

# Reducing and Eliminating Criminal Fines and Fees

## Case Study: Delaware

These case studies highlight innovative and promising court practices related to Fines, Fees, and Pre-Trial Practices and were developed with the support of the State Justice Institute and the [CCJ/COSCA Fines, Fees, and Pre-Trial Practices 2.0 Task Force](#). The best practices highlighted in these Case Study Briefs are based on the [Task Force's Principles](#). These case studies spotlight examples from diverse jurisdictions across the U.S. and are designed to provide jurisdictions with a sample of approaches and options.

### Fines and Fees

Criminal fines and fees<sup>1</sup> (also called court imposed financial obligations or legal financial obligations) cause significant barriers for people living in poverty. The Department of Justice, in April 2023, urged courts to look carefully at situations in which fines and fees are imposed and to think about other ways to collect revenue that does not rely on fines and fees.<sup>2</sup>

This case study looks at steps that **Delaware** has taken to reduce or eliminate criminal fees in a variety of case types.

### The Impact of HB 244 in Delaware

HB 244, as it was passed in 2022, was the first step towards lasting change in the State of Delaware. These reforms are all considered best practices and are aligned with the Guiding Principles set by the Task Force. For example, this bill ended the practice of convenience fees, which were added to payments made at kiosks throughout the state (Principle 1.10: Accessible Proceedings, Assistance for Court Users, and Payment Options). HB 244 also prohibited the practice of suspending driver's licenses upon failure to pay outstanding court debt (Principle 4.3: Driver's License Suspension). Keeping licenses in the hands of hard-working individuals was a major goal throughout the process, as many recognized the challenges of paying off debt if an individual has lost the ability to drive legally. Eliminating the assessment of the Public Defender Fee and Department of Corrections Supervision Fees was also accomplished by HB 244.

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<sup>1</sup> Fines are typically tied to a particular offense and are imposed upon conviction. Fees are often automatically imposed and not related to a particular offense. *See e.g.*, Matthew Menendez and Lauren Brooke-Eisen, The Steep Costs of Criminal Justice Fees and Fines, November 21, 2019, *available at* <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines?limit=all> (last visited February 20, 2024).

<sup>2</sup> U.S. Dep't. of Justice, Dear Colleague Letter, April 20, 2023, *available at* <https://www.justice.gov/media/1288301/dl> (last visited February 20, 2024).

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Money collected from the Public Defender Fee, contrary to its title, went directly to the General Fund. Fees, if utilized, should never fund activities outside of the justice system, in accordance with Principle 1.6: Fees and Surcharges: Nexus to the “Administration of Justice”. However, the Public Defender Fee created the appearance that individuals were being charged for using court-appointed counsel, hurting public trust and going against Principle 4.4: Cost of Counsel for Indigent People. The bill also eliminated late fees and assessments placed on juveniles, who likely have no means of paying back the courts.

Building the capacity for reporting actual collections data on each fee was included within the scope of HB 244. By creating this repository of data, it will be easier to understand the impacts of future reforms and how that may affect court budgets and constituents alike.

Delaware is proud of the work that has been done so far and hopes to continue reforms through the recommendations proposed by the Criminal Legal System Imposed Debt Study Group.

### **Delaware’s Criminal Legal System Imposed Debt Study Group**

[Delaware’s Criminal Legal System Imposed Debt Study Group](#) was created in 2022 by HB 244. The Study Group contained representation from the Delaware House and Senate, the State Court Administrator, the public defender agency, Attorney General’s office, public safety department, and community, and was tasked with making recommendations to the legislature about reforms related to the elimination and reduction of criminal fines and fees. In addition to the Study Group, HB 244 created a number of additional reforms, including eliminating juvenile fines and fees.<sup>3</sup>

The Study Group made specific recommendations regarding a number of legislative, state budget, and judicial policies including the following:

- Creating a clear timeline for writing-off old debt.
- Eliminating a number of fees and replacing them with appropriations.
- Exploring alternative sanctions such as community service, problem-solving courts, and payment plans.
- Authorizing courts to consider a defendant’s ability to pay in all criminal cases.
- Creating a presumption that a person who has been determined indigent is unable to pay fines and fees and allowing a waiver of all fines and fees in those situations.
- Creating a mechanism for a defendant to request an ability to pay hearing in situations where the defendant is not indigent.

The Delaware legislature is currently considering the Study Group’s recommendations.

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<sup>3</sup> Juvenile fees and fines will be the subject of another Task Force Case Study Brief.

### Best Practices

Delaware's work highlights a number of best practices identified by the Fines, Fees, and Pre-Trial Practices Task Force. Some of these are identified above in the discussion of HB 244 and others that touch on the Study Group's work are discussed below.

#### Cross-Agency Collaboration and Alternatives to Fee-Funding

##### [Principle 2.1 Policy Formulation and Administration](#)

Delaware's initiative is an important example of collaboration between the judiciary, legislature, and other justice partners with regard to addressing fines and fees. Collaboration between judiciary, legislature, and criminal justice partners is critical to reforms that reduce or eliminate the use of fines and fees. Because fines and fees are often set by the legislature, and elimination of fines and fees often requires legislative appropriations to cover court operating costs, partnership and collaboration between the judicial branch and the legislature are critical for sustainable reform. Through collaboration, the Study Group identified specific fees to eliminate, and specific appropriation amounts to cover the cost of court operations that had been previously funded by statutory fees.

Initiatives like the Study Group, which are statutorily created, can be an important tool to address fines and fees reform. They require cross-agency participation, and reporting to the legislature gives particular weight to recommendations. Additionally, Delaware's initiative ensured that necessary players were involved in developing recommendations. These players include judiciary leadership who understand how fines and fees impact court operations, legislators who are needed to create statutory change and appropriations, and justice partners such as defense attorneys, prosecutors, and community members who understand the impact of legal financial obligations on people involved in the court system.

#### Alternative Sanctions

##### [Principle 6.5. Alternative Sanctions](#)

The Study Group's recommendations include exploring alternative sanctions such as community service, problem-solving courts, and payment plans. The use of alternative sanctions creates systems that do not rely solely on financial sanctions or incarceration and that work to meaningfully address the underlying causes of a particular offense. Courts looking to implement similar reforms involving alternative sanctions should collect input from stakeholders about what sanctions would help address community needs and ensure that these sanctions do not create additional barriers.

##### **Principle 2.1 Policy Formulation and Administration**

Policy Formulation and Administration. All states should have a well-defined structure for policy formulation for, and administration of, the state's entire court system, including any local courts.

##### **Principle 6.5. Alternative Sanctions**

Courts should not charge fees or impose any penalty for an individual's participation in community service programs or other alternative sanctions. Courts should consider an individual's financial situation, mental and physical health, transportation needs, and other factors such as school attendance and caregiving and employment responsibilities, when deciding whether and what type of alternative sanctions are appropriate.

### Ability to Pay Reforms

#### [Principle 2.3. Statewide Ability to Pay Policies](#)

#### [Principle 3.3. Schedule for Legal Financial](#)

When a court imposes incarceration because of a defendant's failure to pay a fine or fee, all courts are constitutionally required to permit defendants to show that their ability to pay was not willful. However, requiring determination of a person's ability to pay before assessing fines and fees ensures that people are not inappropriately burdened with financial penalties at the outset of a case disposition.

Delaware's recommendation that courts be able to conduct ability to pay assessments in all cases ensures that defendants are not improperly assessed financial obligations that they cannot pay at the outset of a case, rather than waiting for a defendant to default on payment. In assessing ability to pay in all cases, courts can design sanctions that feature payment plans or that use non-financial sanctions when appropriate. This will avoid costly consequences for people who are assessed legal financial obligations and are then unable to pay them.

Delaware's proposal creating a presumption of inability to pay when a person is indigent reduces court time use court time holding a hearing about a defendant's income and expenses, under this recommendation, a defendant could provide proof of public defender representation or receipt of means-tested benefits. This streamlines court processes as well as ensures that people are not unjustly assessed financial sanctions they cannot pay.

#### **Principle 2.3. Statewide Ability to Pay Policies**

States should have statewide policies that set standards and provide for processes courts must follow when doing the following: assessing a person's ability to pay; granting a waiver or reduction of payment amounts; authorizing the use of a payment plan; and using alternatives to payment or incarceration.

#### **Principle 3.3. Schedule for Legal Financial Obligations**

The amounts, source of authority, and authorized and actual use of Legal Financial Obligations should be compiled and maintained in such a way as to promote transparency and ease of comprehension. Such a listing should also include instructions about how an individual can be heard if they are unable to pay.