

§ 9721. Sentencing generally.

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(c.1) Mandatory payment of costs.--Notwithstanding the provisions of section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties) or any provision of law to the contrary, in addition to the alternatives set forth in subsection (a), the court shall order the defendant to pay costs. In the event the court fails to issue an order for costs pursuant to section 9728, costs shall be imposed upon the defendant under this section. No court order shall be necessary for the defendant to incur liability for costs under this section. The provisions of this subsection do not alter the court's discretion under Pa.R.Crim.P. No. 706(C) (relating to fines or costs) or the requirements of section 9730 (relating to payment of court fines, costs and restitution).

(c.2) Imposition of fines, costs and restitution.--

(1) Restitution established by the evidence as owed to a victim shall be imposed in accordance with 18 Pa.C.S. § 1106 (relating to restitution for injuries to person or property). Payment of restitution in full shall have priority over payment of fines or costs.

(2) When imposing fines and costs, whether mandatory or discretionary, the court or issuing authority shall:

(i) Consider only the defendant's income in assessing fines and costs and ability to pay.

(ii) Have the discretion to waive or reduce fines and costs at any time.

(iii) Conduct an ability-to-pay analysis before imposing any fines or costs:

(A) At any stage in the proceeding, including, but not limited to, pretrial proceedings, diversionary programs, sentencing or postsentencing proceedings.

(B) In any summary offense, misdemeanor, felony or other offense.

(C) In accordance with this section and sections 9721(c.1) (relating to sentencing generally) and 9726 (relating to fine).

(3) A sentence of incarceration may not be imposed solely because a defendant is found unable to pay.

(4) If a felony or misdemeanor charge is reduced to a summary offense, the defendant shall be liable only for costs associated with a summary offense, pursuant to the standards specified in this section.

(5) In any single case, or if more than one case is consolidated or tried together, each court cost that is authorized by law shall be assessed no more than once. A defendant may not be charged any costs associated with charges that are withdrawn or dismissed or otherwise do not result in conviction.

(6) The inability to pay shall not limit access to diversionary programs or serve as

grounds for removal or suspension from the programs.

§ 9726. Fine.

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(c) Exception.--The court shall not sentence a defendant to pay a fine, whether mandatory or discretionary, unless it appears of record that:

- (1) the defendant is or will be able to pay the fine; and
- (2) the fine will not prevent the defendant from making restitution or reparation to the victim of the crime.

(d) Financial resources.--In determining the amount and method of payment of a fine, whether mandatory or discretionary, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

(e) Alternative sentence.--The sentence of the court may include an alternative sentence in the event of nonpayment, but the sentence shall only take effect in accordance with section 9772 (relating to failure to pay fine).

§ 9728. Collection of restitution, reparation, fees, costs, fines and penalties.

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(g.1) Payment.--[No less than 50% of all moneys] Money collected by the county probation department or other agent designated by the county commissioners of the county with the approval of the president judge of the county pursuant to subsection (b)(1) and deducted pursuant to subsection (b)(5) shall, until the satisfaction of the defendant's restitution obligation, be used to pay restitution to victims. Any remaining moneys shall be used to pay fees, costs, fines, penalties and other court-ordered obligations.

§ 9730. Payment of court costs, restitution and fines.

(a) **Method of payment.**--The treasurer of each county shall allow the use of credit cards, debit cards and bank cards in the payment of court costs, restitution and fines and may provide for automatic periodic deductions from a bank account, subject to the agreement of the owner of the account, but any deduction, garnishment or wage attachment shall not be in excess of the defendant's payment plan amount. Defendants may not be charged any administrative fee for the use of the credit cards or bank cards.

(a.1) **Wage attachment.**--A court may, at sentencing, assign an amount not greater than 25% of the defendant's gross salary, wages or other earnings to be used for the payment of court costs, restitution or fines.

(b) **Procedures regarding default.**--

(1) If a defendant defaults in the payment of court costs, restitution or fines after imposition of sentence, the court, issuing authority or a senior judge or senior magisterial district judge appointed by the president judge for the purposes of this section may conduct a hearing to determine whether the defendant is financially able to pay. The court may not hold the defendant in contempt, alter the defendant's payment plan without the defendant's consent, or issue a sanction without first holding a hearing. A bench warrant may not be issued solely for a financial default. If the defendant fails to appear at the hearing, the court may issue a bench warrant or reschedule the hearing.

(1.1) With respect to notice of the hearing:

(i) Notice shall be provided via certified mail and via phone, text or e-mail when possible, but not as a substitute for traditional service.

(ii) At a minimum, notice shall include:

(A) The date, time and location of the hearing.

(B) The total amount owed in fines, costs and restitution.

(C) The current installment payment schedule, if any.

(D) Any measure that the defendant may take to avoid a hearing.

(E) A reminder that the defendant may bring documentation regarding the defendant's finances or a list of documents that the court, issuing authority, senior judge or senior magisterial district judge, requires the defendant to bring.

(F) If the court, issuing authority, senior judge or senior magisterial district judge, is considering incarcerating the defendant, a statement that the defendant has a right to counsel at the hearing, with instructions on how to apply for a public defender if the defendant cannot afford counsel.

(iii) Notice shall be provided to a victim to whom restitution is owed, when so requested.

(1.2) With respect to a hearing on the ability of a defendant to pay fines, costs or restitution, the court, issuing authority, senior judge or senior magisterial district judge, shall affirmatively inquire into the reasons for nonpayment and the defendant's present financial status in accordance with the standards specified in subsection (c). The following shall apply:

(i) The defendant has the right to offer evidence, and a right to representation if there is a likelihood of incarceration.

(ii) A victim who is owed restitution is entitled to notice if so requested.

(iii) The court, issuing authority, senior judge or senior magisterial district judge shall make written findings on the record

(1.3) At any time deemed appropriate or upon motion, the court may waive or reduce a defendant's fines or costs, whether mandatory or discretionary, or any portion thereof, as noncollectible due to the defendant's inability to pay. Any amount of unpaid restitution may be reduced or waived only if the court finds on the record that the victim has given consent to the reduction or waiver.

(2) If the issuing authority, senior judge or senior magisterial district judge determines that the defendant is financially able to pay the costs, restitution or fine, and has willfully refused to pay, the court, issuing authority, senior judge or senior magisterial district judge may reinstate, alter or otherwise create an installment payment schedule, enter an order for wage attachment, turn the delinquent account over to a private collection agency or impose imprisonment for nonpayment, as provided by law. The following shall apply:

(i) No person shall be incarcerated for nonpayment unless the court makes the necessary finding under this subsection in writing.

(ii) The court may impose a purge condition, compliance with which will allow the defendant to avoid sanction, only if it finds beyond a reasonable doubt that the defendant has the present ability to comply.

(2.1) (i) If the court, issuing authority, senior judge or senior magisterial district judge schedules a financial determination hearing for the defendant and provides notice to the defendant of the hearing, but the defendant fails to appear at the financial determination hearing, the issuing authority, senior judge or senior magisterial district judge may turn the delinquent account over to a private collection agency or the county's collection enforcement unit as set forth under section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties), as provided by law.

(ii) In each communication with the defendant, the private collection agency or the county's collection enforcement unit shall notify the defendant of the defendant's right to request a new financial determination hearing under paragraph (2.2).

(2.2) (i) If the defendant has a delinquent account turned over to a private collection agency or the county's collection enforcement unit under paragraph (2.1), the defendant may request a new financial determination hearing on the defendant's financial ability to pay the court costs, restitution or fines.

(ii) Upon receipt of the request for a new financial determination hearing under this paragraph, the issuing authority, senior judge or senior magisterial district judge shall schedule and conduct the hearing in accordance with this subsection.

(iii) Upon notice that the defendant has requested a new financial determination hearing under this paragraph, the private collection agency or the county's collection enforcement unit shall cease all collections activities pending the conclusion of the financial determination hearing.

(iv) If the defendant fails to appear at the financial determination hearing under this paragraph, the private collection agency or county's collection enforcement unit may resume collection activities.

(v) If the defendant requests a new financial determination hearing after failing to appear at a hearing previously requested under this paragraph, the private collection agency or

county collection enforcement unit's collection activities may continue unless stayed by court order.

(3) (i) If the court, issuing authority, senior judge or senior magisterial district judge determines that the defendant is without the financial means to pay the costs, restitution or fines immediately or in a single remittance, the court, issuing authority, senior judge or senior magisterial district judge may provide for payment in installments or, in the case of costs or fines, reduce or waive the costs or fines, except costs imposed under section 1101 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act. In determining the appropriate installments, reduction or waiver, the issuing authority, senior judge or senior magisterial district judge shall consider the defendant's financial resources, the defendant's ability to make restitution and reparations and the nature of the burden the payment will impose on the defendant.

(ii) If the defendant is in default of a payment or advises the court, issuing authority, senior judge or senior magisterial district judge that default is imminent, the court, issuing authority, senior judge or senior magisterial district judge may schedule a rehearing on the payment schedule. At the rehearing the defendant has the burden of proving changes of financial condition such that the defendant is without the means to meet the payment schedule. The court, issuing authority, senior judge or senior magisterial district judge may extend or accelerate the schedule, leave it unaltered, reduce or waive the costs or fines, except costs imposed under section 1101 of the Crime Victims Act, or sentence the defendant to a period of community service as the issuing authority, senior judge or senior magisterial district judge finds to be just and practicable under the circumstances.

(iii) If the court, issuing authority, senior judge or senior magisterial district judge determines that the defendant is without the financial means to pay the costs, restitution or fines under this paragraph, the court, issuing authority, senior judge or senior magisterial district judge shall waive an existing collection fee under section 9730.1(b) (relating to collection of court costs, restitution and fines by private collection agency) that was not previously collected from the defendant who is determined to be without the financial means to pay the costs, restitution or fines under this paragraph.

(iv) If the waiver or reduction results in eliminating any outstanding balance of fines or costs, the court shall specify in writing that the case was closed for that reason. Any existing civil judgment or lien entered in accordance with section 9728 shall be terminated.

(4) A decision of the court, issuing authority, senior judge or senior magisterial district judge under paragraph (2), (2.1) or (3) is subject to section 5105 (relating to right to appellate review).

(c) Ability to pay. - -

(1) The defendant shall be considered unable to pay fines, costs, or restitution if any

of the following is established by a preponderance of the evidence:

(i) The defendant's income is less than 125% of the Federal poverty guidelines or the defendant is an unemancipated juvenile.

(ii) The defendant proves that imposition of the fines or costs would render the defendant unable to meet basic life needs, including, but not limited to, food, rent or mortgage, utilities, medical expenses, transportation and dependent care, with consideration given to employment status, treatment needs and access to means-based public assistance.

(2) The court, issuing authority, senior judge or senior magisterial district judge may request reasonable documentation in relation to the defendant's income and ability to pay, but no final order regarding fines and costs shall be issued without providing the defendant with a reasonable opportunity to produce financial documentation. The defendant shall be provided in writing the total amount of fines, costs or restitution imposed.

(3) The court, issuing authority, senior judge or senior magisterial district judge shall allow a victim owed restitution to provide competent and relevant evidence regarding the defendant's finances and ability to pay, if so requested.

(4) The court, issuing authority, senior judge or senior magisterial district judge may order a defendant to report any salary increase that improves the defendant's ability to pay and any financial windfalls in excess of \$1,000. The court shall provide the defendant with written notice of this obligation.

(d) Installment payment schedule. - -

(1) Upon a determination that a defendant has the ability to pay, the court, issuing authority, senior judge or senior magisterial district judge shall seek immediate payment. If it is established that the payment cannot be paid in full, the court, issuing authority, senior judge or senior magisterial district judge shall permit a victim owed restitution to offer competent and relevant evidence as to the defendant's finances, if so requested, before finalizing an installment payment schedule. Unless a greater payment is consented to by the defendant, the installment payment schedule shall be prescribed as below:

(i) A defendant whose income is less than or equal to 125% of the Federal poverty guidelines shall not be required to make monthly installment payments.

(ii) A defendant whose income is more than 125% but less than 150% of the Federal poverty guidelines shall not be required to make monthly installment payments that exceed two times the hourly minimum wage for the locality.

(iii) A defendant whose income is equal to or more than 150% but less than 185% of the Federal poverty guidelines shall not be required to make monthly installment payments that exceed three times the hourly minimum wage for the locality.

(iv) A defendant whose income is greater than or equal to 185% but less than 200% of the Federal poverty guidelines shall not be required to make monthly installment payments that exceed four times the hourly minimum wage for the

locality.

(v) If a defendant's income is equal to or more than 200% of the Federal poverty guidelines, the court, issuing authority, senior judge or senior magisterial district judge shall consider the evidence presented at a hearing on the defendant's financial ability to pay and set an installment payment schedule that would not prevent the defendant from meeting the basic life needs of the defendant and any of the defendant's dependents.

(2) The court, issuing authority, senior judge or senior magisterial district judge may set review dates to review progress and related financial information. The review dates based solely on financial payments shall not be more frequent than once every six months absent default. The scheduling shall take into account the impact on the defendant's employment or dependent care.

(3) The court, issuing authority, senior judge or senior magisterial district judge may delegate authority to the department of probation of the respective county or other agent designated by the county commissioners of the county with the approval of the president judge of the county in accordance with section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties). The court, issuing authority, senior judge or senior magisterial district judge may delegate authority to its clerks to enter into a mutually agreeable installment payment schedule with the defendant. However, if the defendant requests that the court, issuing authority, senior judge or senior magisterial district judge hold a hearing to set or modify a payment plan, the court, issuing authority, senior judge or senior magisterial district judge shall schedule and hold the hearing. An entity to which the authority is delegated shall inform the defendant in writing of the right to a hearing.

(4) The court, issuing authority, senior judge or senior magisterial district judge may send automated reminders to the defendant via text message or e-mail to remind the defendant to pay each month.

(e) Community service. - The court may, with the consent of the defendant, permit the defendant to perform community service in lieu of paying fines or costs or in lieu of restitution, if agreed to on the record by the victim to whom restitution is owed. The following shall apply:

(1) A defendant who performs community service shall receive credit at no less than two times the hourly minimum wage for the locality, although the court, issuing authority, senior judge or senior magisterial district judge may in its discretion give credit at a higher rate. The failure to complete agreed-to community service may lead to reinstatement of outstanding financial obligations in accordance with this section.

(2) No community service may be used to enrich or otherwise benefit:

(i) the court, issuing authority, senior judge or senior magisterial district judge or staff thereof, including any family members, colleagues or acquaintances; or

(ii) the victim or the victim's family members, colleagues or acquaintances.

(f) Time limit on contempt proceedings.—

(1) A court, issuing authority, senior judge or senior magisterial district judge may not hold a defendant in contempt or otherwise arrest or imprison a defendant for nonpayment of fines or costs beyond the maximum term of imprisonment to which the defendant could have been sentenced for the crimes of which the defendant was convicted or upon the termination of probation, if any.

(2) In summary offenses, the court, issuing authority, senior judge or senior magisterial district judge may not hold a defendant in contempt or otherwise arrest or imprison a defendant for nonpayment of fines or costs once two years have passed since the date of conviction for the offense or upon the termination of probation, if any.

(3) Nothing in this subsection limits the ability of the Commonwealth to enforce a civil judgment entered in accordance with sections 5529(a) (relating to twenty year limitation) and 9728.

(g) Termination of probation or parole with unpaid fines, costs, or restitution.--

(1) If a defendant has completed all rehabilitative goals of probation or parole other than payment of fines and costs and there has been no finding of willful refusal to pay fines, the court shall terminate supervision.

(2) If a defendant has completed all rehabilitative goals of probation or parole but restitution remains and there has been no finding of willful refusal to pay, the court may terminate supervision.

(3) If any financial obligation is still owed or assigned at the termination of supervision, the court shall provide the defendant with the amount in writing, place the defendant on an installment payment schedule in accordance with Section 9730 and inform the defendant that payment is still owed and that willful failure to comply may result in a finding of contempt and possible imprisonment.

(4) Without a finding of willful nonpayment, nonpayment of fines or restitution shall not constitute grounds to revoke or extend a period of probation or parole. Nonpayment of costs shall not constitute a probation violation.

Section 9758 of Title 42 is repealed

§ 9772. Failure to pay fine.

[Unless there is proof that failure to pay a fine or that portion of the fine that is due is excusable, the] The court may after a hearing find the defendant guilty of contempt and sentence him to not more than six months imprisonment, if a term of confinement of that amount could have been imposed for the offense charged[,] and the defendant is not indigent and is willfully refusing to pay in accordance with section 9730 (relating to payment of court fines, costs and

restitution). The court shall make findings on the record regarding the defendant's ability to pay. If an alternative sentence has been imposed under section [9758(c) (relating to alternative sentence)] 9726(e) (relating to fine), the alternative sentence may not take effect until there has been a preliminary finding of non-indigency, and a willful failure to pay the fine in accordance with section 9730.

Section 1533 of Title 75 is repealed:

[§ 1533. Suspension of operating privilege for failure to respond to citation.

(a) Violations within Commonwealth.--The department shall suspend the operating privilege of any person who has failed to respond to a citation or summons to appear before an issuing authority or a court of competent jurisdiction of this Commonwealth for any violation of this title, other than parking, or who has failed to pay any fine, costs or restitution imposed by an issuing authority or such courts for violation of this title, other than parking, upon being duly notified by an issuing authority or a court of this Commonwealth.

(b) Violations outside Commonwealth.--The department shall suspend the operating privilege of any person who has failed to respond to a citation, summons or similar writ to appear before a court of competent jurisdiction of the United States or any state which has entered into an enforcement agreement with the department, as authorized under section 6146 (relating to enforcement agreements), for any violation of the motor vehicle laws of such state, other than parking, or who has failed to pay any fine or costs imposed by such court upon being duly notified in accordance with the laws of such jurisdiction in which the violation occurred. A person who provides proof, satisfactory to the department, that the full amount of the fine and costs has been forwarded to and received by the court shall not be regarded as having failed to respond for the purposes of this subsection.

(c) Time for responding to notice.--At least 15 days before an issuing authority or court notifies the department to impose a suspension pursuant to subsection (a), the issuing authority or court shall notify the person in writing of the requirement to respond to the citation and pay all fines, restitution and penalties imposed by the issuing authority or court.

(d) Period of suspension.--The suspension shall continue until such person shall respond to the citation, summons or writ, as the case may be, and pay all fines, restitution and penalties imposed or enter into an agreement to make installment payments for the fines, restitution and penalties imposed provided that the suspension may be reimposed by the department if the defendant fails to make regular installment payments and, if applicable, pay the fee prescribed in section 1960 (relating to reinstatement of operating privilege or vehicle registration).

(e) Remedy cumulative.--A suspension under this section shall be in addition to the requirement of withholding renewal or reinstatement of a violator's driver's license as prescribed in section 1503(a) (relating to persons ineligible for licensing; license issuance to minors; junior driver's license).

(f) Admissibility of documents.--A copy of a document issued by a court or issuing authority of this Commonwealth or by an official of another state shall be admissible for the purpose of proving a violation of this section.]

Title 75 is amended by adding a section to read:

§ 1533.1. Fee for restoration of operating privilege.

A person whose operating privilege was suspended under former section 1533 (relating to suspension of operating privilege for failure to respond to citation) before the effective date of this section shall have the operating privilege promptly restored by the department without the requirement to pay any fee prescribed in section 1960 (relating to reinstatement of operating privilege or vehicle registration).

Section 6504 of Title 75 is repealed:

[§ 6504. Inability to pay fine and costs.

(a) Order for installment payments.--Upon plea and proof that a person is unable to pay any fine and costs imposed under this title, a court may, in accordance with 42 Pa.C.S. § 9758 (relating to fine), order payment of the fine and costs in installments and shall fix the amounts, times and manner of payment.

(b) Imprisonment for nonpayment.--Any person who does not comply with an order entered under this section may be imprisoned for a number of days equal to one day for each \$40 of the unpaid balance of the fine and costs.]

This act shall take effect in 60 days.