

Court practices to enforce appropriately assessed fines, costs, and other financial sanctions are an important part of enforcing the consequences of misconduct. The responsibility of the courts in general, and individual judges in particular, is to ensure that any fines, costs, and other financial sanctions arising out of a case are reasonable and take into account a child's ability to pay.

### IMPOSING FINES, COSTS, AND OTHER FINANCIAL SANCTIONS

#### Court Costs

- Court costs and fees are civil, not criminal, obligations and may be collected only by the methods provided for the collection of civil judgments.<sup>1</sup>
- Court may waive all fees and costs.<sup>2</sup>
- Court cannot assess costs against a child whose delinquency case is dismissed.<sup>3</sup>
- Court cannot impose costs on juvenile cases transferred from another court if disposition has already taken place.<sup>4</sup>
- Court cannot sanction a child to detention for failure to pay costs.<sup>5</sup>

#### Fines

- Non-payment of a financial sanction is a violation of a court order so all attendant dispositions under R.C. 2152.19 apply, except detention.
- The court should consult the following statutes for maximum fines allowable:
  - R.C. 2151.87
  - R.C. 2152.20
  - R.C. 2152.21
  - R.C. 4513.99

Dispositional orders are temporary and continue only for the period that is designated by the court or until the child attains 21 years of age, whichever

is sooner.<sup>6</sup> Orders to enforce the payment of fines, costs, license suspensions, community service requirements, and vehicle registration blocks expire upon the child turning 21.

### DETERMINING THE ABILITY TO PAY



The juvenile court should presume that young people are unable to pay fines and fees and only impose them after an affirmative showing of ability to pay.<sup>7</sup>

Before the juvenile court punishes youth for failing to pay fines, costs, or other financial sanctions, it must first determine ability to pay, considering factors particularly applicable to youth.<sup>8</sup>

- Hearing on ability to pay is discretionary when imposing fines or costs, but hearing to determine ability to pay after failure to pay is mandatory.<sup>9</sup>
- An ability-to-pay inquiry that recognizes the unique characteristics of children will help to ensure that juvenile courts and other juvenile justice agencies do not punish children for their poverty in violation of the Constitution and also may prevent the kind of disparate racial impact that may violate Title VI, the Safe Streets Act, and other related statutes.<sup>10</sup>
- Consideration of ability to pay should focus on unique circumstances that inhibit the child's ability to pay, including:<sup>11</sup>
  - Requiring a child to work to pay fines and fees may have negative consequences like missing school in order to work;
  - Children often lack their own means of transportation; and
  - Children under probation or in a diversion program may find it difficult to simultaneously fulfill obligations related to their probation, program, school, and job.

## COSTS RELATED TO CONFINEMENT AND LEGAL SERVICES

1. The “cost of confinement” includes costs for medical and dental care provided to the child during his confinement, and the cost of any property damaged while so confined. These amounts cannot be determined in advance of the child’s release. A hearing at or near the time of release must be held to ensure that all costs allowed by the statute are properly calculated, and that those

costs shall not “exceed the total amount of reimbursement the child is able to pay as determined at the hearing and shall not exceed the actual cost of the confinement.”<sup>12</sup>

2. A court must make an affirmative determination on the record that a child has, or can reasonably be expected to have the ability to pay the cost of legal services.<sup>13</sup> The court must determine the child’s ability to pay before imposing court-appointed attorney fees.<sup>14</sup>

### PERMITTED METHODS OF COLLECTING COURT COSTS AND FINES (Any Method Not Permitted is Prohibited)

PERMITTED COLLECTION METHODS	COSTS	FINES
Voluntary Payment	X	X
Payment Plan <sup>15</sup>	X	X
Collection Agency or Attorney General <sup>16</sup>	X	X
Community Service <sup>17</sup>	X	X
Civil Judgment <sup>18</sup>	X	
Registration Block <sup>19</sup>	X	X
Detention <sup>20</sup> ( <i>see Fines front</i> )		
Driver’s License Suspension <sup>21</sup>	X	X
Cancellation of Uncollected Debt <sup>22</sup>	X	X

## NOT RECOMMENDED: CONTEMPT PROCEEDINGS



The use of contempt proceedings for failure to pay is not recommended. If contempt is used, the court shall conduct a hearing. At the hearing, the court shall investigate the charge and hear any answer or testimony that the accused makes or offers and shall determine whether the accused is guilty of the contempt charge. The Constitution requires that before punishing someone for failing to pay a fine or fee, a court must inquire into the individual’s ability to pay.

- Contempt for failure to pay requires a hearing under R.C. 2705.05.
- Contempt should be used as a last resort.
- Consider alternatives to financial sanctions in R.C. 2152.20(D).

## RESTITUTION

### Amount

- Court must find a definite amount of restitution and must determine the amount is reasonable. An evidentiary hearing must be held before a court can order an offender to pay restitution if the amount is disputed.<sup>23</sup>
- The amount is limited to the actual economic loss that criminal conduct caused.<sup>24</sup>
- Court record must contain competent, credible evidence to show amount.<sup>25</sup>
- Court may apportion a restitution among co-defendants.<sup>26</sup>

## RESTITUTION - *cont.*

### Victims

- Court may establish a victim-offender mediation program in which victims and offenders meet to discuss the offense and suggest possible restitution.<sup>27</sup>
- A delinquent child, a victim, or a survivor of a victim (through the prosecutor) may file a motion for modification of the payment terms.<sup>28</sup>
- Restitution may be in the form of a cash reimbursement paid in a lump sum or in installments, the performance of repair work to restore any damaged property to its original condition, the performance of a reasonable amount of labor for the victim or survivor of the victim, the performance of community service work, any other form of restitution devised by the court, or any combination of the previously described forms of restitution.<sup>29</sup>

### Parents

- Court cannot order parent to pay restitution in a delinquency proceeding.<sup>30</sup>
- Parents may be held liable for restitution through a separate civil suit filed in a municipal, county court, or the general division of a common pleas court.
- Liability of parents for destructive acts or theft by children = \$10,000 maximum.<sup>31</sup>
- Liability of parents for assaults by children = \$10,000 maximum.<sup>32</sup>
- Damages recoverable for vandalism, desecration, or ethnic intimidation = \$15,000 maximum.<sup>33</sup>

## DIVERSION PROGRAMS OR OTHER ALTERNATIVES TO ADJUDICATION



The juvenile court should not condition entry into a diversion program or another alternative to adjudication on the payment of a fee if the youth or the youth's family is unable to pay the fee.<sup>34</sup>

Due process and equal protection plainly prohibit juvenile courts and other juvenile justice agencies from treating two similarly situated children differently based solely on their economic status or economic status of their parents.<sup>35</sup>

## COMMUNITY SERVICE

A term of community service **in lieu of financial sanctions:**

- Must be considered if the child is indigent.
- May be considered if:
  - The child is not indigent;
  - Fails to pay.<sup>36</sup>

*See References, p. 4.*

## REFERENCES

Click on a statute or case citation for a link to the text.

- 1 *Strattman v. Studt*, 20 Ohio St.2d 95 (1969).
- 2 R.C. 2151.54. (Must make a specific finding of indigency and waive all other costs before waiving costs required under R.C. 2743.70 or R.C. 2949.091.)
- 3 *In re Graham*, 7th Dist., Case No. 02 CA 67, 2002-Ohio-6615.
- 4 R.C. 2152.20.
- 5 *In re Rinehart*, 10 Ohio App.3d 318, (4th Dist. 1983).
- 6 R.C. 2152.22(A).
- 7 U.S. Dep't of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (January 2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.
- 8 *Id.*
- 9 *In re McClanahan*, 5th Dist., Case No. 2004AP010004, 2004-Ohio-4113 (Hearing on ability to pay upon the imposition of fines or costs is discretionary (Also *In re Carter*, 4th Dist., Case Nos. 04CA15 and 04CA16, 2004-Ohio-7285), but hearing to determine ability to pay after failure to pay is mandatory.
- 10 U.S. Dep't of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (January 2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.
- 11 *Id.*
- 12 R.C. 2152.20(A)(4)(b).
- 13 *In re J.W.*, 12th Dist., Case Nos. CA2004-02-036 and CA2004-03-061, 2004-Ohio-7139; Juv.R. 4; OAC 120-1-05.
- 14 *In re J.W.*, 12th Dist., Case Nos. CA2004-02-036 and CA2004-03-061, 2004-Ohio-7139; Juv.R. 4; OAC 120-1-05.
- 15 R.C. 2152.20(E).
- 16 R.C. 2152.20(E).
- 17 R.C. 2152.20(D).
- 18 R.C. 2335.19.
- 19 R.C. 2947.09.
- 20 *In re Rinehart*, 10 Ohio App.3d 318, (4th Dist. 1983).
- 21 *In re R.K.*, 8th, R.C. 2152.19(A)(4)(l); Dist., Case No. 84948, 2004-Ohio-6918.
- 22 R.C. 2151.542.
- 23 *In re Holmes*, 70 Ohio App.2d 75, 76-77 (1st Dist. 1980); *In re Clemens*, 11th Dist., Case No. 2001-L-004, 2002-Ohio-3370.
- 24 *State v. Brumbeck*, 109 Ohio App.3d 65 (9th Dist. 1996).
- 25 *In re Hatfield*, 4th Dist., Case No. 03CA14, 2003-Ohio-5404.
- 26 *In re Daudt*, 1987 WL 13715, 1987 Ohio App. LEXIS 7717 (12th Dist. 1987).
- 27 R.C. 2152.19(C).
- 28 R.C. 2152.20(A)(3).
- 29 R.C. 2152.20(A)(3) - (4).
- 30 *In re Daudt*, 1986 WL 9630, 1986 Ohio App. LEXIS 8105 (12th Dist. 1986).
- 31 R.C. 3109.09.
- 32 R.C. 3109.10.
- 33 R.C. 2307.70.
- 34 U.S. Dep't of Justice, Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (January 2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.
- 35 *Id.*
- 36 R.C. 2152.20(D); R.C. 2152.19.