



### IMPOSING FINES AND COURT COSTS

- In determining whether to impose a fine, the court should consider the reasons a fine is appropriate, the financial resources and obligations of the defendant and the burden payment of a fine will impose, ability of the defendant to pay, and the extent to which payment of a fine will interfere with the defendant's ability to make restitution.<sup>1</sup>
- Docket fees and other costs in criminal cases shall be assessed at the time of conviction.<sup>2</sup>

- Trial courts retain jurisdiction to permit payment of costs, fines, and/or restitution at some later date, or in specified installments. The trial court may also, should the defendant fail to pay a fine and/or restitution, reduce the fine to an amount the defendant may pay, modify the fee payment schedule, or release the defendant from the obligation to pay the fine.<sup>3</sup>
- When multiple offenses arise from the same incident, docket fees and other court costs should generally be assessed on the basis of the most serious offense for which the defendant is convicted. A judge may, in his or her discretion, assess costs for each conviction.<sup>4</sup>

### ENFORCING FINES BY IMPOSING JAIL

- **In no case shall an indigent defendant be incarcerated for inability to pay a fine or court costs or restitution.**<sup>5</sup>
- A person may be jailed for *willful* nonpayment of a fine that he or she has the ability to pay.<sup>6</sup>
- Incarceration shall not automatically follow nonpayment and should be employed only after the court has examined the reasons for nonpayment.<sup>7</sup> This examination should include the defendant's financial, employment, and family standing, and the reasons for nonpayment of the fine and/or restitution, including whether nonpayment of the fine and/or restitution was contumacious or due to indigence.<sup>8</sup>
- Before committing an offender to jail for nonpayment of fines, a court must examine reasons for nonpayment and make specific determinations and findings that the defendant willfully refused to pay, failed to make sufficient bona fide efforts to pay, or that alternate measures to punish or deter are inadequate.<sup>9</sup>

- In the event of incarceration for willful nonpayment only, the period of incarceration may not exceed the maximum periods set forth in Ala. Code § 15-18-62.
- If, at the time the fine was imposed or the restitution was ordered, a sentence of incarceration was also imposed, the aggregate of the period of incarceration imposed for nonpayment and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense.<sup>10</sup>
- If the fine was imposed in connection with a felony, the period of incarceration for nonpayment may not exceed one (1) year.<sup>11</sup>
- If the fine was imposed in connection with a misdemeanor or municipal ordinance violation, the period of incarceration for nonpayment may not exceed one-third (1/3) of the maximum term of incarceration authorized for the offense.<sup>12</sup>

### COURT ACTIONS ON NONPAYMENT

#### PERMISSIBLE ACTIONS:

- Community Service<sup>13</sup>
- Reducing or Remitting Amount Due
- Voluntary Payment<sup>14</sup>
- Payment Plan<sup>15</sup>
- Collection Agency<sup>16</sup>
- Imposing Jail for Willful Nonpayment Only (see *Enforcing Fines*)
- Suspension of Driver's License or Restricted Driving Conditions<sup>17</sup>
- Attachment of Prisoner Property<sup>18</sup>
- Contempt of Court<sup>19</sup>
- Execution of Civil Judgment<sup>20</sup>
- Forfeiture of Confiscated Money<sup>21</sup>
- Order Employer to withhold wages<sup>22</sup>

#### IMPERMISSIBLE ACTIONS:

- Violation or Extension of Probation<sup>23</sup>
- Refusal to Accept Filings<sup>24</sup>
- Jailing or threatening to jail a person who is indigent or other wise unable to pay.

### CONTEMPT

- Nonpayment of a fine or court costs constitutes contempt only where the court determines, after proper notice and an evidentiary hearing, that defendant has willfully refused to comply with the court's order to pay.<sup>25</sup>

### OTHER REMEDIES FOR NONPAYMENT

- If a defendant fails to pay a fine, the court may reduce the fine to an amount the defendant is able to pay, continue or modify the payment schedule, or release the defendant from the obligation to pay.<sup>26</sup>
- For indigent defendants, the court should consider alternative public service in lieu of fines, where the State's goals of punishment and deterrence are adequately served.<sup>27</sup> Municipal courts have the authority to remit fines and require competent defendants to attend educational, corrective or rehabilitative programs.<sup>28</sup> Alternatively, municipal courts may allow a defendant to work off, under municipal direction, the amount of an unpaid judgment at a rate of at least \$10.00 per day of service.<sup>29</sup>

## PROBATION

- Probation may be used only when a suspended sentence is imposed following a conviction.<sup>30</sup>
- For misdemeanors, “in no case shall the maximum probation period...exceed two (2) years.”<sup>31</sup>
- Community service may be imposed as a condition of probation. Conditions requiring payment of fines, restitution, reparation or family support should not go beyond the probationer’s ability to pay.<sup>32</sup>
- In order to revoke probation for nonpayment, defendant must be given proper notice and the court must conduct an evidentiary hearing. Only where the evidence presented shows that defendant willfully failed to make payment may the Court then sentence Defendant to imprisonment within the authorized range of its sentencing authority.<sup>33</sup>
- If the evidence shows that defendant is indigent, the court must consider alternative measures of punishment other than imprisonment.

## RIGHT TO COUNSEL

- The court must provide access to legal counsel, including to misdemeanor defendants, in any proceeding in which there is a possibility of incarceration.<sup>34</sup>
- A probationer is entitled to be present at the probation revocation hearing and to be represented by counsel.
- When probation is revoked and the defendant was not provided access to counsel in the original underlying adjudication, the court cannot impose jail time.<sup>35</sup>

## ENDNOTES:

<sup>1</sup>Ala. R. Crim. P. 26.11(b).

<sup>2</sup>Ala. R. Crim. P. 26.11(c).

<sup>3</sup>Ala. R. Crim. P. 26.11(h).

<sup>4</sup>Ala. Code § 12-19-150(c) (2014).

<sup>5</sup>Ala. R. Crim. P. 26.11(i)12); *Tate v. Short*, 401 U.S. 395 (1971) see also Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).

<sup>6</sup>Ala. R. Crim. P. 12.11(h)(3), (i)(2); *Taylor v. State*, 47 So. 3d 287, 289-90 (Ala. Crim. App. 2009).

<sup>7</sup>Ala. R. Crim. P. 26.11(i)(1).

<sup>8</sup>Ala. R. Crim. P. 26.11(g).

<sup>9</sup>*Taylor v. State*, 47 So. 3d at 290; see also Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).

<sup>10</sup>Ala. R. Crim. P. 26.11(i)(1)(iv).

<sup>11</sup>Ala. R. Crim. P. 26.11(i)(1)(ii).

<sup>12</sup>Ala. R. Crim. P. 26.11(i)(1)(iii).

<sup>13</sup>Code of Ala. § 12-14-10 and 12 (1975); Ala. R. Crim. P. 27.1.

<sup>14</sup>Ala. R. Crim. P. 26.11(b).

<sup>15</sup>Ala. R. Crim. P. 26.11(d).

<sup>16</sup>*Wilkins v. Dan Haggerty & Associates, Inc.*, 672 So.2d 507, 510 (Ala.1995).

<sup>17</sup>Ala. R. Crim. P. 26.11(i)(3); Code of Ala. § 12-14-10 (1975).

<sup>18</sup>Code of Ala. § 15-18-180 (restitution).

<sup>19</sup>*Little v. State*, 693 So. 2d 30, 30-32 (Ala. Crim. App. 1997).

<sup>20</sup>*Smith v. State*, 335 So. 2d 393, 395 (Ala. Crim. App. 1976); Ala. R. Crim. Pro. 26.11(k).

<sup>21</sup>Ala. Code 1975 § 15-5-65; *Heard v. State*, 607 So. 2d 260, 261 (Ala. Civ. App. 1992).

## INDIGENCE

- In determining indigence, the court shall recognize ability to pay as a variable depending on the nature, extent and liquidity of assets, disposable net income of the defendant, the nature of the offense, the effort and skill required to gather pertinent information and the length and complexity of the proceedings.<sup>36</sup>
- A defendant whose income is at or below 125% of the Federal Poverty Level is presumed to be indigent.<sup>37</sup>
- In determining indigence and ability to pay, the court cannot consider the assets of relatives or friends.<sup>38</sup>
- A court may develop a form to uniformly collect earning and asset information from defendants, which may be required to be completed under oath. The Administrative Office of Courts has developed an Affidavit of Substantial Hardship for civil proceedings that may provide helpful guidance

## BAIL

- Except as provided in Ala. Code § 15-13-3(a), a defendant before conviction is entitled to bail as a matter of right.<sup>39</sup>
- Any bail that is set must be reasonable, with consideration of defendant’s ability to pay.<sup>40</sup>
- Holding an indigent defendant, otherwise eligible for release, solely because he cannot make a monetary bail payment violates the defendant’s right to equal protection under the law.<sup>41</sup>
- A system of monetary bail only, not providing for release on a defendant’s own recognizance in appropriate circumstances (including indigence), is unconstitutional.<sup>42</sup>

<sup>22</sup>Ala. R. Crim. P. 26.11(h).

<sup>23</sup>Ala. R. Crim. P. 26.11.

<sup>24</sup>*Boddie v. Connecticut*, 401 U.S. 371, 381-82 (1971).

<sup>25</sup>Ala. R. Crim. P. 33.

<sup>26</sup>Ala. R. Crim. P. 26.11(h).

<sup>27</sup>*Jackson v. State*, 435 So. 2d 235, 238 (Ala. Crim. App. 1983).

<sup>28</sup>Code of Ala. § 12-14-10 (1975).

<sup>29</sup>Code of Ala. § 12-14-12 (1975).

<sup>30</sup>Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).

<sup>31</sup>Ala. Code §15-22-54(a) (1975).

<sup>32</sup>Ala. R. Crim. P. 27.1; see *Vandiver v. State*, 401 So. 2d 326 (Ala. Crim. App. 1981).

<sup>33</sup>*Bearden v. Georgia*, 461 U.S. 660, 672 (1983); Ala. Code §15-22-54 (1975).

<sup>34</sup>See *Gideon v. Wainwright*, 372 U.S. 335 (1963). See also *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

<sup>35</sup>*Alabama v. Shelton*, 535 U.S. 654 (2002).

<sup>36</sup>Ala. Code § 15-12-5 (2014).

<sup>37</sup>Ala. Code § 15-12-1 (2014).

<sup>38</sup>*Ex parte Sanders*, 612 So. 2d 1199 (Ala. 1993); *Quick v. State*, 825 So. 2d 246 (Ala. Crim. App. 2001).

<sup>39</sup>Ala. Code § 15-13-1 (2014).

<sup>40</sup>Ala. R. Crim. P. 7.2; Alabama Judicial Inquiry Commission, Advisory Opinion No. 14-926 (March 4, 2014).

<sup>41</sup>E.g., *State v. Blake*, 642 So. 2d 959, 968 (Ala. 1994).

<sup>42</sup>*Id.*