WEST VIRGINIA CODE CHAPTER 62 ARTICLE 4

WV Legislature

§62-4-1. Fines to accrue to state for support of free schools, unless otherwise provided.

Unless otherwise expressly provided, or manifestly inconsistent with the intention of the Legislature, every fine or forfeiture imposed by or under an act of the Legislature shall be and accrue to the state for the support of the free schools, and shall be applied to such purpose pursuant to the fifth section of article XII of the Constitution.

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§62-4-2. Allowance to informer or person prosecuting.

Although a law may allow an informer or person prosecuting to have part of a fine, the whole thereof shall go to the state for the support of the free schools, unless the name of such informer or prosecutor be indorsed on or written at the foot of the presentment at the time it is made, or of the indictment before it is presented to the grand jury, or of the writ issued in the action, or the warrant, or the notice of the motion, before the service of such writ, warrant or notice.

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§62-4-3. Fine, imprisonment, etc., to be by indictment, etc.; exception.

Where fine and imprisonment, or fine and any punishment is imposed by law, the proceeding shall be by indictment or presentment in the circuit court, or other court of record having jurisdiction in criminal cases, in the county wherein the offense was committed, unless otherwise specially provided.

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§62-4-4. Recovery of fines before justice or in court.

Where a fine alone is imposed, if it be in a case mentioned in section one, article eighteen, chapter fifty of this code, it may be recovered upon warrant of a justice having jurisdiction; and whether so mentioned or not, it may be recovered by presentment or indictment in the circuit court, or other court of record having jurisdiction in criminal cases, in the county wherein the offense was committed.

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§62-4-5. Form of proceedings.

The proceedings in all cases shall be in the name of the state, unless otherwise specially provided. If before a justice, the proceedings shall be according to article eighteen, chapter fifty of this code.

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§62-4-6. Remission of fines by Governor.

Fines may be remitted by the Governor, subject to the provisions of sections sixteen and seventeen, article one, chapter five of this code.

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§62-4-7. Remission of fines by courts.

No court shall remit any fine except for contempt, which the court during the same term may remit either wholly or in part. This section shall not impair the judicial power of the court to set aside a verdict or judgment, or to grant a new trial.

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§62-4-8. Duties of prosecuting attorney in relation to fines.

It shall be the duty of the prosecuting attorney of every county to institute and prosecute in the circuit court, or other court having jurisdiction thereof, as the case may be, proper proceedings for the recovery of all fines imposed by law, where the cases are cognizable in such court. He shall superintend the issuing of executions on judgments for fines rendered by such courts, and cause all delinquencies in relation to the service or return of such executions to be duly prosecuted. If judgment be rendered by the circuit or other court for a fine, whether with or without imprisonment, a docket fee of $10 for the prosecuting attorney's services, but payable into the county treasury, shall be taxed in the costs against the offender.

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§62-4-9. Capias pro fine; release of defendant on bond.

When a judgment for fine and costs is rendered by a circuit court, or other court of record having jurisdiction in criminal cases, the court may order a capias pro fine to be issued thereon at any time during the term at which the judgment is rendered, and if not such order be made, such capias shall be issued by the clerk of the court in vacation if he be ordered to do so by the prosecuting attorney. If the judgment of the court in such case be that the defendant be imprisoned and fined, or that he be fined and imprisoned until the fine and costs be paid, or if the defendant be imprisoned by virtue of such capias pro fine, in either event, the defendant may be released from such imprisonment, where he is detained for a failure to pay such fine and costs, only upon his giving bond with good security before the court, or before the clerk thereof in vacation, or before the sheriff of the county in which such judgment is rendered, payable to the State of West Virginia, for the payment of such fine and costs, at a time not exceeding twelve months after the date of such bond. If default be made in the payment of such bond, the same may be proceeded against to judgment and execution as if it were a forthcoming bond.

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§62-4-10. Discharge from confinement; allowances for labor while confined.

Any person imprisoned for the purposes stated in the preceding section may be discharged from confinement at any time by the court wherein he was sentenced, and in no event shall his confinement, for failure to pay a fine and costs, exceed the term of six months. Any person confined in prison who is required to perform labor under the provisions of article fifteen, chapter seventeen of this code, shall be allowed, as a credit upon the fine and costs for which he is liable, the sum of $1.50 a day for each day he has so labored, and when the amount of such credits equals the amount of the fine and costs he shall be discharged from custody.

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§62-4-11. Fieri facias for collection of fines.

On every judgment for a fine rendered by a circuit court, or other court of record having jurisdiction in criminal cases, if no special order be made by the court or judge, the clerk of the court shall issue a writ of fieri facias immediately after the term at which such judgment was rendered. And unless paid in court, a payment to any person other than the officer who holds the execution shall not discharge the judgment.

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§62-4-12.

Repealed.

Acts, 1995 Reg. Sess., Ch. 83.

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§62-4-13.

Repealed.

Acts, 1995 Reg. Sess., Ch. 83.

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§62-4-14.

Repealed.

Acts, 1995 Reg. Sess., Ch. 83.

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§62-4-15. Limitation upon collection of fines.

No prosecution by warrant for the recovery of a fine shall be commenced, unless it be done within one year after there was cause therefor, except in cases where a different limitation is prescribed by law.

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§62-4-16. Community service work may be substituted in lieu of a fine in municipal court and magistrate court; immunity from suit.

(a) Notwithstanding any provision of this code to the contrary, a municipal judge or a magistrate may substitute, in lieu of the imposition of a sentence of incarceration or imposition of a fine, community service work for such incarceration or fine. Where community service work is ordered as a substitute on a sentence of incarceration, an eight-hour work day shall extinguish one day of any sentence of incarceration. The minimum wage established by the prevailing federal minimum wage in effect at the time sentencing is imposed shall be used to compute the amount of community service work necessary to extinguish the fine. In the discretion of the court, the sentence credits may run concurrently or consecutively.

(b) Any community service ordered pursuant to the provisions of this section shall be performed for government entities or charitable or nonprofit entities.

(c) Any person who is sentenced to court-ordered community service under this section by a municipal court shall be supervised by the chief of police, or his or her designee. Any person who is sentenced to court-ordered community service under this section by a magistrate shall be supervised by the sheriff or other person designated by the county commission.

(d) Persons sentenced under the provisions of this section remain under the jurisdiction of the sentencing court. The court may withdraw the community service sentence at any time by order entered with or without notice and order a person previously sentenced to community service to serve the term of incarceration or to pay the fine available to the court upon the person's conviction: *Provided,* That any community service work performed before the community service sentence is withdrawn shall be credited against any term of incarceration or fine imposed.

(e) This section does not create any additional cause of action for individuals who appear in municipal or magistrate court. Any person who participates in court-ordered community service is limited to the remedies contained in §29-12A-1 *et seq*. of this code, subject to any defenses, immunities, and limitations of liability contained therein.

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§62-4-17. Suspension of licenses for failure to appear in court; payment plan; failure to pay fines will result in late fee and judgment lien.

(a) Upon request and subject to the following requirements, the circuit clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within 90 calendar days after release.

(b) The Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of circuit clerks and circuit clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against them, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual income divided by 12, or $10, whichever is greater: *Provided*, That if this calculation results in a payment plan lasting more than five years, the monthly payments shall be set by dividing the total amount owed by 60.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d)(1) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan, and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

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(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of

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nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney, and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(h) If a person charged with a criminal offense fails to appear or otherwise respond in court after having received notice to do so, the court shall notify the Division of Motor Vehicles thereof within 15 days of the scheduled date to appear unless such person sooner appears or otherwise responds in court to the satisfaction of the court. Upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

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