



SPONSOR: Rep. Snyder-Hall & Rep. Lynn & Rep. Lambert & Sen. Brown & Sen. Townsend
Reps. Burns, Morrison, Ross Levin, Wilson-Anton, Gorman, Neal, Phillips, Romer, Harris, Bolden, Griffith, Heffernan, Kamela Smith, Berry, Ortega, Chukwuocha; Sens. Cruce, Lockman, Sokola, Pinkney, Sturgeon, Hoffner, Seigfried

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 133
AS AMENDED BY
HOUSE AMENDMENT NO. 4

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO FINES, FEES, RESTITUTION, AND OTHER COURT-RELATED MONETARY OBLIGATIONS.

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

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

§ 4101. Payment of fines, fees, costs, assessments, and restitution on conviction.

(a) On conviction on indictment or information for any crime or offense, a defendant must pay all costs imposed by a ~~court~~ court unless the defendant qualifies for a hardship waiver under § 4104A of this title.

(b) (3) If not paid promptly on 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 may cause the judgment to be entered on the civil judgment docket of the court. If a stay of execution is otherwise permitted by law, the stay may not be granted as a matter of right but only within the discretion of the court.

(5) Judgments for restitution docketed under this subsection are exempt from the provisions of § 4711 of Title 10, which mandate the expiration of judgments and require the renewal of ~~judgments; however, no such judgment will attach to a parcel of real property for more than 7 years after the convicted person has sold, transferred, or lost ownership interest in that specific parcel of real property.~~ judgments. Judgments that include restitution as well as other fines and fees are exempt from the provisions of § 4711 of Title 10 only as to the restitution portion of the judgment.

§ 4104. Fines, fees, costs, assessments, or restitution; how collected; suspending driver's license for nonpayment prohibited.

(a) (1) When a court imposes a fine, fee, cost, assessment, or restitution on a defendant, the court may order any of the following:

a. That the defendant pay the entire amount at the time sentence is ~~imposed~~ imposed where the court finds that the defendant has the ability to pay.

§ 4104A. Hardship waiver.

(a) (1) For purposes of this section “fee” includes a cost, penalty, assessment, or any other monetary obligation that is related to a criminal case or a motor vehicle offense. “Fee” does not include restitution or a fine.

(2) A hardship waiver under this section may not be applied to an offense that is eligible for voluntary assessment under § 709 of Title 21, a civil penalty under § 4129 of Title 21, or to any electronic monitoring violation under Chapter 41 of Title 21.

(b) When a defendant is sentenced to pay fines or fees, the sentencing court shall advise the defendant on the record and in writing of the availability of a hardship waiver under this section. Defense counsel must also advise the defendant of the availability of a hardship waiver and the evidence required to obtain a hardship waiver.

(c) (1) The courts shall administer a hardship waiver process to allow a defendant to submit evidence at sentencing or post-sentencing showing that a defendant is unable to pay a fine, fee, or both.

(2) If a defendant submits evidence of any of the following, the court shall find the defendant presumptively qualifies for a hardship waiver and may not order fines or fees unless the court in its discretion finds that a fine, fee, or both, in whole or in part, are in the interest of justice:

a. The defendant receives a public assistance benefit, including any of the following:

1. Medicaid, including Medicare cost-sharing programs.
2. Low-income subsidy for Medicare Part D.
3. Supplemental Nutrition Assistance Program (SNAP).
4. SNAP benefits for Women, Infants, and Children.
5. Temporary Assistance for Needy Families (TANF).
6. Veterans Affairs Pension or Service-Connected Disability Compensation.
7. Residence in subsidized or public housing, including units that have less than market rental as a result of the owner receiving a Low Income Housing Tax Credit.
8. Low Income Home Energy Assistance Program.
9. A public transportation reduced fare card.
10. General assistance under § 503 of Title 31.
11. Supplemental Security Income (SSI).
12. Social Security Disability Benefits (SSDI).

13. Subsidized daycare (Purchase of care).

b. The defendant was represented in the matter that gave rise to a fine or fee through the Office of Defense Services.

c. The defendant was detained pretrial in Delaware for more than 3 days at any time in the 6 months prior to sentencing in the matter which gave rise to the fine, fee, or both.

d. The defendant was sentenced to incarceration in the matter which gave rise to the fine, fee, or both.

(3) If a defendant does not qualify for a presumption of hardship under paragraph (c)(2) of this section, the court may consider any of the following factors in determining whether a hardship waiver should be granted:

a. The defendant was previously or is incarcerated.

b. The defendant spent any period of time in a residential mental health facility in the preceding 6 months.

c. The defendant is currently homeless or was homeless at any time in the preceding 6 months.

d. The defendant's income is too low to afford payments against fines, fees, or both without undue hardship.

e. Any other demonstration of undue hardship deemed persuasive by the court.

(d) After consideration of the evidence relating to ability to pay, and any presumption of hardship under paragraph (c)(2) of this section, the court may impose a fine, fee, or both, in whole or in part. Where a defendant otherwise would have qualified for a presumption of hardship under paragraph (c)(2) of this section, but the court exercises its discretion to impose monetary penalties despite the evidence of hardship, the court must document the reason in its sentencing order.

(e) A defendant who is not granted a hardship waiver at the time of sentencing may apply for such a waiver at a later time pursuant to rules prescribed by the court.

(f) (1) Except as set forth under paragraph (f)(2) of this section and notwithstanding any law or court rule to the contrary, the court may choose not to impose or may at any time waive, suspend, or modify any fine or fee including those otherwise deemed mandatory or not subject to waiver or suspension.

(2) The penalty assessment under § 9016 of this title may not be waived, suspended, or modified under this section.

(g) The courts may promulgate rules relating to evidence, standards, and procedure for hardship hearings. A copy of the rules, if promulgated, must be given to a defendant at or before sentencing.

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

(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, 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 additional sentence of imprisonment may not exceed 30 days, to be served concurrently or consecutively with the sentence originally imposed, as the court may order.~~

[Repealed.]

Section 2. This Act takes effect 180 days after its enactment.