

# Reconsidered Fines and Fees Hearing Act

August 27, 2020

**100:1 Short title.** This act may be cited as the Reconsidered Fines and Fees Hearing Act.

## **100:2 Fees.**

**A. Fees.** “Fees” are civil, not criminal, financial obligations imposed by a court. Fees include court costs, and other charges used to fund the justice system and other government services.

**B. Nonpayment of fees.** A court may not order incarceration for unpaid fees.

## **100:3 Fines.**

**A. Fines.** “Fines” are criminal financial sanctions imposed by a court. Fines include financial penalties for traffic and municipal code violations, misdemeanors and felonies. They also may be financial obligations imposed as condition of probation or parole.

**B.** A court may ***(the bill author should select one)*** include/exclude, as part of fines under this chapter, restitution or other compensation that a court ordered the offender to pay to a crime victim or government fund for crime victims.

**C. Hearing after nonpayment of fines.** A court may not incarcerate an offender for failure to pay a fine unless the court inquires in a contested hearing into the reasons for the failure to pay and finds the offender:

1. Willfully refused to pay;
2. Failed to make sufficient bona fide efforts to legally acquire the resources to pay; or
3. Was unable to pay despite sufficient bona fide efforts to legally acquire resources to do so, and alternate measures of punishment, other than imprisonment, are not adequate to meet the State’s interests in punishment, deterrence, and rehabilitation.<sup>1</sup>

**D. Bona fide efforts.** In the court’s determination of the offender’s bona fide efforts legally to acquire resources to pay a fine, the court may consider the offender’s:

1. Age and the time since the offender committed the offense;
2. Education and training;
3. Employment history;
4. Employment aspirations;
5. Current family responsibilities;
6. Personal limitations including disability, homelessness, or institutionalization;
7. Driving privileges or lack of transportation; and
8. Other information submitted to the court.

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<sup>1</sup> Ohio law excludes the 3<sup>rd</sup> prong in its test based on *Bearden v. Georgia*, 461 US 660 (1983). An offender who made sufficient bona fide efforts to pay fines may not be imprisoned. The bill author may consider excluding C-3.

**E. Additional considerations for probation or parole.** In the case of an offender's failure to pay a fine imposed as a condition of probation or parole, the court may consider the following additional factors, during the offender's probation or parole, in the court's determination of the offender's bona fide efforts to legally acquire the resources to pay:

1. The completion of the criminal sentence;
2. A certificate of rehabilitation or good conduct;
3. Completion of, or active participation in, rehabilitative drug or alcohol treatment;
4. Testimonials and recommendations including a progress report from the person's probation or parole officer;
5. Other evidence of rehabilitation;
6. The availability of governmental funds to compensate victims;<sup>2</sup>
7. The victim's forgiveness of unpaid restitution; and
8. Other information submitted to the court.

**100:4 Payment plan considerations.** The court may offer the offender the opportunity to pay any fee or fine over time. In establishing a payment plan, the court shall determine ability-to-pay based on the offender's monthly financial condition including:

1. Income from employment;
2. Income from government programs;
3. Income from other sources;
4. Assets;
5. Expenses for food, housing, utilities, and transportation;
6. Expenses for education or training;
7. Medical expenses;
8. Personal expenses;
9. Family expenses including child support;
10. Other monthly expenses; and
11. Liabilities and other obligations

**100:5 Community service.** A court may order an offender to perform community service if the offender fails to pay a fee or fine. The offender is entitled to credit at no less than the state's minimum wage for work performed as community service.

**100:6 Reduction or forgiveness.** In its sole discretion, a court may reduce or forgive an unpaid fine or fee.

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<sup>2</sup> The author should exclude sentence E-6 and E-7, if the author chooses to exclude restitution from the definition of fines in section 100:3 B.