



SPONSOR: Sen. Brown & Sen. McBride & Sen. Townsend &  
Rep. Griffith & Rep. Longhurst & Rep. Dorsey Walker &  
Rep. Lynn  
Sens. Hansen, Lockman, Sokola, Sturgeon; Reps.  
Baumbach, Chukwuocha, Heffernan, Kowalko, Minor-  
Brown

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 39

AN ACT TO AMEND TITLE 10, TITLE 11, AND TITLE 21 OF THE DELAWARE CODE RELATING TO FINES,  
FEES, COSTS, PENALTIES, AND FORFEITURES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 1009, Title 10 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as shown by underline as follows:

3           § 1009. Adjudication; disposition following adjudication; commitment to custody of Department of Services for  
4     Children, Youth and Their Families; effect.

5           (c) Following an adjudication in which the Court declares that a child is delinquent, it may:

6           (19) Notwithstanding any provision of law or court rule to the contrary, and except for any assessment  
7     imposed pursuant to Chapter 90 of Title 11, waive or suspend payment of any fine, ~~cost~~ cost, or penalty assessment,  
8     including those otherwise deemed mandatory or not subject to waiver or suspension, as part of the sentence imposed on  
9     a delinquent child. When imposing, waiving, or suspending payment of any fine, cost, or penalty assessment as part of  
10    the sentence imposed on a delinquent child, the Court may consider the child's ability to pay under § 4104(a) of Title  
11    11.

12          Section 2. Amend § 4101, Title 11 of the Delaware Code by making deletions as shown by strike through and  
13     insertions as shown by underline as follows:

14          § 4101. Payment of fines, ~~costs~~ fees, costs, assessments, and restitution upon conviction.

15          (a) On conviction upon indictment or information for any crime or offense, ~~all the costs shall be paid by the party~~  
16     ~~convicted.~~ a defendant must pay all costs imposed by a court.

17          (b)(1) ~~Immediately upon imposition by a court, including a justice of the peace, of any sentence to pay a fine,~~  
18     ~~costs, restitution or all 3, the same shall be a judgment against the convicted person for the full amount of the fine, costs,~~  
19     ~~restitution or all 3, assessed by the sentence.~~ When a court's sentence includes a fine, fee, cost, assessment, or restitution,  
20     the full amount imposed becomes a judgement against the defendant immediately upon sentencing. For purposes of this

chapter, "court" includes the Superior Court, Court of Common Pleas, Family Court, Justice of the Peace Court, and a municipality's alderman's or mayor's court.

(2) ~~Such~~ A judgment ~~shall be~~ under this subsection is immediately executable, ~~enforceable and/or enforceable,~~ or transferable by the State or by the victim to whom such restitution is ordered in the same manner as other judgments of the court.

(3) If not paid promptly upon its imposition or in accordance with the terms of the order of the court, or immediately if so requested by the State, the clerk or Prothonotary shall cause the judgment to be entered upon the civil judgment docket of the court; provided, however, that where a stay of execution is otherwise permitted by law such a stay ~~shall~~ may not be granted as a matter of right but only within the discretion of the court.

(4) If the court imposing ~~any~~ a sentence to pay a ~~fine, costs, restitution or all 3~~ fine, fee, cost, assessment, or restitution ~~has no~~ does not have a civil docket for the entry of a judgment, then ~~such the~~ court may immediately transfer ~~such the~~ judgment to the civil judgment docket of an appropriate court, as ~~shall be~~ determined by the court imposing ~~such the~~ sentence.

(5) Judgments docketed ~~pursuant to~~ under this subsection ~~shall be~~ are exempt from the provisions of § 4711 of Title 10 which mandate the expiration of judgments, and which require the renewal of such judgments.

(k)(1) A state, county, or municipal law enforcement agency or a volunteer ambulance company, as defined under paragraph (j)(4) of this section, shall calculate and report the total sum the law enforcement agency or volunteer ambulance company received under this chapter from fines, forfeitures, and court costs, and the percentage of its annual operating budget that the total sum represents.

(2) A state, county, or municipal law enforcement agency or a volunteer ambulance company shall disaggregate the total sum calculated under paragraph (k)(1) of this section into the sum it received based on violations of traffic, State, county, or municipal ordinance, violation, misdemeanor, and felony offenses. The county or municipal law enforcement agency or volunteer ambulance company shall include its findings in the report required under paragraph (k)(1) of this section.

(3) A state, county, or municipal law enforcement agency or a volunteer ambulance company shall make the report required under paragraph (k)(1) of this section available on its website.

(l)(1) A state, county, or municipal government shall calculate and report the total sum it received under this chapter from fines, forfeitures, and court costs, and the percentage of its annual operating budget that the total sum represents.

(2) A state, county, or municipal government shall make the report required under paragraph (1)(1) of this section available on its website.

Section 3. Amend § 4104, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4104. Fines, ~~costs~~ fees, costs, assessments, or restitution; how collected; ~~holding operator's license as security for payment~~ suspending driver's license for nonpayment prohibited.

(a) Before imposing fines, fees, costs, or assessments upon a defendant, a court may consider the defendant's ability to pay the fines, fees, costs, or assessments imposed. Nothing in this section may be construed to create or expand any substantive right to the appointment of counsel or to require a court to hold an additional hearing for the sole purpose of analyzing the defendant's ability to pay.

(1) Notwithstanding any law or court rule to the contrary, the court may waive, suspend, or modify payment of any fine, fee, cost, penalty, or assessment, including those otherwise deemed mandatory or not subject to waiver or suspension.

(2) On motion of the defendant or on the court's own motion, the court may waive, suspend, or modify fines imposed before [the effective date of this Act].

(3) A defendant's ability or inability to pay fines, fees, costs, and assessments may not influence a court's decision whether to impose a custodial or probationary sentence.

(4) A court shall advise a defendant on the record and in writing of the financial obligations and the possible sanctions for noncompliance.

~~(b)(1)~~ When a court imposes a fine, ~~costs~~ fee, cost, assessment, or restitution upon a defendant, the court or justice of the peace may direct as follows may order any of the following:

~~(1) a.~~ a. That the defendant pay the entire amount at the time sentence is ~~imposed;~~ imposed.

~~(2) b.~~ b. That the defendant pay a specified portion of the fine, ~~costs~~ fee, cost, assessment, or restitution at designated periodic ~~intervals, and in such case~~ intervals. The court may ~~direct order~~ direct order that the fine, ~~costs~~ fee, cost, assessment, or restitution be remitted to a probation officer who ~~shall~~ must report to the court, at such periods as the court may direct, any failure to comply with the ~~orders; or~~ court's order.

~~(3) c.~~ c. Where the defendant is sentenced to a period of probation as well as to pay a fine, ~~costs~~ or restitution fee, cost, assessment, or restitution, that payment of the fines, ~~costs or restitution shall be~~ fees, costs, assessments, or restitution is a condition of the probation.

(2)a. A court may not impose an additional fee for any of the following:

1. The payment of a fine, fee, cost, assessment, or restitution that is made at designated periodic intervals.

2. A late payment of a fine, fee, cost, assessment, or restitution.

3. Supervision by probation of the payment of a fine, fee, cost, assessment, or restitution.

b. A court may not charge interest for a payment of a fine, fee, cost, assessment, or restitution that is made late or at designated periodic intervals, but a court may charge a convenience fee for a payment made at a court-designated payment kiosk or through an Internet-based court payment system.

(3) The Supreme Court, or its designee, shall develop policies and procedures that enable the courts to provide defendants with a statewide aggregate total of the amount owed in fines, fees, costs, penalties, assessments, and restitution across all courts and counties; information as to the payment amounts and due dates across all courts and counties; and a payoff figure, on request. The Court shall implement these policies and procedures no later than February 1, 2021.

~~(b) Any court, including a justice of the peace, may, in its discretion, permit any person sentenced to pay a fine upon conviction of crime, in lieu of the payment of the fine ordered, to execute a bond acknowledging the amount of the fine imposed upon the person as a debt due and owing to this State and binding the person unto this State in an amount equal to 10 times the fine imposed. The bond shall be so conditioned that, should the amount of the fine imposed be paid to this State on or before the tenth day next following the day on which the fine is imposed, then in that event the bond shall be null and void. The bond shall contain a warrant of attorney authorizing the Prothonotary or any attorney of record in this State or elsewhere to appear in any court, including a justice of the peace, and confess judgment against the person so bound. Upon execution of the bond the convicted person shall be required to list on the reverse thereof all motor vehicles and real property owned by the person or in which the person has any title or interest with a description and the location thereof.~~

(c)(1) ~~Any A court may, in its discretion, may~~ direct any person a defendant sentenced to pay a ~~fine or restitution~~ fine, fee, cost, assessment, or restitution upon conviction of a crime, who is employed within this State or by a Delaware resident or employer, to execute an assignment of a specified periodic sum not to exceed ~~1/3 of the person's total earnings,~~ which assignment shall 25% of the defendant's disposable earnings or the amount by which the defendant's disposable earnings are greater than 30 times the federal minimum wage, whichever is lesser. For purposes of this subsection, "disposable earnings" means the amount of an individual's earnings left after legally required deductions are made. The assignment must direct the ~~person's~~ defendant's employer to withhold and remit that amount to this State up to the total of the fine, ~~costs~~ fee, cost, assessment, and restitution imposed.

(2) An assignment of earnings executed ~~in accordance with~~ under this subsection ~~shall be~~ is binding upon an employer in the same manner as an attachment of wages ~~pursuant to~~ under Title 10, except that an assignment need be filed only once with the defendant's employer who shall make the withholding and remittances until the full amount is paid. An amount of total earnings consistent with federal law may be assigned. ~~An employer shall take no~~ A defendant's employer may not take an action against ~~an employee~~ a defendant who has executed an assignment, and the penalty imposed upon ~~an employee~~ a defendant solely because of an assignment under this subsection ~~shall~~ must be in accordance with the manner set forth for attachments.

(d) For purposes of ensuring the payment of fines, ~~restitution~~ fees, costs, assessments, and restitution, and the enforcement of any orders imposed under this section, the court shall retain jurisdiction over ~~the convicted person~~ a defendant until ~~any fine or a fine, fee, cost, assessment, or restitution imposed shall have been~~ is paid in full. The court may write off the fines, ~~costs~~ fees, costs, assessments, and restitution of ~~any convicted person~~ a defendant when the court receives evidence that ~~such person~~ the defendant is deceased.

(e) ~~Whenever any person lawfully possessed of an operator's license theretofore issued to the person by the Division of Motor Vehicles of the Department of Transportation of the State, or under the laws of any other state or territory, or of the District of Columbia, shall be arrested and charged with any violation of the traffic or criminal laws of this State, or of any political subdivision thereof, a court, as a condition of sentencing, may take and hold, as security for the payment of any fine, costs, restitution or Victims Compensation Fund assessment, the operator's license so issued to the defendant. Neither the Division of Motor Vehicles of the Department of Transportation nor a court may suspend a defendant's driver's license as a penalty for nonpayment of a fine, fee, cost, assessment, or restitution.~~

(1) A defendant whose driver's license was suspended before [the enactment date of this Act] only as a penalty for nonpayment of a fine, fee, cost, penalty, assessment, or restitution is eligible for restoration of the defendant's driving privileges.

(2) The Division of Motor Vehicles of the Department of Transportation shall develop policies and procedures to implement the restoration of driving privileges under paragraph (e)(1) of this section. The Division shall implement these policies and procedures by July 1, 2020.

(3) A defendant who seeks to restore the defendant's driving privileges under paragraph (e)(1) of this section may not be required to pay a fee to do so.

~~(f) Any person whose operator's license has been deposited with a court, pursuant to subsection (e) of this section above, shall be issued a receipt by the court taking said license upon a form substantially as set forth in this subsection, and thereafter said person shall be permitted to operate a motor vehicle upon the highways of the State during the pendency of~~

the case in which the license was taken, unless the person's license or privilege to operate a motor vehicle is otherwise revoked, suspended or cancelled.

#### FORM OF RECEIPT

The operator's license of....., license number..... is held by the..... Court, State of Delaware, as security for the payment of a fine, costs, restitution or Victims Compensation Fund assessment in Case No..... Please accept this receipt as a substitute for that license as provided by Title 11, § 4104(e), Delaware Code, as amended. Payment is due by..... This receipt is not valid after said date. Failure to appear will result in license suspension. An attempt to secure, or the securing of, a duplicate operator's license during the period in which this court holds an operator's license shall be considered as a contempt of court under 11 Del. C., § 1271(3).

Judge A court may not charge a penalty, assessment, or fee to a defendant for the cancellation of a capias issued due to the defendant's nonpayment of a fine, fee, costs, assessment, or restitution.

(g) The clerk of the court in which the sentence was imposed and for which a person's license was taken as security, pursuant to subsection (e) of this section, shall immediately forward to the Division of Motor Vehicles of the State the license if the person fails to pay by the date indicated in the receipt as prescribed by subsection (f) of this section above. The Director of the Division of Motor Vehicles shall, upon receipt of a license so forwarded by the clerk, suspend the operator's license and driving privileges of the defaulting driver until notified by the court that payment of the fine, costs, restitution or Victims Compensation Fund assessment has been made. If the person be from another state or territory or the District of Columbia of the United States, the Director of the Division of Motor Vehicles shall further advise the motor vehicle administrator of the state, territory or the District of Columbia of this State's suspension and request that said person's license to drive be suspended until the fine, costs, restitution or Victims Compensation Fund assessment have been paid. (1) A court shall waive a defendant's outstanding fines, fees, costs, and assessments 10 years after the later of one of the following:

a. The imposition of the fine, fee, cost, or assessment.

b. The defendant's release from a term of Level V imprisonment in this State or a custodial sentence imposed by another jurisdiction.

(2) The 10 year period established by paragraph (g)(1) of this section is tolled by an intervening period of incarceration of the defendant regardless of whether the incarceration is related to the offense for which the fines, fees, costs, or assessments were imposed or for an unrelated matter.

~~(h)(1) The clerk of the court in which the sentence was imposed and for which a person's operator's license was taken as security, pursuant to subsection (e) of this section, shall immediately return the person's operator's license upon~~

170 ~~payment of the fine, costs, restitution or Victims Compensation Fund assessment within the period as prescribed by the~~  
171 ~~sentencing judge and as reflected in the form set forth in subsection (f) of this section. For purposes of this subsection,~~  
172 “entity” means a separate account where the State Treasurer deposits the moneys collected from fines, fees, costs, and  
173 assessments that are transmitted from the prothonotary of Superior Court or a clerk of court to the State Treasurer.

174 (2) A court shall collect, calculate, and report annually the total sum of money the court receives under this  
175 chapter representing each of the following:

176 a. Fines.

177 b. Fees.

178 c. Costs.

179 d. Assessments.

180 e. Restitution.

181 (3) A court shall include in the report required under paragraph (h)(2) of this section the disbursement of  
182 moneys collected from fines, fees, costs, and assessments and report the total sum disbursed to each entity.

183 (4) A court shall provide the report required under paragraph (h)(2) of this section to the Administrative  
184 Office of the Courts by the September 1 of each year.

185 (5) The Administrative Office of the Courts shall calculate the amount collected by all courts from fines, fees,  
186 costs, assessments, and restitution, and the total sum disbursed from all courts to each entity from the fines, fees, costs,  
187 and assessments collected.

188 (6) The Administrative Office of the Courts shall provide a copy of the report required under paragraph (h)(5)  
189 of this section to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives,  
190 and the Librarian of the Division of Research of Legislative Council by the December 1 of each year.

191 (7) The Administrative Office of the Courts shall make the report required under paragraph (h)(5) of this  
192 section available on its website.

193 Section 4. Amend § 4105, Title 11 of the Delaware Code by making deletions as shown by strike through and  
194 insertions as shown by underline as follows:

195 § 4105. Default in payment of fine; inability to pay.

196 (a) ~~No person~~ A court may not order a defendant sentenced to pay a fine, ~~costs~~ fee, cost, assessment, or restitution  
197 upon conviction of a crime ~~shall be ordered~~ to be imprisoned in default of the payment of such fine, ~~costs~~ fee, cost,  
198 assessment, or restitution.

(b)(1) Where a ~~person~~ defendant sentenced to pay a ~~fine, costs, restitution or all 3, fine, fee, cost, or assessment~~, on conviction of a crime is unable or fails to pay such ~~fine, costs, restitution or all 3, fine, fee, cost, or assessment~~, at the time of imposition of sentence or in accordance with the terms of payment set by the court, the court may order the ~~person~~ defendant to report at any time to the Commissioner of the Department of Correction, or a person designated by the Commissioner, for work for a number and schedule of hours necessary to discharge the fine, ~~costs or restitution~~ fee, costs, or assessment imposed.

a. A court may waive or modify the number of hours necessary to discharge the fines, fees, costs, or assessments imposed.

b. The court may accept the completion of any of the following in lieu of work hours:

1. Educational programming.

2. Parenting courses.

3. Defensive driving courses.

4. Participation in other court ordered programs.

5. Participation in programs that are mandated as a condition of the receipt of public services.

(2) For purposes of this section, the hourly rate ~~shall~~ must be established in accordance with the then prevailing federal or state minimum wage, whichever is more, and ~~shall~~ must be used in computing the amount credited to ~~any person a defendant~~ discharging fines, ~~costs and restitution~~ fees, costs, assessments.

(3) In cases involving Justices of the Peace Courts, the Chief Magistrate thereof shall establish guidelines for the number of hours of work which may be assigned and the Courts shall adhere to ~~said~~ these guidelines.

(4) The Department of Correction may approve public work assignments for ~~convicted persons~~ defendants in accordance with subsection (c) of this ~~section, whereupon~~ section. Once a public work assignment is approved, the Commissioner, or a person designated by the Commissioner, may assign ~~the convicted person a defendant~~ to work under the supervision of ~~any a state, county~~ county, or municipal agency or a nonprofit organization on any project or assignment specifically certified for that purpose.

(5) The Department of Correction ~~shall~~ may not compensate ~~any convicted person a defendant~~ assigned to work under the supervision of ~~any a state, county~~ county, or municipal agency or nonprofit organization. ~~but~~ But, the Department shall credit ~~such person the defendant~~ with the number of hours of satisfactory service.

(6) When the number of ~~such~~ hours of work performed by a defendant equals the number of hours imposed by the court that sentenced the defendant, the Department of Correction shall certify this fact to the ~~appropriate~~ court, and the court shall proceed as if the fines, ~~costs~~ fees, costs, and ~~restitution~~ assessments had been paid in cash. Fines, ~~costs~~



~~and restitution~~ fees, costs, and assessments successfully worked off under this subsection ~~shall~~ may not be considered as receivables of the court, but the records ~~shall~~ must show the hours worked.

(7) ~~Failure~~ A defendant's failure to comply with an order of the court to participate in work referral made ~~pursuant to~~ under this section ~~shall be~~ is punishable as civil contempt and all courts ~~shall~~ have the power to punish as a civil contempt ~~any convicted person~~ a defendant who fails to comply with such an order.

(8) ~~In the event a person~~ If a defendant serves all or part of a sentence of incarceration for contempt of court in accordance with this subsection, the length of the sentence being in the court's discretion and based upon the amount of the outstanding ~~finest and costs~~ finest, fees, costs, and assessments, the court shall cancel all or part of the ~~finest and costs~~ finest, fees, costs, and assessments. The amount of ~~finest and costs~~ finest, fees, costs, and assessments cancelled ~~shall~~ must be commensurate with the amount of the time served.

(9) For any offense in which the penalty is civil, a court may order a ~~person~~ defendant to report to the Commissioner of the Department of Correction, or a person designated by the Commissioner, for work under this subsection and consistent with the procedures of this subsection until the civil penalties and costs are discharged. Notwithstanding paragraph (b)(7) of this section, a ~~person's~~ defendant's failure to participate in work ordered under this paragraph is not punishable as contempt of court. A ~~person's~~ defendant's failure to participate in work ordered under this paragraph may result in the transfer of the judgment to the Office of State Court Collections Enforcement to be collected according to § 4104 of this title.

(c) ~~Any agency of the State, county or any municipality~~ A state, county, or municipal agency or ~~any a~~ a nonprofit organization approved by the court may submit public work projects or proposed assignments to the Department of Correction for certification as approved public work projects under this section. Upon certification by the Department, the Department shall notify the agency or nonprofit organization ~~will be notified~~ and the Commissioner of the Department of Correction ~~will be authorized to~~ may begin to assign ~~convicted persons~~ defendants to the certified project or assignment.

(d) Notwithstanding subsection (a) of this section, where a defendant sentenced to be imprisoned is ordered to pay a ~~fine, costs, restitution or all 3~~ fine, fee, cost, or assessment the court may order an additional sentence of imprisonment in lieu of requiring the payment of the ~~fine, costs, restitution or all 3; provided, however, that this~~ fine, fee, cost, or assessment. An additional sentence of imprisonment imposed under this subsection may not exceed 30 days, to be served concurrently ~~or consecutively~~ with the sentence originally ~~imposed, as the court may order~~ imposed.

(e) ~~A court having probationary powers may, in its discretion, treat any failure to comply with a court order in respect to fines, costs, restitution or all 3 either as a civil contempt or as if the defendant had been placed on probation and the probation violated; provided, however, that any sentence for violation of probation may not exceed 30 days. [Repealed.]~~

Section 5. Amend § 2751, Title 21 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 2751. Unlawful application for or use of license or identification card.

(r) *Penalty.* — Unless otherwise specifically provided for in Chapter 31 of this title, an individual who violates this section shall be guilty of a class B misdemeanor and shall have that individual's driver's license and/or driving privileges suspended for a period to be set by the Court, not to exceed 6 months. The foregoing sentence notwithstanding, an individual who violates subsection (d), (e), (i) and/or (j) of this section by possessing or displaying a driver's license that has been suspended or revoked by application of the following statutes shall be guilty of a violation only, provided that the judicial officer adjudicating the charge or charges brought under subsections (e) and (j) of this section has made a factual finding that the defendant was reasonably unaware the driver's license that defendant possessed or displayed had been suspended or revoked:

Title 4, § 904(f)

Title 11, § 2106(c)

~~Title 11, § 4104(g)~~

Title 14, § 2730(c)(7) [repealed]

Title 14, § 4130(e)(1) [repealed]

Section 314(b) of this title

Section 709(j)(1) of this title

Section 2118(n)(1) of this title

Section 2703(d)(5) of this title

Section 2710(e)(5) of this title

Section 2724(b) of this title.

Section 6. Amend § 2731, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2731. Duty of courts and police officers.

(b) ~~The clerk or prothonotary of every court shall forward to the Department or its successor, a record of the name and address of each convicted person who shall have been sentenced to pay a fine, costs or both a fine and costs and who has failed to pay at the time sentence was imposed or in accordance with an order of the court. Whenever a convicted person who has not paid a fine, costs or both at the time sentence was imposed shall pay, the clerk or prothonotary shall~~

provide the convicted person with a receipt confirming that the fine, costs or both have been paid so that the receipt may be presented to the Department, or its successor, as notice that the fine, costs or both have been paid. [Repealed.]

Section 7. Amend § 2732, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2732. Mandatory revocation or suspension of license or refusal to renew or issue a duplicate license.

(b) Upon receiving a record of the failure of a convicted person to pay a fine, costs or both as described in § 2731(b) of this title, or to timely complete a course of instruction pursuant to § 4175A or § 4177D of this title, the Department or its successor, shall:

(1) If the convicted person is a resident of this State, forthwith suspend the convicted person's license until the fine, costs or both have been paid, or the court finds that the person has completed the necessary course of instruction and paid all applicable fees; and

(2) If the convicted person is a nonresident of this State, forthwith suspend the convicted person's driving privileges in this State and immediately advise the Motor Vehicle Administrator of the state wherein the convicted person is a resident that the convicted person has failed to pay a fine, costs or both, or to timely complete a course of instruction pursuant to § 4175A or § 4177D of this title, and requesting that the convicted person's license to drive be suspended until the fine, costs or both have been paid, or the court finds that the person has completed the necessary course of instruction and paid all applicable fees.

Section 8. The Criminal Legal System Imposed Debt Study Group ("Study Group") is established to review the impact court imposed financial obligations have on defendants and survivors of crime and make recommendations to promote access, fairness, and transparency in the imposition and collection of court imposed financial obligations.

(1) The Study Group is composed of the following members:

a. A member of the Senate, appointed by the President Pro Tempore of the Senate.

b. A member of the House of Representatives, appointed by the Speaker of the House of Representatives.

c. A representative of the Superior Court with decision-making authority, appointed by the President Judge.

d. A representative of the Court of Common Pleas with decision-making authority, appointed by the Chief Judge.

e. A representative of the Family Court with decision-making authority, appointed by the Chief Judge.

f. A representative of the Justice of the Peace Court with decision-making authority, appointed by the Chief Magistrate.

- 318 g. Two members of community groups, appointed by the President Pro Tempore of the Senate.
- 319 h. Two members of the community impacted by the imposition of court costs, appointed by the Speaker
- 320 of the House of Representatives.
- 321 i. The following members serving by virtue of position, or an individual with decision-making authority
- 322 designated by the member, as follows:
- 323 1. The State Court Administrator.
  - 324 2. The Director of the Office of the State Court Collections Enforcement.
  - 325 3. The Director of the Judicial Information Center.
  - 326 4. The Director of the Delaware Criminal Justice Information System.
  - 327 5. The Director of the Office of Management and Budget.
  - 328 6. The Controller General.
  - 329 7. The Secretary of the Department of Technology & Information.
  - 330 8. The Chief Defender of the Office of Defense Services.
  - 331 9. The Attorney General.
  - 332 10. The Commissioner of the Department of Correction.
  - 333 11. The Colonel of the State Police.
  - 334 12. The Executive Director of the Statistical Analysis Center.
  - 335 13. The Chair of the Delaware Police Chief's Council.
  - 336 14. The Executive Director of the American Civil Liberties Union.
  - 337 15. The Executive Director of the Community Legal Aid Society.
  - 338 16. The Executive Director of the Delaware Center for Justice.
  - 339 17. The Chair of the Victims' Rights Task Force.

340 (2) The member of the Senate appointed by the President Pro Tempore of the Senate is the Chair of the Study

341 Group and the member of the House of Representatives appointed by the Speaker of the House of Representatives is

342 the Vice Chair of the Study Group.

343 (3) The President Pro Tempore of the Senate shall notify the Chair of the Study Group of the Study Group's

344 creation and provide the Chair with a copy of the legislation creating the Study Group.

345 (4) A Study Group member serving by virtue of position who is granted the ability to designate another

346 individual to attend a Study Group meeting must provide the designation in writing to the Chair. An individual

347 attending a meeting for a member serving by virtue of position has the same duties and rights as the member serving by  
348 virtue of position.

349 (5) The Chair of the Study Group shall guide the administration of the Study Group by, at a minimum, doing  
350 all of the following:

351 a. Notifying the individuals listed in paragraph (1)a. through (1)i. of this Section of the formation of the  
352 Study Group and the need to appoint a member, if applicable.

353 b. Setting a date, time, and place for the initial organizational meeting.

354 c. Supervising the preparation and distribution of Study Group meeting notices, agendas, minutes,  
355 correspondence, and reports.

356 d. Sending to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and  
357 the Director of the Division of Research of Legislative Council, after the first meeting of the Study Group, a list of  
358 the members of the Study Group and the person who appointed them.

359 e. Providing meeting notices, agendas, and minutes to the Director of the Division of Research of  
360 Legislative Council.

361 f. Ensuring that the final report of the Study Group is submitted to the President Pro Tempore of the  
362 Senate and the Speaker of the House of Representatives, with copies to all members of the General Assembly, the  
363 Governor, the Director and the Librarian of the Division of Research of Legislative Council, and the Delaware  
364 Public Archives.

365 (6) The Study Group shall study and report its findings and recommendations on all of the following:

366 a. The current process used in each court or in each court in each county to assess, impose, and collect  
367 fines, fees, costs, assessments, and restitution and recommendations, if any, for a more uniform and transparent  
368 process.

369 b. The current sums fines, fees, costs, assessments, and restitution imposed and collected by each court  
370 annually from 2016 through 2017, disaggregated by race, gender, and ethnicity, or the barriers in reporting data  
371 disaggregated in this matter and recommendations for system improvements that are required to report this data in  
372 a cost and time efficient manner.

373 c. The estimated fiscal impact if mandatory assessment of fines, fees, costs, and assessments were  
374 eliminated or what barriers prevent the Study Group from estimating the fiscal impact and the Study Group's  
375 recommended solutions.

d. The infrastructure changes required to consider a defendant's ability to pay when imposing court fines, fees, costs, and assessments and recommendations for alternative sanctions to hold a defendant accountable when the defendant is unable to pay.

(7) The Study Group shall include an analysis of all of the following for each recommendation made under paragraph (6) of this Section:

a. Benefits to the public and system.

b. Budgetary impacts.

c. Technology improvements required.

d. Process improvement required.

(8) The Study Group shall hold its first meeting no later than September 15, 2019, and shall meet at least once each month thereafter until the Study Group submits its final report.

(9) The General Assembly shall provide reasonable and necessary support staff, including a legislative attorney, and materials for the Study Group to carry out its mission.

(10) A quorum of the Study Group is a majority of its members.

(11) Official action by the Study Group, including making findings and recommendations, requires the approval of a quorum of the Study Group.

(12) The Study Group may adopt rules necessary for its operation. If the Study Group does not adopt rules or if the adopted rules do not govern a given situation, Mason's Manual of Legislative Procedure controls.

(13) The Chair and Vice Chair shall compile a report containing a summary of the Study Group's work regarding the issues assigned to it under paragraph (6) of this Section, including any findings and recommendations adopted by the Study Group, and submit the report to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Director and the Librarian of the Division of Research of Legislative Council, and the Delaware Public Archives no later than January 1, 2020.

(14) This Section expires on the date the Study Group submits the report under paragraph (13) of this Section.

Section 9. Section 1 of this Act, § 4104(a), (b)(1) and (b)(2), (c), (d), (f), and (g) of Title 11 as contained in Section 3 of this Act, and Sections 4 through 7 of this Act take effect 120 days after enactment of this Act. Section 4104(e) of Title 11 as contained in Section 3 of this Act takes effect on April 1, 2020. Section 2 takes effect on December 1, 2020. Section 4104(b)(3) of Title 11 as contained in Section 3 of this Act takes effect on February 1, 2021.

#### SYNOPSIS

In 2017, 44,889 failure to pay capias issued for people who did not pay a fine, fee, cost, assessment, or restitution imposed for a non-felony offense. In the first 6 months of 2018, there were a total of 5,807 admissions to detention at all

Level V facilities. Of these admissions, 129 were for failure to pay only and 595 were for failure to pay and another charge. When a capias is issued for nonpayment of a fine, courts currently may and do impose fees to cancel the warrant. When defendants are late paying their fines, the courts' clerks also must forward the defendant's name to the Department of Transportation's Division of Motor Vehicles for license suspension.

This Act prohibits a court or the Department of Transportation from suspending a driver's license for nonpayment of a fine, fee, cost, assessment, or restitution and from charging a penalty, assessment, or fee to a defendant for the cancellation of a warrant issued due to the defendant's nonpayment of a fine, fee, cost, assessment, or restitution. This Act also prohibits a court from imposing an additional fee on a defendant for payments that are made at designated periodic intervals or late, or when probation is ordered to supervise a defendant's payment. Nothing in this Act precludes the court from filing contempt charges against defendants who willfully fail to pay their fines imposed after their ability to pay hearing.

Further, this Act permits a court, before imposing a fine, fee, cost, or assessment, to consider a defendant's ability to pay the fine, fee, costs, or assessment, whether an adult or a juvenile, is able to pay the fine, fee, cost, or assessment. This Act also provides the courts with discretion to waive, modify, suspend, costs, assessments, fines, and fees even if otherwise deemed mandatory by the Code.

Additionally, this Act requires state, county, and municipal law enforcement agencies and volunteer ambulance companies to calculate and report the total sum they receive from fines, fees, costs, assessments and restitution and make a public report of these totals.

This Act also creates the Criminal Legal System Imposed Debt Study Group to review the impact court imposed financial obligations have on defendants and survivors of crime and make recommendations to promote access, fairness, and transparency in the imposition and collection of court imposed financial obligations.

Finally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Brown