



June 27, 2021

The Honorable Tom Wolf
Governor, Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: Request to veto Senate Bill 516

Dear Governor Wolf,

[Senate Bill 516](#) will soon be on your desk, having passed the House last week by a vote of [109-92](#) with nine Republican representatives voting against it. While we certainly understand the challenges counties face when trying to collect unpaid court debt, the solution proposed by SB 516 is not only an ineffective and disproportionately burdensome remedy, it is also likely an unconstitutional one.

If a defendant fails to appear at a scheduled hearing for nonpayment of fines, costs, or restitution, SB 516 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. But when debt is referred to a private collection agency, a 25% surcharge is added to the amount owed.

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.¹ SB 516 would likely exacerbate those disparities by disproportionately imposing this surcharge on indigent Pennsylvanians and people of color. Furthermore, SB 516 would allow 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.” [Section 9730\(b\)\(2\)](#).²

Section 9730 was carefully drafted nearly 30 years ago to carefully balance defendants' constitutional rights with the needs of the court to collect fines, costs, and restitution from defendants who **can pay** but willfully **refuse to pay**. To that end, courts must first hold a hearing where the defendant is present. If they fail to appear, the judge can issue a bench warrant to have them arrested and brought in for a hearing. The court is then only permitted to impose punishment if it makes a finding on the record that the defendant has the ability to pay and is refusing to pay. 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. SB 516 would upend that balance in violation of the Constitution.

As a result, SB 516 is likely unconstitutional. 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 add a 25% surcharge, which could potentially be 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.³

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

² [42 Pa.C.S. § 9730\(b\)\(2\)](#).

³ 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).

The proposed process under SB 516 is particularly egregious given that such collections often happen years after a ticket is adjudicated, when an MDJ likely has an old, invalid address. Accordingly, the only “notice” that the court would send prior to referring the matter to a private debt collector would be a first-class letter to a bad address. Absent evidence that a defendant actually received a letter to appear for a hearing and then refused to attend, there would be no basis to proceed without the defendant being present. Mailing a letter to an old address is not sufficient given the substantial constitutionally-protected interests at stake.

The ACLU-PA agrees that we need to reform the way courts collect fines, costs, and restitution. And we know 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. Because SB 516 fails to address that problem, it is unlikely to yield better collection rates.

There are more effective ways to collect unpaid debt from those who can afford to pay without further penalizing those who can't. We've seen collections improve just by enhancing existing resources. Counties such as Chester, Armstrong, Montgomery, and Westmoreland have worked with their collections staff to change how they engage with people who owe court debt. Staff make outbound calls to people who owe fines, costs, or restitution; they send letters that don't threaten people with jail, but rather offer to help people meet their obligations; and they meet with people individually to set up payment plans. Making these simple changes to how collections staff communicate with defendants has **increased the collection rates** for each of these counties and **saved them money** on bench warrants, which are expensive to issue.⁴

More permanent improvements can be accomplished legislatively by modernizing our collections system while protecting, and in some cases strengthening, defendants' constitutional rights. There are many ways to improve the process, but a few suggested changes include:

- Sending email and/or text messages to remind defendants to make their monthly payments.
- Mandating that counties allow MDJs to accept credit cards in person.
- Allowing defendants to set up recurring credit card payments for automatic payment.
- Allowing MDJs to reduce or waive fines and costs at any time if the defendant cannot afford to pay them.
- Requiring that all court debt, whether from MDJs or common pleas, be collected by a centralized collections enforcement unit in each county.
- And to reduce uncollectible debt, requiring that fines and costs be tailored to what the defendant can afford to pay and establishing clear guidelines for judges to use when determining ability to pay.

We will continue our work with legislators to improve this process, whether by recommending statutory changes, providing feedback on bill language, or drafting additional legislation. We support the intended goal of SB 516, but we emphatically oppose the mechanism by which it attempts to achieve that goal.

For these reasons, and on behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to veto Senate Bill 516.

Sincerely,

Elizabeth Randol, Legislative Director
ACLU of Pennsylvania

⁴ More than 600,000 warrants are issued each year for people who fall behind on payments. Counties contract with constables to serve those warrants, often at considerable expense. For example, see: "[Berks County Taxpayers Are on the Hook for up to \\$439,196 in Reading Constable Pay.](#)" Reading Eagle, 11 Mar. 2019.