judges may set a civil contempt of court hearing date commensurate with the balance owed;
- Judges may, at the time of the civil contempt of court hearing, dismiss the contempt of court charge and release the defendant;

- Judges may, at the time of the civil contempt of court hearing, accept a guilty plea, release the defendant, and suspend all remaining fines and fees;
- Judges may, depending upon the defendant’s circumstances, decide NOT to cite the defendant with a civil contempt of court charge, due to a determination that the defendant did not willingly refuse to pay and did not willingly refuse to complete work referral (or wage garnishment);
- Judges may, depending upon the defendant’s circumstances, decide NOT to cite the defendant with a civil contempt of court charge, due to a determination that the defendant will, with great likelihood, never make payment in full AND to a subsequent acknowledgment that incarcerating the defendant with a civil contempt of court charge will not only not produce payment, but will cost the state to house and keep the defendant and could cause harmful ramifications for the defendant.

Clerical Practices & Forms ¹⁵⁶

If the Defendant is Paying in Full

- On the PAYMENT ENTRY screen the DELJIS system lists the amounts that can be paid on the specific case or for the defendant:
 - a. **Current Payment Due:** This amount is the deferred payment plan amount due plus any past underpayments plus any outstanding capias fees.
 - b. **Amount Currently Due:** This amount is the “Current Payment Due” amount above plus any missed payments and the amount the defendant must pay to bring the case current.
 - c. **Current Balance Due:** This is the total remaining balance for this specific case.
 - d. **Total Due all Cases:** This is the total amount owed for all cases for this defendant.

If the Defendant Requested a Time to Pay Agreement/Deferred Agreement

Clerical staff will generate the Time to Pay Agreement, have defendant and judge sign the agreement, and provide a copy of the signed agreement to the defendant.

If the Defendant Has Requested a Work Referral

Clerical staff will generate the Work Referral order to Work Programs at Probation and Parole and fax or state mail a copy of order to Probation and Parole. If there are monies that cannot be worked off, then the clerical staff will complete a deferred agreement and set up a Time to Pay agreement. Defendant will be provided a copy of the documents.

If the Defendant Requested a Wage Assignment

Clerical staff will generate a Wage Assignment order using the information provided by the defendant, have defendant and judge sign the agreement, provide a copy to the defendant, and mail a copy to the employer.

Notes

The JP Court has the authority to transfer a delinquent stand-alone civil traffic offense case to the

¹⁵⁶ Prior to the due date clerks may reset payments when a defendant calls in or appears in person and requests time to be extended because of inability to pay by the due date. After first FTP capias has been issued clerks do not reset payment plans after a capias has been issued

Office of State Court Collections Enforcement (OSCCE) for collection. Financial receivables will be transferred to OSCCE's books (for collection) and account coding will remain as ordered by the Justice of the Peace Court. This means any money collected will go to the appropriate agencies and accounts as they do for any JP Court case. This excludes Civil Red Light Appeal cases.

Administrative & Automatic Processes

Once a payment is missed, the case goes into Warrant Processing Status. Once in the Warrant Processing Status, the defendant is given a grace period of 14 days to make the payment or appear in Court before a *capias* is issued. Should the defendant fail to make the payment or appear in court within the grace period, a *capias* will automatically print with the Daily Batch Report.

Office of State Court Collections Enforcement

Administrative & Automatic Processes

- Once a case reaches 10 years of age, it is referred to AOC\OSCCE for specialized collections. Currently, OSCCE waives all non-restitution debt in accordance with the Chief Justice's policy.
- Upon case transfer, a "Welcome to OSCCE" letter is sent to the client letting them know they have been transferred to our agency.
- For accounts less than \$3000, the system generates an automated payment plan of 10% of the amount owed, not to exceed \$300, with a minimum of \$50 for non-restitution and \$100 for restitution cases.
- For accounts greater than \$3000, OSCCE includes a financial affidavit for the client to fill out and ask them to make an appointment with the office so we can work together on setting an appropriate payment amount. They are also advised, if there is no communication received from them, they will be set at the \$300/month limit due to the amount owed.
- If a client at any time contacts and states they can't afford the assigned payment plan, staff are authorized to go as low as \$25/month for non-restitution cases and \$50/month for restitution cases. If a client wishes to go below these amounts or asks for a significantly low payment plan based on the monies owed, OSCCE requires the completion of a financial affidavit.
- Dunning Letters are sent at the 31, 61 and 91 day delinquent marks to remind the client they missed their payments and are behind in payments. Before the collections clean-up that the Judicial Branch undertook during the pandemic moratorium, OSCCE would institute wage garnishment, tax and lottery intercept, or civil judgment proceedings against clients who remained in a delinquent status beyond 90 days. Since the lifting of the moratorium, OSCCE currently only institutes tax and lottery intercepts against delinquent clients. OSCCE and the courts are working together to update and reinstate these collection processes following the recent implementation of HB244.
- This program is maintained through Client/Victim Interactions, Payment Plans, Work Programs, State Refund/Tax Lottery Intercepts, Wage Garnishments and Civil judgments.

Information Dissemination by Criminal Justice Partners Department of Justice

As the bulk of information regarding fines and fees for criminal defendants is typically provided by the courts and defense counsel; the DOJ does not regularly discuss financial obligations with represented litigants. In situations where defendants are self-represented, prosecutors usually explain both the potential minimum and maximum fines associated with the case and make them aware that failing to pay these fines could lead to consequences such as probation violation or being held in contempt of court.

The DOJ has found that the courts are particularly effective in ensuring that pro se defendants comprehend the legal process. During these interactions, they go to great lengths to explain the procedure, including options available for payment plans or even community service as an alternative to paying fines.

Office of Defense Services

When a client is assessed for any financial obligations for a court case, the attorney advises them to set up a payment plan with the court immediately. It is explained to them that they must pay a set amount per month until the obligation is paid off to be within compliance. Each attorney also explains to the client what will happen if they fail to timely pay the obligations.

DOC Probation & Parole

The agency provides services and opportunities that encourage offenders to take responsibility for their actions. Opportunities are based upon victim(s) and community input and are fashioned in a way that seeks to ameliorate the harm done.

- Payment schedules are established for all persons ordered to pay monies. These schedules include the total amount of monies owed, the time frame for payment of the total obligation, the monthly payment amount due and the date.
- The Acknowledgement Form is the standard form for establishing payment schedules.
- Intake/Institutional Release staff enters all available court ordered monies and Supervision Fee information on this form for all new offenders. The assigned officer must enter this information for existing offenders.
- The assigned Officer must ensure the accuracy of the information on the Acknowledgement Form and ensure the offender signs the form.
- The original Acknowledgement form is maintained in the offender's case file and a copy is provided to the offender.

The assigned officer is responsible for monitoring payment schedules per the designated supervision standards for their cases. Officers must make every effort to ensure that offenders make full payment of their monetary obligations 30 days prior to the maximum expiration date or any other period specified by the court. Staff do not accept any direct payments. Any payments received by staff through a third party (including U.S. mail) must be forwarded to OSCCE or the sentencing Court immediately. This must be documented in the offender's DACS Case Notes.

Website Information

Each of the Courts maintain independent websites on the judicial branch umbrella site. While collectively administered on a technical basis through the Judicial Information Center, each Court is responsible for content on their respective sites. All the criminal courts have information related to various ways of making a payment. Most are connected to OSCCE. None of the sites explain the process of collections, the consequences of failing to pay or to make other arrangements, what to do if there is a problem with making payment, or who to contact under those circumstances. None of the sites explain various costs and assessments, the priority of applied payments, or the implications of failing to meet financial obligations.

License Suspension, Reinstatement, & Non-Renewal Information Dissemination

The courts and other criminal justice partners provide little or no information regarding the ancillary, administrative sanctions associated with licensure at the time of sentencing, as the actual sanction is administered by the Division of Motor Vehicles. While HB 244 eliminated license suspension as a consequence of failure to pay a Criminal Justice Debt, licenses are still subject to non-renewal for failing to meet financial obligations.

Gaps in How Information is Provided

A. Criminal justice system users are presented with confusing/conflicting/less than complete information.

- The imposition of fees, costs and other assessments on top of base fines creates a web of misunderstanding about what criminal justice system debtors are paying for, and what entities and individuals those assessments benefit.
- The method by which each court collects debts separately sows confusion in what is paid, how payments get applied, and when debts are extinguished.
- Each Court/OSCCE has different transmission methods and information available to the public.
- Lack of a unified collection apparatus leads to lack of uniformity of practice and, therefore, incomplete or confusing information about those practices.
- Inability to get info about service hours performed that were supposed to count towards fines/fees. There needs to be clarification to offenders from all prisons/facilities on how to get their community services hours credited to their accounts.
- The forms of payment each court takes are different and not outlined anywhere.

B. In a digital age, the Courts are largely reliant on analog methods that are passive rather than proactive.

- Paper notices are lost.
- Inability/expense of getting printed information about amounts owed on cases.
- Verbal admonishments and information provided by judicial officers and staff are relatively ineffective.
- Web site information is sometimes stale and only provides options for payment, not an understanding of the fines and fees processes.
- VINE is not equipped to provide information to users about debts owned or payment

times.

C. Information regarding ancillary consequences for failure to pay is not coordinated among courts/criminal justice partners/DMV.

D. Implementation of Ability to Pay processes will require additional information dissemination and present challenges to users to take advantage of the ability to pay guidelines.

Recommendations for Enhancement of Criminal Justice Debt Information

- *Create uniform information for all courts to use and establish both in courtroom practices and clerical/administrative processes that are reflective of each court's case type but also give a clear understanding of how payments are applied, debts are discharged, and the consequences of failure to attend to debt issues.*
- *Review and update information sources regularly.*
- *Criminal justice system partners should incorporate standardized information about payment of Criminal Justice Debt in their practices.*
- *Develop a centralized payment/debt collection process for Criminal Justice Debt to make the payment of such debt easier, more uniform, and, therefore, easier to understand.*
- *Expand the use of VINE or another digital service to not only provide information about court appearance dates, but also payment due dates. Text capability is critical.*

Costs of Incarceration Work Group

Members

Tanya N. Whittle, PhD
Rebecka Steiner
Meryem Dede
Kailyn Richards (DCJ)
Christopher Ciecko
Kim Cooper (DOC)
Kolawole Akinbayo (DOC)
Romain Alexander

Meetings

June 9, 2023
September 19, 2023
September 25, 2023
October 2, 2023

Per the “Criminal Legal System Imposed Debt Study Group – Road Map,” the COI’s Work Group’s goals were:

- Research various costs imposed on people incarcerated in Delaware and how those may hurt reentry, and
- Propose solutions to problems observed.

At the kick-off COI Work Group meeting, the COI Work Group initiated efforts to explore and understand financial costs of incarceration imposed directly and indirectly by the criminal legal system. The Work Group asked DDOC to provide policies, FOIA responses, and other available materials relevant to legal financial obligations, fees, and costs of incarceration. Action items agreed to by attendees of the initial Work Group meeting were shared via email with the entire COI Work Group.

Dr. Tanya Whittle also coordinated community input from formerly and currently incarcerated individuals through meetings¹⁵⁷, emails, and mailed letters, which has been incorporated into this report where possible.

The Work Group compiled the following information requests to DDOC:¹⁵⁸

- Applicable laws, policies, and contracts with vendors that allow for costs to be charged to persons under DDOC supervision/custody and/or members of the public. Does DDOC earn money through any contracts with third party vendors, and if so, how much and how is it spent?
- Clarification on how and when community service/time served is credited toward financial legal obligations and transparency and frequency of updates
- Schedule of incarceration, supervision, compliance monitoring costs, current and/or authorized (even if not active)
- Schedule of medical visit/procedure and medication costs

¹⁵⁷ To help inform the COI report, Dr. Whittle attended community-based listening sessions hosted by the Criminal Justice Council for general public comment and questions, Partnership in Reentry Coalition of Delaware meetings, Campaign to End Debtor’s Prison meetings, Trauma Talk on the Table group sessions, and Clean Slate meetings.

¹⁵⁸ These questions were submitted to all COI Work Group members via email on July 20, 2023; DOC responded with some work credit information on July 24, 2023, as well as some relevant policies on August 8, 2023.

- a. Is there a written procedure for what happens if an inmate does not have money to pay for a medical procedure? If so, please share.
 - b. If there is different pricing for “necessary” vs. “unnecessary” medical visits, how are those distinctions defined? Please share written policies.
- Commissary pricing by institution
 - Overview of types of accounts for inmates and what can be paid from different pots (e.g. Is the account for inmate calls the same as for tablet usage and commissary spending? Do they have to transfer money between accounts or request money orders or ‘pay to’ requests?)
 - Provided provisions (quantity and frequency) of food, hygiene, recreational, etc. items by facility, classification, housing unit, and other influencing factors.
 - Inmate-pay ranges, rates for positions, approximate hours, weekly/monthly income 9. Policies on payment schedules, withholding allowances, prioritization of payment (e.g.. Restitution before/after vendor charges?)
 - Areas of need lacking funding?¹⁵⁹
 - What different services/labor do inmates provide that benefit other government agencies (e.g., making business cards), and are there numbers on how much their labor saves the state were it outsourced or paid a prevailing wage?

Findings

Cost to the State/Community to Incarcerate

The Delaware Department of Correction prepares an annual per diem report, identifying the cost to the state to house a person per fiscal year. The cost to incarcerate someone in a Level IV or Level V correctional facility in Delaware factors in all costs (General Funds, Capital Bond Funds (Maintenance and Restoration, Minor Capital Improvement and Major Capital Improvement) Appropriated Special Funds, Non-Appropriated Special Funds and Federal Funds) to operate.

The cost to incarcerate an individual has averaged [[\$131, \$156, \$180, \$216, and \$219]] for fiscal years 2018 through 2022, respectively for the State of Delaware.

While some costs decrease along with the population count (e.g. food and clothing), other costs (e.g. personnel and building/grounds maintenance) do not fluctuate in proportion to population count. Therefore, reduction in population count may on their face increase the “cost to incarcerate,” and increases in population counts can give the illusion of lowering costs by reflecting a lower average cost to incarcerate. Also, DDOC budget allocations do not cover all inmate costs associated with their incarceration; fees charged to inmates may be mandated by legislation, court ordered, DDOC policies¹⁶⁰, and/or contract and service agreements.

¹⁵⁹ On October 13, 2023, during the final round of revisions to the COI Work Group report, DDOC asked if they had ever been asked about DDOC funding needs—a topic raised from the outset of the COI Work Group during meetings, documented in meeting notes (ex. July 20, 2023 email at 5:09PM from the COI Work Group lead, Dr. Whittle, to the full COI Work Group), and included in every draft of the COI report that was circulated to Work Group members.

¹⁶⁰ See Appendix A for relevant DDOC policies.

Cost to the Incarcerated for their Incarceration

Individuals incarcerated at “Level V” facilities are not charged for their incarceration, itself. However, if people are sentenced to a “Level IV” facility, or are flowed down to one following a period of Level V incarceration, they are charged “room and board” by the state.⁸

People incarcerated in a Delaware work release facility are typically charged \$15.00/week if employed part time or \$25.00/week if employed full time for room and board.⁹ Part time is defined as less than 32 hours per week and full time as 32+ hours per week.¹⁰ Revenue collected from the Work Release Room and Board Fee is deposited into the State General Fund, and thus does not directly pay for inmates’ “room and board.”¹¹

Supervising officers may reduce collections of room and board fee payments but are not authorized to eliminate them from accumulating. Officers reduce collections of Room and Board fee payments manually on an ad hoc basis, which I contributes to a common misconception that DDOC sets and receives these fees themselves, which contributes to conflict between DDOC personnel and the incarcerated community and their families.

Costs to the Incarcerated (and their Family/Friends) *during* their Incarceration
Incarcerated individuals in Delaware often depend on wages from jobs as well as contributions from unincarcerated family and friends for certain services and products while they are incarcerated. Inmates are charged for medical co-pays, and they must pay for phone calls or tablet use to communicate with loved ones. It’s also common to rely heavily on purchases from “commissaries,” or small prison stores, within the prisons for food and hygiene products.

Medical charges

In addition to the money allocated by the state for DOC prison healthcare services, inmates in Delaware facilities are charged co-pays for appointments, medications, dentures, glasses, and copies of medical records.

DOC medical appointment and medication co-pays for incarcerated individuals are outlined in DOC Policy Number E-01:¹⁶¹

- Appointment co-pays (\$4.00/ inmate-initiated sick visit)
- Medication co-pays (\$2.00/prescription order)
- Dentures (\$4.00/pair)
- Glasses (\$2.00 per replacement pair)
- If an inmate does not have funds to pay medical appointment or medication co-pays, service/medicine is provided and the cost is charged to the inmate’s account, resulting in a negative account balance.¹⁶²
- Additionally, in certain circumstances under DOC Policy # A-08, DDOC charges former

¹⁶¹ See Policy of State of Delaware Department of Correction, Chapter 11 Bureau of Healthcare, Substance Abuse, and Mental Health Services, Policy # E-01, Information on Health Services, page 2; there are no charges for chronic care visits or chronic care related medications.

¹⁶² See Policy of State of Delaware Department of Correction, Chapter 11 Bureau of Healthcare, Substance Abuse, and Mental Health Services, Policy # E-01, Information on Health Services, page 2; there are no charges for chronic care visits or chronic care related medications.

inmates for their health records.¹⁶³

- Revenue received is deposited into the DDOC Medical units non-appropriated “special” fund, and DOC utilizes the revenue to supplement the budget for offender healthcare, behavioral health, and facility medical supplies.¹⁶⁴

If an inmate does not have funds to pay medical appointment or medication co-pays, service/medicine is provided and the cost is charged to the inmate’s account, resulting in a negative account balance.¹⁶⁵ Additionally, in certain circumstances under DOC Policy # A-08, DDOC charges former inmates for their health records.¹⁶⁶ Revenue received is deposited into the DDOC Medical units non-appropriated “special” fund, and DOC utilizes the revenue to supplement the budget for offender healthcare, behavioral health, and facility medical supplies.¹⁶⁷

Commissary

Certain “standard personal care products” are provided on a schedule at no cost to inmates. However, for many other supplies, incarcerated people must purchase them through the commissaries. What incarcerated people are provided varies by institution. As one example, however, the inmates of James T. Vaughn Correctional Center (“JTVCC”) are provided the following:

A. Weekly:

- a. Toilet paper roll (x1)
- b. Soap bar (x1)
- c. Toothbrush (x1)
- d. Toothpaste tube (x1)

B. Every 6 months:

- a. V-neck top (x2)
- b. Pants (x2)
- c. Underwear (x4)
- d. T-shirt (x4)
- e. Socks (x4 pair)

¹⁶³ See Policy of State of Delaware Department of Correction, Chapter 11 Bureau of Healthcare, Substance Abuse, and Mental Health Services, Policy Number A-08, Health Record; DOC policy prohibits providing inmates with copies of their health records while incarcerated within a DDOC facility unless ordered by a court.

¹⁶⁴ See Appendix B: DOC Provided Summary of “DOC Tablet Fees and Inmate Account Deposit Options/Fees”.

¹⁶⁵ See Policy of State of Delaware Department of Correction, Chapter 11 Bureau of Healthcare, Substance Abuse, and Mental Health Services, Policy # E-01, Information on Health Services, page 2; there are no charges for chronic care visits or chronic care related medications.

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copies of their health records while incarcerated within a DDOC facility unless ordered by a court.

¹⁶⁷ See Appendix B: DOC Provided Summary of “DOC Tablet Fees and Inmate Account Deposit Options/Fees”.

- f. Washcloth (x2)
- g. Towel (x2)
- h. Work boots [workers only]
- i. Shoes (1 pair)
- j. Sheets (x2)
- k. Laundry bag

C. Every year:

- a. 2 thermal tops
- b. 2 thermal bottoms

D. And once every 2 years:

- a. 1 Winter coat
- b. 1 Mattress

This notably leaves out many hygiene products that are generally considered necessary, such as deodorant (only supplied at Level IV facilities, not Level V), shampoo, a hair brush or comb, nail files, etc. These items are only available for purchase through the commissary.¹⁶⁸ Formerly and currently incarcerated community members reported they rely heavily on commissary purchases to meet their hygiene and dietary needs.¹⁶⁹

Generally, individuals incarcerated in DDOC facilities may not purchase items from the commissary without having the balance available in their inmate account at the time the order is processed.¹⁷⁰ As one exception, inmates designated indigent may order full or partial “indigent packets” even if they do not have the money to pay for them.¹⁷¹

Items allowed and quantity permitted depends on facility, housing unit, quality of life

¹⁶⁸ See Appendix C for a list of JTVCC inventory items, including the cost for the commissary to acquire each item and the post-mark-up cost charged to inmates, as well as the inventory order sheets for BWCI, HRYCI, and CCTC.

¹⁶⁹ Dr. Tanya Whittle received community input via community meeting discussions, email, and mailed letters from formerly and currently incarcerated individuals, which included statements raising concerns about living conditions within DDOC facilities resulting in inmates engaging in sexual activities in exchange for hygiene products. For example: “Basically the TP [toilet paper] is the only useful item. Everyone buys everything else from [the] commissary. Even people without money. Wish I was lying when I say guys have done sexual favors for cosmetics [hygiene products].”

¹⁷⁰ According to DDOC: “Per DDOC Policy 4.11, Inmates with an established pattern of insufficient funds averaging less than \$10.00 per day in a rolling 30-day period with which to pay for supplies such as basic personal hygiene items, writing materials, postage and legal copies are designated as indigent.”

¹⁷¹ For \$4.74, inmates designated indigent may order ‘indigent packets’ that consist of stamps (x4), envelopes (x10), large envelopes (x1), pens (x2, black), and a notepad (x1). Full packets may be issued at most once monthly, and partial packet supplies can be ordered. Indigent inmates are charged for these materials.

designation, sanctions, etc.¹⁷²¹⁷³ See Appendix C for a list of JTVCC inventory items, including the cost for the commissary to acquire each item and the post-mark-up cost charged to inmates, as well as the inventory order sheets for BWCI, HRYCI, and CCTC.

As indicated in DOC Policy 3.9 and BCC Procedure 3.9, inmates may be charged up to 20% markup above actual cost paid to vendors. For example, an item purchased for \$3 from a vendor can be sold for up to \$3.60 as a result of the 20% commissary tax. Given inmate pay rates, it would cost an inmate worker approximately 2 hours to earn enough money for just the markup on a \$3 commissary item.¹⁷⁴

Representatives designated by the BOP and BCC Chiefs to the Commissary Products Review Committee are “responsible for the review and recommendations of the appropriate product mark-up percentage for consistency throughout DDOC facilities to the Office of the Commissioner.” The Commissary Products Review Committee is required to meet on at least a semi-annual basis and to work with DDOC Bureau of Correctional Healthcare to “jointly approve non-prescription medications and supplements made available through commissary services.”¹⁷⁵

Tablets: GTL/ViaPath

Inmates are responsible for paying for their own communication with the outside world. Depending on facility and security-level, inmates have access to tablets during designated hours of the day through which they can access information, submit internal forms, communicate with family/friends, etc.¹⁷⁶ Inmates are charged to use the tablets; the cost depends on which section is accessed and functionality used:

- “Free”—For no charge, inmates may submit within-facility messages, requests, and grievances and access facility information, law library, photo library, religious library, etc. materials.
- “Promotional”—For \$.03/minute (\$1.80/hour), incarcerated individuals may listen to music, news, and sports; access games and some movies; and read, write, and send messages to family/friends.¹⁷⁷
- “Standard”—For \$.05/minute (\$3.00/hour), incarcerated individuals may listen to music and audiobooks, play games, and watch movies/TV.

¹⁷² Policy and procedure for the operations and fiscal management of commissary services are established for the Community Corrections Treatment Center by Procedure Number 3.9 in DOC’s Bureau of Community Corrections Procedures Manual and for Level-5 facilities DOC Policies, Chapter 3 Programs & Services, Policy Number 3.9 on Commissary Services.

¹⁷³ While on sanctions for a write-up, inmates are limited to spending \$15 and are only allowed to order from a limited list of hygiene and writing supplies, no food purchases.

¹⁷⁴ See section below on DOC inmate wages and work credit policies.

¹⁷⁵ Policy of State of Delaware Department of Correction, Chapter 3 Programs and Services, Policy Number 3.9 Commissary Services, page 3 of 4.

¹⁷⁶ Phone service charges are governed by DOC Policy 3.17 and Contract # DOC20001-GTL. Also see Appendix B: DOC Provided Summary of “DOC Tablet Fees and Inmate Account Deposit Options/Fees.”

¹⁷⁷ Inmates are charged \$.03/minute to write messages, which disadvantages slow writers and individuals with literacy challenges. Similarly, inmates are charged \$.03/minute to read messages, which disadvantages slow writers and individuals with literacy challenges. Given the vendor charges family/friends to send messages (\$.25/message) and charges inmates to read the messages, this results in what community members refer to as ‘double-dipping.’

- “Video visits”–For \$.25/minute (\$7.50/30 minutes; \$15/hour), inmates may have video visits for up to 30-minutes a session via wall-mounted tablets in designated areas.¹⁷⁸

DOC does not receive revenue from phone or tablet charges; however, revenue is made by GTL/ViaPath. Costs to users vary by contract, and other jurisdictions may charge incarcerated users more, while a few others are starting to actually provide free services.¹⁷⁹ GTL/ViaPath does not charge a fee to deposit money on accounts.

Inmate Account Banking Fees

Inmates, family members, and friends who want to deposit money on an inmate account are charged to do so; the charge is dependent on the amount and method of deposit. Below is a table provided by DDOC indicating charges to deposit money on an inmate account:

Deposit Amt.	Lobby Kiosk (Credit Card)	Telephone	Web/Countertop Terminal	Lobby Kiosk (Cash/Debit Card)
0-\$19.99	\$2.99	\$2.99	\$2.99	\$2.00
\$20.00-\$50.00	\$4.95	\$4.95	\$4.95	\$2.00
\$50.01-\$100	\$5.50	\$5.50	\$5.50	\$2.00
\$100.01-\$200.00	\$8.50	\$8.50	\$8.50	\$2.00
\$200.01-\$300.00	\$11.50	\$11.50	\$11.50	\$2.00

Other Miscellaneous Charges while Incarcerated

In addition to the above forms of incarceration costs, currently and formerly incarcerated community members and their family and friends noted the following costs they incur as a result of incarceration:

- Photo charges (\$2.00/print; must be pre-arranged and prepaid; unused photo funds will not be returned to an inmate if the photo cannot be taken for any reason.)
- Photocopies (\$0.25/page, black and white; copies for legal work are provided at no cost via the law library.)
- Copies of inmate bank account statements and offender status statements cost \$0.25/page. (1 “good time” report provided at no cost once each quarter; 1 copy of inmate account statement is provided for free each month, which breaks down transactions by date and type, but breakdown of commissary purchases are not included on the monthly statement.¹⁸⁰) Revenue is deposited by DOC in the State General Fund.¹⁸¹
- Lost key (\$5-\$45 depending on housing unit)
- Lost ID (up to \$5, average \$1.26); revenue is deposited by DOC into the State General Fund.

¹⁷⁸ At 5-cents a minute, it would cost an inmate approximately \$47.95 to listen to Bram Stoker’s Dracula, which has a play length of 15:58:55.

¹⁷⁹ <https://sfgov.org/financialjustice/reports/people-over-profits-truly-free-no-cost-tablet-program-incarcerated-people-san-francisco>.

¹⁸⁰ DDOC Claims the breakdown is provided when the Commissary order is received; however, examples or verification were not provided.

¹⁸¹ For Offender Status Sheet policy, see DOC Policy 3.13.

- DOC Restitution - A fee is assessed via internal incident report and review. (For instance: If an inmate is accused of intentionally breaking/damaging DOC property, they would receive a disciplinary infraction and, if the hearing officer finds the inmate guilty, they may order the offender to pay restitution to DOC for the repair/replacement of the damaged item.) Revenue is deposited to the State General Fund if prior year or processed as an expenditure reduction to the state to offset the repair/replacement cost for the damaged item/property.
- Common relocation expenses
 - a. For example: Hooks (\$3.30 for 4-pack)
 - b. Any open cosmetics or food products at time of move.¹⁸²
 - c. Stolen items when belongings moved by others due to medical or security reasons.
 - d. If moving from one institution to another, inmates are allowed one box for moving purposes but must mail the remaining property at their own expense.³¹¹⁸³
- Interstate Compact Fee¹⁸⁴ - If an individual under DDOC community supervision intends on moving out of state, an Interstate Compact application must be submitted, and a \$50.00 fee is charged and due at time of submitting the application.
- Release Clothing - Upon release from a DDOC facility, returning persons are provided release clothing, if needed and requested by the inmate. The clothing offered upon request may consist of a shirt, pants, and shoes. Prices vary depending on the size and cost of the items provided. What DDOC pays for the item is what the offender pays for it. Average prices are \$10.50 for a shirt, \$13.50 for a pair of pants, and \$6.45 for a pair of shoes; inmates classified indigent upon release are not charged for release clothing.

Work Wages and Credits

Level-V Labor Wages

Not all inmates are assigned a paying job while incarcerated.¹⁸⁵ Job assignments are generally part-time and dependent on facility staffing levels. Even if an incarcerated worker wanted to work full-time, they often may only work a few hours a week if correctional staffing is low.

While the federal minimum wage as of September 2023 is \$7.25/hour and Delaware's state minimum wage is \$11.75/hour, inmates in the State of Delaware are paid a rate ranging from \$0.0198/hour to \$1.314/hour.¹⁸⁶ An incarcerated person making 39 cents an hour would have to work over 8 hours to purchase a stick of deodorant (\$3.18), and over 19 hours to pay for a 30-minute video call with family (\$7.50).

¹⁸² DDOC confirmed that it is the practice of officers to dispose of open cosmetics during inmates moves but that there is no written DDOC policy mandating such..

¹⁸³ DDOC confirmed that inmates are allowed to transfer "a TV, radio, fan and two (2) boxes or bags of equivalent size." DDOC was unable/unwilling to share the policy, itself, publicly.

¹⁸⁴ For Interstate Compact Fee Policy, see DOC Policy 4.13 and Delaware Code Title 11 §4359.

¹⁸⁵ According to DDOC: "There is more to assigning a job other than availability. Classification, facility need, skillset, programming and treatment needs. It's not just tied to CO staffing levels."

¹⁸⁶ See BOP 2.2 Offender Position and Wage Chart/Master Job Index provided by DOC personnel assigned to the Work Group.

Level-IV Work Credits

According to DDOC:

DDOC Level IV facilities offer opportunities for individuals in their facilities to complete work referral hours to help offset Court ordered financial obligations by completing work hours on road crews in the community, community service hours/projects, and/or institutional employment. Work opportunities vary by institution, geographic location, transportation, community resources, and an individual's classification, such as Community Corrections Treatment Center. These opportunities are communicated to individuals through the orientation guide provided during intake at Level IV facilities and/or through communication with Counselors and Work Programs Coordinators.

Time worked is recorded by the Level IV facility through direct observation of time worked and those hours are approved by the facility designee in 15-minute increments using the standard rounding rule of .25. The Work Programs Coordinator records time worked daily for good time, while the work referral credits for Court ordered financial obligations are applied when requested by the individual.

Except for hours worked at the Sussex County Community Corrections Center (SCCC), the total hours a person completes while at Level IV are communicated to Probation and Parole's Work Programs Coordinators monthly through Excel records. The person who completed hours toward Court ordered financial obligations is advised to contact the Work Programs Coordinator in the county in which he/she resides upon release so the hours can be totaled and credited using the current minimum wage (currently \$11.75) for every hour of work completed (i.e., 10 hours would equal \$117.50 credit). This information is then communicated to the appropriate Court(s) that ordered the work referral so the credit amount can be credited towards the person's financial obligations. SCCC work hours are communicated directly to the appropriate Court through a Paralegal at SCCC.

Since the communication of the number of hours worked typically involves one or more DDOC facility and at least one Court, efforts to fully automate this system haven't been finalized; however, the DDOC is exploring options to incorporate this process within the Delaware Automated Corrections System (DACS).

The number of individuals that are eligible for work referral compared to how many are working full/part-time at Level IV facilities, how many hours workers typically work to pay off legal obligations, the percentage of people released with legal debt associated with criminal-justice involvement, and the range and average time worked by someone before release from Level IV are not data elements currently tracked by the DDOC. The DDOC does not report unpaid Court ordered financial obligations to credit rating agencies and therefore they are not reflected in an individual's credit score.

RECOMMENDATIONS

The Cost of Incarceration Work Group was unable to come to consensus on any recommendations other than more research into this matter needs to be conducted.