



## MEMORANDUM

**TO:** The Pennsylvania Senate Judiciary Committee

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** June 6, 2022

**RE: SUPPORT FOR SB 1208 PN 1620 (BROWNE)**

**Bill summary:** [SB 1208](#) (PN 1620) would amend [42 Pa. C.S. § 9730](#) to allow for unpaid fines, costs, and restitution in magisterial district and common pleas courts to be referred to a debt collection agency or the county's collection enforcement unit when a defendant fails to appear.

SB 1208 is the product of increasingly rare, but exceptionally welcome, collaboration led by Senator Browne and his staff, Governor Wolf and his team, as well as Senator Santarsiero and his staff working with advocates to negotiate bill language that still accomplished Sen. Browne's legislative goal, while also ensuring that the bill's court debt collection process protected the due process rights of defendants. The ACLU-PA very much appreciated the invitation to collaborate and remains encouraged by its success.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to support Senate Bill 1208.**

### **SB 1208 adds crucial due process protections before referring cases to private debt collection.**

Protecting Pennsylvanians' due process rights is a foundational driver of the ACLU-PA's advocacy and litigation work, especially when it involves people whose rights are most vulnerable to violations—in this case, indigent defendants. We know from our [2020 study](#) of fines, costs, and restitution imposed and collected by PA criminal courts that our current practices impose disproportionate burdens on low-income Pennsylvanians. Indigent defendants in particular struggle to pay court-imposed financial assessments and Black Pennsylvanians owe more in combined financial sanctions than their White counterparts.<sup>1</sup> One statutory bulwark against such disproportionate sanctions is [42 Pa.C.S. § 9730](#), which is essential for protecting vulnerable defendants by ensuring that no person can be punished for being too poor to pay.

[Section 9730](#) of Title 42 was thoughtfully drafted nearly 30 years ago to carefully balance defendants' constitutional rights with the needs of courts to collect fines, costs, and restitution from defendants who **can pay** but willfully **refuse to pay**. In such cases, courts must first hold a hearing where the defendant is present. The court is only permitted to impose punishment if (1) it makes a finding on the record that the defendant has the ability to pay, **and** (2) is refusing to pay.<sup>2</sup> Whether the punishment is incarceration or referral to a private debt collection agency with a surcharge, the statute has always respected the constitutional limitations established by the Pennsylvania and U.S. Supreme Court.

Like its predecessor, [SB 516](#), the goal of SB 1208 is to help counties collect unpaid court debt. If a defendant fails to appear at a scheduled hearing for nonpayment of fines, costs, or restitution, SB 1208 would allow a judge, including a magisterial district judge (MDJ), to send the defendant's delinquent account to the county collections unit or a private debt collection agency.<sup>3</sup> But when debt is referred to a private collection agency, a 25% surcharge is added to the amount owed, which effectively alters—in absentia—a defendant's sentence.<sup>4</sup>

<sup>1</sup> ACLU of Pennsylvania, [Imposition and Collection of Fines, Costs, and Restitution in Pennsylvania Criminal Courts](#) (December 2020).

<sup>2</sup> [42 Pa.C.S. § 9730\(b\)\(2\)](#).

<sup>3</sup> 9730(b)(2.1).

<sup>4</sup> [42 Pa.C.S. § 9730.1](#)

The ACLU-PA's opposition to SB 516 stemmed from conflicts it created with § 9730 and fundamental due process guarantees, namely that it would have allowed courts to impose this surcharge without a hearing—a substantial departure from existing practice, which only allows referrals **after** the court holds a hearing **and** determines that the defendant is financially able to pay. In the same way that the court cannot simply order a defendant jailed for nonpayment of fines, costs, or restitution for not appearing at a hearing, the court also cannot impose a 25% surcharge, which could potentially add hundreds or even thousands of dollars, onto a person's debt by sending it to a private debt collection agency. Such an action is as clearly an infringement on the defendant's constitutionally-protected property interest as jail would be on the person's liberty interest.<sup>5</sup>

Importantly, SB 1208 adds clarifying language to mitigate against such infringements.<sup>6</sup> If a case is referred to a collection agency, SB 1208 would allow the defendant to request a new financial determination hearing, which the court must then hold. Once that request is made, debt collections must cease until the hearing is held. Although we remain concerned that failure to appear is sufficient to send a case to a private debt collector (and incur the 25% surcharge), new provisions in the bill offer some protections and benefits:

- Requiring new determination hearings be held when requested means that even after collection agencies are involved, ability to pay can still be considered by the court.
- Establishing a process to request and receive a new determination hearing also means that defendants now have a potential pathway to getting a case *removed* from collections when warranted, i.e. the person is unable to afford to pay.
- Furthermore, this provision now clarifies that ability to pay hearings must proceed like any other under this subsection,<sup>7</sup> which tells the court what its options are—either find the defendant able to pay or unable to pay. If unable to pay, the court must create a payment plan, order community service, or waive the debt.

### **SB 1208 will set forth the court's authority to waive or reduce fines or costs for indigent defendants.**

SB 1208 adds two vital protections to § 9730(b)(3) when a court finds a defendant is unable to pay in a single payment. In fact, these two provisions moved the ACLU-PA's position on SB 1208 from neutral to support:

- First, when a defendant is unable to pay, this section now provides that courts have the discretion to **reduce or waive any fines or costs** (not restitution). This may seem like a technical clarification, but it will yield significant benefits—not only for indigent defendants, but, perhaps counterintuitively, for courts and counties as well. Counties and courts are frustrated by the pile of outstanding debt on their books. But the underlying problem is that courts continue to waste resources trying to collect money that people just don't have—bad debt that is simply uncollectible. The option to waive uncollectible debt is certainly preferable to repeatedly trying to get blood from a stone.
- Second, if a defendant is ultimately found unable to pay, the **court must waive the unpaid collection fee** (i.e., the 25% surcharge). This provides a critical fix for the due process concerns that arise when courts send in absentia cases to private debt collectors and was in part the basis for the ACLU-PA's opposition to SB 516.

### **SB 1208 limits adverse credit reporting by requiring that defendants first get a hearing and are found able to pay.**

Section 9730.1 ensures that credit reporting agencies are not informed of cases sent to private debt collection unless the court holds a hearing at which the defendant is (1) **present, and** (2) finds the defendant **able to pay**.<sup>8</sup> Adverse credit reports<sup>8</sup> can cause wide-ranging damage, including to housing security, job prospects, and access to credit—all of which makes it harder for defendants to pay their debt **and** for counties to collect it.

<sup>5</sup> See, e.g., [Nelson v. Colorado](#), 137 S.Ct. 1249, 1255 (2017) (an obligation to pay fines, costs, or restitution is a property interest protected by due process); [Buck v. Beard](#), 879 A.2d 157, 160 (Pa. 2005) (same).

<sup>6</sup> 9730(b)(2.2).

<sup>7</sup> [42 Pa.C.S. § 9730\(b\)](#).

<sup>8</sup> Pursuant to [42 Pa.C.S. § 9730\(b\)](#).

**SB 1208 will provide for uniform payment options across Pennsylvania's courts.**

Under § 9730(a), courts will now be required to accept credit card **and** debit card payments. Currently, each county decides whether to accept credit / debit cards. This will provide badly needed uniformity in payment options so that defendants have the same methods to pay regardless of where they live.

Furthermore, automated payments will bring in more revenue (likely even more than private debt collectors); reduce the risk of defendants defaulting on their payments; and reduce the need for costly warrants and court hearings because defendants will be able to set up automatic, recurring monthly payments. This is clearly a win-win for courts and defendants.

SB 1208 provides counties and courts with a new tool to help them collect outstanding court debt without sacrificing the due process rights of indigent defendants. And by offering enhanced provisions to give judges and defendants greater flexibility and more options, SB 1208 will help counties focus on collectible debt while making it easier for some defendants to pay off their debt.

**For these reasons, we urge you to support Senate Bill 1208.**