



# THE SUPREME COURT *of* OHIO

OFFICE OF JUDICIAL SERVICES

## COLLECTION OF FINES AND COURT COSTS IN ADULT TRIAL COURTS

**Fines are separate from 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> Sole authority exists under **R.C. 2947.14** for a court or magistrate to commit an offender to jail for nonpayment of *fin*es in a criminal case. An offender **CANNOT** be held in contempt of court for refusal to pay fines.<sup>2</sup> Accordingly, unpaid fines and/or court costs may neither be a condition of probation, nor grounds for an extension or violation of probation.

### ENFORCING FINES BY IMPOSING JAIL

- A person may be jailed for a willful refusal of nonpayment of a fine that he or she has the ability to pay.<sup>3</sup>
- Prior to committing an offender to jail for nonpayment of fines, an economic ability-to-pay hearing is required, but this requirement does not arise until the trial court decides to jail the offender for failure to pay fines.<sup>4</sup>
- Notice must be provided at a reasonable time prior to the hearing.<sup>5</sup>
- A person has a right to counsel (including a public defender or court-appointed attorney) for the hearing.<sup>6</sup>
- Any person jailed for failure to pay a fine shall receive credit upon the fine at the rate of fifty dollars per day *or per fraction of a day*.<sup>7</sup>
- The court shall inquire and make a determination of an offender's ability to pay a fine, which shall be supported by findings of fact set forth in a judgment entry that indicates the offender's ability to pay, as well as the income, assets, and debts, as presented by the offender.<sup>8</sup>
- A person cannot be ordered to serve additional days for failure to pay a fine if the maximum jail sentence was imposed and served.<sup>9</sup> Under R.C. 2947.14(E), no commitment pursuant to this section shall exceed six months.

### IMPOSING COSTS

- Trial court must impose court costs at time of sentencing.<sup>10</sup>
  - Stated at sentencing hearing
  - Written in sentencing order
- Trial court has a mandatory duty to inform a defendant at the time of sentencing that failure to pay court costs may result in imposition of community service.<sup>11</sup>
- Trial court retains jurisdiction to waive, suspend, or modify the payment of costs at the time of sentencing or any time thereafter.<sup>12</sup>
- A court may not order a person to appear or issue a warrant for unpaid court costs.<sup>13</sup>

Note: When both fines and court costs are owed, the court has the obligation to segregate and/or allocate the amounts when imposing jail time for nonpayment, so that the appropriate mechanisms can be utilized to collect each.<sup>14</sup>

### LIMITATION OF CONTEMPT

1. Contempt **may not** be used in lieu of R.C. 2947.14 to impose jail time to collect fines.<sup>15</sup>
2. Contempt **may not** be used to collect costs.<sup>16</sup>
3. If community service is in lieu of either fines or court costs, contempt **may not** be imposed for failure to perform.<sup>17</sup>

Contempt of court may be applied if a defendant fails to appear for a court-ordered hearing, including a hearing under R.C. 2947.14, but only after the defendant has been served with a separate citation for contempt of court, notice, and advised of the right to counsel (including appointed, if applicable) and jury trial. Contempt may not be used to create a jail sentence that does not exist with the underlying offense. Contempt for non-appearance cannot be used on a summary basis. If contempt is used for non-appearance at a payment hearing, then any imposition of jail time must be based upon the failure to appear, **not for the failure to pay fines.**

Failing to follow the dictates of R.C. 2947.14 and using contempt as a sanction to collect fines can result in disciplinary violations.<sup>18</sup>

### ALLOCATION OF COURT COSTS, FINES, RESTITUTION & REIMBURSEMENTS IN MISDEMEANOR CASES (R.C. 2949.111)

Unless the court enters in the record of the case a different method of assigning payments, the clerk shall assign the offender's payment in the following manner:

1. Court costs, until entirely paid, then;
2. State fines or costs, on a pro rata basis, until entirely paid, then;
3. Restitution, until entirely paid, then;
4. Fines, until entirely paid, then;
5. Reimbursements

## COLLECTING FINES

### Permitted Methods of Collection:

- Voluntary Payment<sup>19</sup>
- Payment Plan<sup>20</sup>
- Collection Agency<sup>21</sup>
- Community Service<sup>22</sup>
- Attachment of Prisoner Accounts<sup>23</sup>
- Execution of Civil Judgment<sup>24</sup>
- Registration Block<sup>25</sup>
- Imposing Jail (see Enforcing Fines)
- Driver's License Forfeiture<sup>26</sup>
- Warrant Block<sup>27</sup>
- Extension of probation if within maximum allowable term of probation and if made a condition of probation

### Non-permitted Methods of Collection:

- Contempt of Court<sup>28</sup>
- Forfeiture of Confiscated Money<sup>29</sup>
- Refusal to Accept Filings<sup>30</sup>
- Violation or Revocation of Probation<sup>31</sup>

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- Refusal to Accept Filings<sup>44</sup>
- Violation or Extension of Probation<sup>45</sup>

## AN ALTERNATIVE: CANCELLATION/DISCHARGE

If at any time the court finds that an amount owed to the court is due and uncollectible, in whole or in part, the court may direct the clerk of the court to cancel all or part of the claim.<sup>46</sup> The court retains jurisdiction to waive, suspend, or modify the payment of the costs of prosecution, including any costs under R.C. 2947.231, at the time of sentencing or at any time thereafter.<sup>47</sup>

## COMMUNITY SERVICE AS PAYMENT FOR COURT COSTS

R.C. 2947.23 authorizes a court to convert court costs to community service when a defendant fails to pay court costs or comply with a payment plan to pay court costs.

- Notice must be given to the defendant and the prosecuting attorney
- An evidentiary hearing must be held

Defendant is entitled to credit at no less than the specified hourly credit rate defined by 29 U.S.C.A. 206(a)(1).

## COMMUNITY SERVICE SCHEDULE

Offense	Statutory Authority	Limitation
Minor Misdemeanor	R.C. 2929.27(D)	Maximum 30 hours
Second, Third, and Fourth Degree Misdemeanor	R.C. 2929.27(A)	Maximum 200 hours
First Degree Misdemeanor	R.C. 2929.27(A)	Maximum 500 hours
Unclassified Misdemeanor	Suspended License Offenses <sup>48</sup>	Maximum 500 hours
Felony	R.C. 2929.17 R.C. 2951.02	Maximum 500 hours
Satisfaction of Court Costs	R.C. 2947.23	No less than federal minimum hourly wage rate; hearing required
Satisfaction of Fines <sup>49</sup>	R.C. 2929.28	Not specified; hearing not required

### ENDNOTES

- <sup>1</sup>Stratman v. Studt (1969), 20 Ohio St.2d 95.
- <sup>2</sup>Cleveland v. Anderson (1992), 82 Ohio App.3d 63.
- <sup>3</sup>State v. Ellis, 2d Dist., 2008 Ohio 2719.
- <sup>4</sup>State v. Perkins (2003), 154 Ohio App.3d 631.
- <sup>5</sup>State v. Swift, 2d Dist., 2005 Ohio 1595.
- <sup>6</sup>Id.
- <sup>7</sup>R.C. 2947.14 (D).
- <sup>8</sup>R.C. 2947.14 (B).
- <sup>9</sup>Stratman v. Studt (1969), 20 Ohio St.2d 95.
- <sup>10</sup>State v. Joseph, 125 Ohio St.3d 76, 2010-Ohio-954.
- <sup>11</sup>R.C. 2947.23 (A)(1)(a)(i).
- <sup>12</sup>R.C. 2947.23 (C).
- <sup>13</sup>Strongsville v. Waiwood (1989), 62 Ohio App.3d 521.
- <sup>14</sup>State v. Swift, 2d Dist., 2005 Ohio 1595.
- <sup>15</sup>Alliance v. Kelly (1988), 48 Ohio App.3d 133; Cleveland v. Anderson (1992), 82 Ohio App.3d 63.
- <sup>16</sup>State v. Lamb (2005), 163 Ohio App.3d 290.
- <sup>17</sup>Id. & State v. Ellis, 2d Dist., 2008 Ohio 2719.
- <sup>18</sup>Ohio State Bar Assn. v. Goldie (2008), 119 Ohio St.3d 428.
- <sup>19</sup>R.C. 2929.28 (F).
- <sup>20</sup>R.C. 2929.28 (F)(2).
- <sup>21</sup>R.C. 2929.18 (F) Felony; R.C. 2929.28 (F)(1) Misdemeanor.
- <sup>22</sup>R.C. 2929.28 (B).
- <sup>23</sup>R.C. 5120.133.
- <sup>24</sup>R.C. 2929.28 (D).
- <sup>25</sup>R.C. 1901.44 (B) Municipal Court; 1907.25 (B) County Court; 2947.09 (A) Common Pleas Court.
- <sup>26</sup>R.C. 4510.22 1st – 4th Degree Misdemeanor; R.C. 2935.27 Minor Misdemeanor.
- <sup>27</sup>R.C. 4503.13 Registration of Vehicle; R.C. 4507.091 Driver's License.
- <sup>28</sup>Alliance v. Kelly (1988), 48 Ohio App.3d 133; Cleveland v. Anderson (1992), 82 Ohio App.3d 63.
- <sup>29</sup>R.C. 2981.12 (G)
- <sup>30</sup>In re GMS Mgt. Co., Inc. v. Unpaid Court Costs, Fees and Delinquencies (2010), 187 Ohio App.3d 426.
- <sup>31</sup>R.C. 2947.14 (D), provides the basis for incarceration for willful non-payment of fines.
- <sup>32</sup>R.C. 2929.28 (F).
- <sup>33</sup>R.C. 2929.28 (F)(2).
- <sup>34</sup>R.C. 2929.18 (F) Felony; R.C. 2929.28 (F)(1) Misdemeanor.
- <sup>35</sup>R.C. 2947.23.
- <sup>36</sup>R.C. 5120.133.
- <sup>37</sup>R.C. 2929.28 (D).
- <sup>38</sup>R.C. 1901.44 (B) Municipal Court; 1907.25 (B) County Court; 2947.09 (A) Common Pleas Court.
- <sup>39</sup>State v. Swift, 2d Dist., 2005 Ohio 1595.
- <sup>40</sup>State v. Short, 2nd Dist. Darke No. 2011 CA 16, 2012-Ohio-2546.
- <sup>41</sup>Strongsville v. Waiwood, (1989), 62 Ohio App.3d 521.
- <sup>42</sup>State v. Ellis, 2d Dist., 2008 Ohio 2719.
- <sup>43</sup>State v. Cruise, (2009) 185 Ohio App.3d 230.
- <sup>44</sup>In re GMS Mgt. Co., Inc. v. Unpaid Court Costs, Fees and Delinquencies (2010), 187 Ohio App.3d 426.
- <sup>45</sup>Stratman v. Studt (1969), 20 Ohio St.2d 95.
- <sup>46</sup>R.C. 1901.263 (Municipal Court); 1905.38 (Mayor's Court); 1907.251 (County Court); 1925.151 (Small Claims Division of Municipal or County Court); 2101.165 (Probate Court); 2151.542 (Juvenile Court); 2303.23 (Court of Common Pleas).
- <sup>47</sup>R.C. 2947.23 (C).
- <sup>48</sup>The following R.C. sections (4507.35, 4510.111, 4510.12, 4510.16, 4510.21, and 4511.203) provide for a maximum of 500 hours of community work service if the offense is charged as a "first offense" with no prior convictions set out in the citation or charging document. For these offenses, a jail sentence may not be directly imposed, but to enforce the community service assignment, the defendant may be charged with indirect criminal contempt of court in accordance with R.C. 2705.02 et. seq. for failure to complete community service. This is a separate charge, however, and the defendant would be entitled to counsel, and, appointed counsel, if indigent.
- <sup>49</sup>Although the statute does not set out a rate of credit of a fine when converted to community service, the court in State v. Glasscock (1993), 91 Ohio App.3d 520 implied the appropriate rate to be the daily rate for incarceration under R.C. 2947.14. The current rate is \$50.00 per day.

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