



## MEMORANDUM

**TO:** The Pennsylvania Senate Judiciary Committee

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

**DATE:** May 21, 2021

**RE: OPPOSITION TO SB 516 P.N. 507 (BROWNE)**

**Bill summary:** [SB 516](#) (PN 507) amends [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 when a defendant fails to appear.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 516.**

### **The debt referral process created by SB 516 is likely unconstitutional.**

If a judge, including a Magisterial District Judge (MDJ), schedules a hearing for nonpayment of fines, costs, and/or restitution and the defendant does not appear, SB 516 would allow the court to send the delinquent account to a private debt collection agency. Referring debt to a private collection agency also adds a 25% surcharge to the amount owed. In other words, the bill would allow courts to impose a 25% surcharge on thousands of indigent Pennsylvanians who have already been unable to pay fines and costs due to their poverty without the defendant appearing before the court to explain the reasons for nonpayment. It would be a substantial shift from existing practice, which allows such a referral to a private debt collection agency only *after* the court holds a hearing and determines that the defendant is “financially able to pay.” [42 Pa.C.S. § 9730\(b\)\(2\)](#).

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. 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). While there is the need for reform in the way courts collect fines, costs, and restitution, SB 516 does nothing to address the problem that courts are wasting resources trying to collect bad debt rather than focusing on defendants who can actually pay and are willfully refusing to pay.

The proposed process is particularly egregious given that such collections practices 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. While the co-sponsorship [memo](#) mentions that there is a “notice provision to address any due process issues,” mailing a letter to an old address is not sufficient given the substantial constitutionally-protected interests at stake.

Section 9730(b) 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 that some defendants can pay yet refuse to pay. To that end, it always requires that a court first hold a hearing where a defendant is present. And it only permits the court to impose punishment if the court makes findings on the record that the defendant has the ability to pay and is refusing to pay. Whether this punishment is incarceration or referral to a private debt collection agency with an associated surcharge, the statute has always respected the constitutional limitations set by the Pennsylvania and United States Supreme Court. SB 516 would upend that balance and violate the Constitution.

**For these reasons, we urge you to oppose Senate Bill 516.**