



SPONSOR: Sen. McBride & Sen. Poore & Rep. Cooke &
Rep. Chukwuocha & Rep. Dorsey Walker
Sens. Brown, Cloutier, Hansen, Lockman, Paradee,
Sokola, Sturgeon, Walsh; Reps. Baumbach, Bolden,
Heffernan, K. Johnson, Lynn, Matthews, Minor-Brown,
Osienski

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 123

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

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

1 Section 1. Amend Chapter 41, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4107. Alternative sentence; discharge of fees or fines through earned credits.

4 (a) For purposes of this section, “fees or fines” means fines, court costs, or assessments imposed as part of a
5 sentencing order, but does not include restitution or a penalty assessment levied under § 9016 of this title for the Victim’s
6 Compensation Fund.

7 (b) If a court orders a person convicted of a crime under Titles 11 or 16 to pay fees or fines and orders a person to
8 be incarcerated at Level V, the court shall provide in its order that the person may discharge the fees or fines through an
9 earned credits program established by the Department of Correction in lieu of paying the fees or fines.

10 (c) The court shall determine the number of hours necessary to discharge the fees or fines at the time the order is
11 entered under subsection (b) of this section. For purposes of this section, the court shall establish the hourly rate in
12 accordance with the then prevailing State minimum wage and shall use the hourly rate to compute the amount of hours
13 necessary to discharge the fees or fines. Calculation of such necessary hours shall include, as deemed appropriate by the
14 court, the defendant’s previously accrued balance of fees and fines.

15 (d)(1) The Department of Correction shall establish through its rules and regulations earned credits programs in
16 education, rehabilitation, work, work readiness, job training, or others as designated by the Commissioner. Programming
17 that qualifies for credits must be exclusively funded, operated, and managed by the State, a county or municipal
18 governmental agency within the State of Delaware, an incorporated non-profit entity within this State, or a combination
19 thereof.

(2) The Department of Correction may not compensate a person participating in an earned credits program but shall credit the person with the number of hours of satisfactory service.

(3) The Department of Correction shall award earned credits concurrently with wages earned under §§ 6532 and 6533 of this title or good time credits.

(4) When the number of hours worked by a person in the earned credit program equals the number of hours imposed by the court under subsection (c) of this section, the Department of Correction shall certify this fact to the appropriate court, and the court shall proceed as if the fees or fines had been paid in cash. Fees or fines discharged under this subsection may not be considered as receivables of the court, but the court's records must document the hours worked by the person.

(e) A court may only use this section to discharge fees or fines due as a result of a conviction for a crime under Title 11 or Title 16. A court may not use this section to discharge other financial obligations owed to the State or other persons.

(f)(1) If before [the effective date of this Act] a person was convicted of a crime under Titles 11 or 16 and ordered to pay fees or fines and to be incarcerated at Level V, the Department of Correction may permit the person to participate in an earned credit program under this section while the person is incarcerated.

(2) If the person participates in an earned credit program, the Department of Correction shall award earned credits based on the then prevailing State minimum wage.

(3) The Department of Correction shall notify the Judiciary and other relevant criminal justice agencies of this State that the person has received the earned credits. The Judiciary shall apply the earned credits to discharge the person's fees or fines.

Section 2. This Act is effective upon enactment and is to be implemented the earlier of the following:

(1) 1 year from the date of the Act's enactment.

(2) Ninety days after promulgation of final regulations issued by the Department of Correction under this Act to establish guidelines and procedures to manage the Act and coordinate information sharing with affected stakeholders and the Commissioner of the Department of Correction providing notice to the Registrar of Regulations, published in the Register of Regulations, that the contingency under this paragraph (2) of this section has been fulfilled.

SYNOPSIS

It is an unfortunate reality that many offenders have difficulty re-entering society. Without the ability to provide for themselves and their families through gainful employment, 67.8% of released prisoners are rearrested within three years of release nationally. One of the reasons that offenders have difficulty is because they often face the unrealistic requirement to pay off large fees and fines, which grow with interest if not paid, at the same time as they have to pay for housing, food, care for children, or other necessities of life. Failure to pay can result in the offender found to be in violation while on probation or being denied a pardon.

Furthermore, most offenders tend to be non-affluent, and the state spends resources chasing fines and fees it will not recover. Unlike motor vehicle fines under Title 21, which generate large sums of revenue, fees and fines under Title 11 and 16 are modest and collection costs are high. The social costs in terms of impacting rehabilitation and successful re-entry are even higher.

To address this problem and to give the Department of Correction a positive incentive to reward participation in work programs in its facilities or in the community, this Act authorizes the Department of Correction to give minimum wage to inmates to pay off fees or fines by participating in an earned credit program established by the Department of Correction. The court would establish how many hours need to be worked in order to discharge this financial obligation by computing the hours based on the then prevailing state minimum wage hourly rate. The Department of Correction will establish an earned credit program and certify to the court when the individual has completed the required number of hours. The earned credit program cannot be used to discharge other financial obligations owed, such as restitution, child support obligations, or bail.

Author: Senator McBride