

WV Municipal Courts

*GUIDE TO
IMPLEMENTING
MUNICIPAL
PAYMENT PLANS*

Edition 3 – October 2021

Contents

WV Municipal Courts	1
Overview	3
Notes on incarcerated defendants.....	4
Section 1 – New Citation Processing	4
1.1 Citation Court Dates.....	4
1.2 Appearance prior to court dates.....	5
1.3 Appearance on court dates	5
1.4 Failure to appear on court dates	6
1.5 Failure to pay or request payment plan	6
Section 2 – Payment Plan Administration.....	6
2.1 Enrolling in a payment plan.....	7
2.2 Calculating payment amounts and number of payments, and completing the payment contract	8
2.3 Applying payments.....	10
2.4 Late payments and defaulted payment plans	11
2.5 Combining payment plans for subsequent offenses.....	13
Section 3 – Collections and Liens	15
3.1 Filing Liens	15
3.2 Collection Consignment	15
Section 4 – Suspensions effective before July 1, 2020	16
4.1 Payment in Full	16
4.2 Payment Plan.....	17
Section 5 – Incarcerated defendants search	18
5.1 Searching the regional jail system	19
5.2 Searching the WV Division of Corrections prison system.....	19
Appendix A – House Bill 4958.....	21
Appendix B – Sample Forms.....	27
Appendix C – Process Workflow Diagrams	33
Appendix D – Frequently Asked Questions	37

Overview

As part of its initiative on criminal justice reform, the 2020 West Virginia Legislature passed HB 4958 which changed the ability of municipal, magistrate, and circuit courts to suspend driver's licenses for non-payment of court fines, fees, and costs. West Virginia State Code Sections §8-10-2a and §8-10-2b applicable to municipal courts were changed to accomplish the Legislature's goal. A copy of the portions of HB 4958 applicable to municipalities is attached as Appendix A.

What changed:

- Courts have express authority to pass through credit card processing fees to the person paying court costs, fines, fees, or penalties.
- Municipal Courts may no longer suspend driver's licenses for non-payment of fines, costs, or fees;
- Unpaid fines, costs, or fees can no longer be submitted to the WV State Tax Department for an offset;
- Payment plans must be offered to defendants who are willing to swear to and sign an affidavit that they are unable to pay court fines, costs, or fees;
- The duration of payment plans will be determined based on the calculation of the maximum payment amount and will not be limited to 180 days;
- An administrative fee is charged for setting up and administering a payment plan;
- A late fee may be charged for missed payments;
- Delinquent accounts may be sent to a collection agency;
- Judgement liens for delinquent accounts may be placed against the defendant.

This guide is intended to help with the implementation of this new law and to provide accurate information to Municipal Courts. It is provided with the understanding that the West Virginia Municipal League Inc., and its officers, members, employees, and agents are not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

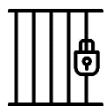
West Virginia State Code mandates that the uniform payment plan contract and financial affidavit forms created by the West Virginia Supreme Court and provided with this guide are to be used by municipal courts without material amendment. Additional forms provided with this guide are intended as examples only and may be modified to fit individual court preferences. Actual forms used by municipal courts should be verified with the individual municipalities' legal counsel.

The West Virginia Municipal League is a West Virginia chartered non-profit organization formed pursuant to W. Va. Code § 8-12-6 to disseminate information and provide advocacy on behalf of West Virginia municipalities.

Notes on incarcerated defendants

In the new statute, there are several instances where courts are limited in the actions they can take against defendants who are incarcerated. At this time, it appears that the only method for the court to independently determine if a defendant is incarcerated is to query each defendant in the online databases for both the West Virginia Regional Jail System and the West Virginia Division of Corrections System. For courts with high volumes of defendants or limited administrative capacity, this type of inquiry for every defendant in all situations where incarceration is a factor may not be reasonable or practical. These searches also will not include defendants who may be incarcerated in border states, and the queries only return results for those that are in custody at the time the query is run and cannot provide historical information.

The other method of determining the incarceration status of a defendant is through self-reporting by the defendant. The complication with this is that defendants do not have a reliable or straightforward way to document that they were incarcerated, so courts will have to rely on the word of the defendant or try to independently verify with the applicable institution that the defendant was incarcerated.



This guide includes notes on incarcerated defendants in the applicable sections. Each court should decide the extent to which it wants to independently verify the incarceration status of a defendant depending on the volume of defendants processed and administrative capacity of the court. The Magistrate and Circuit Courts will be relying on defendant self-reporting and will not be independently verifying incarceration status.

Section 1 – New Citation Processing

1.1 Citation Court Dates

If they are not already doing so, municipal police officers need to begin including a court date on every citation they issue. The court may still request the suspension of a defendant's driver's license if a defendant fails to appear in court, but the defendant must be given an initial court date in order to be able to affect the license suspension. Defendants may appear prior to that date to enter a guilty or no contest plea and either pay in full or set up a payment plan. It may be necessary or convenient to provide officers with calendar dates of court sessions in order for them to be able to quickly provide the information on the citation.

West Virginia Uniform Citation Detail

VIOLATOR RESPONSIBILITY	
<i>I Understand that I Have to Appear, On or Before,</i> _____	(Date)
_____	_____
Court Name and Address	Court Phone
<i>I Promise to Contact the Above Listed Court within the Time Specified. Failure to Appear Will Result in the Suspension of Driver's License.</i>	_____
	Violator Signature - Not an Admission of Guilt

This is the section that is the legal notice to the violator of their obligation to appear in court. When citations are received, the court will need to make sure that the court's name, address, and phone number appear in this section, and that the court date entered is valid. If any of this information is missing or incorrect, inform the issuing officer. Any incorrect information in this section may result in the dismissal of the charges or the inability to suspend the violator's license if they do not show up to court.

Remember that although there is a signature line for the violator, the citation is valid without a violator's signature.

1.2 Appearance prior to court dates

Defendants may enter a plea of guilty or no contest prior to their court date. The new statute does not impact how the court processes these pleas when the Defendant pays in full. The defendant may also request a payment plan. Requests for a payment plan should be processed according to Section 2. If the defendant does not pay in full or request a payment plan at the time they enter the plea, they have up to 90 days from the time they entered the plea to either pay in full, or enter into a payment plan.

If the defendant requests a payment plan within the 90-day window, process the plan according to Section 2. If after 90 days, they have not paid in full or requested a payment plan, process the citation according to Section 1.5.

For Defendants who appear prior to the court date on their citation, the 90-day clock to either pay or enter a payment plan starts when they enter their plea, regardless of their original court date.

1.3 Appearance on court dates

If a defendant appears on their assigned court date, and either pleads guilty or no contest, or is found guilty by the court, they may pay in full or request a payment plan on that day. However, if they do not pay or request a payment plan on that day, they have up

to 90 days to either pay in full, or to request a payment plan. If the defendant requests a payment plan within the 90-day window, process the plan according to Section 2. If after 90 days, they have not paid in full or requested a payment plan, process the citation according to Section 1.5.

1.4 Failure to appear on court dates

Municipal courts can still request that the DMV suspend the driver's licenses of defendants who fail to appear for their court dates. The court must wait 90 days before requesting that the DMV suspend a defendant's West Virginia license for failing to appear in court. The defendant may appear at any time in that 90 days to reschedule a court appearance, or enter a guilty or no contest plea, but the court has no obligation to further notify the defendant of the 90-day deadline. The method for requesting that the DMV suspend a license for failure to appear has not changed with the new statute.

1.5 Failure to pay or request payment plan

Defendants have 90 days after they plead guilty or no contest, or are found guilty to pay in full all fines, fees, and costs or to request a payment plan. If the defendant does not pay or request a payment plan within the 90 days, courts may impose a \$10.00 late fee in addition to the amount owed. This fee will be retained by the court and is not remitted to the state. The imposition of the late fee is at the discretion of the court.

If the defendant has not paid in full or requested a payment plan within 90 days after adjudication of the case, the court must send a notice to the defendant. The notice must contain:

- Notice that the defendant's payment is 90 days past due;
- Notice that the defendant has failed to enroll in a payment plan;
- Notice that a \$10.00 late fee has been assessed, if applicable;
- Notice that the defendant may be the subject of a judgement lien or have their debt sent to a collection agency or both.

A sample Notice of Failure to Pay or Respond is included with this guide.

If the defendant does not respond to the notice within **30 days from the date the notice is mailed**, the court may file a judgement lien, consign the amount for collection, or do both. More information about filing liens and collection consignment is contained in Section 3.

Section 2 – Payment Plan Administration

The most substantial change made by the new statute is the administration of payment plans. There is a new method for enrolling in a payment plan, for determining payment amounts and number of payments, and options for penalty and collection if the defendant defaults on their plan.

2.1 Enrolling in a payment plan

Under the new statute, all defendants must be offered an opportunity to enroll in a payment plan. However, the defendant must sign an affidavit attesting to the fact that they cannot pay the assessed fines, costs, and fees. The affidavit form has been developed by the West Virginia Supreme Court in accordance with the statute and must be used by municipal courts without material modification. Although the affidavit is required, payment plans are not need based. There is no income threshold below which a person must fall to be able to enroll in a plan and the information contained in the affidavit is to facilitate the calculation of the maximum monthly payment.

When a defendant enrolls in a payment plan, the court shall charge a \$25.00 plan administration fee **in addition to** all other fines, costs, and fees. This fee is retained by the municipal court. The \$25.00 plan administration fee may be paid in full at the time of enrollment or divided into no more than five payments to be added to the minimum payment amount on the first payments in the plan.

No payment from the defendant is required when enrolling in a payment plan unless the defendant elects to pay the \$25.00 plan administration fee in whole or in part.

2.1.1 *The Financial Affidavit*

In order to enter into a payment plan, the defendant must complete a financial affidavit. The WV Supreme Court has developed the form for the affidavit and the statute requires that municipal courts use this form. A sample of the affidavit is included in Appendix B. The information contained in the affidavit is used to calculate the number and amount of payments in the plan. If the defendant does not complete the affidavit, they can not be given a payment plan.

The defendant should complete the following sections of the form: Application Information, Net Income, Expenses, and Assets.

Application Information - It is important to make sure the defendant provides their current address, phone number, and email for the court to be able to provide notices and to effectively collect if the defendant defaults on their payment plan.

Net Income – The defendant should list the net income from all income sources and the total of all the amounts included in the income section should be entered in the appropriate box. For the purposes of this affidavit, net income is “take home” income after taxes, deductions, or other court-ordered payments. This information will be used to calculate the amount of the monthly payments the defendant will need to pay as part of their plan.

Expenses – The defendant should list all regular monthly payments, and the total of all the amounts included in the expenses section should be entered in the appropriate

box. This information will be used to calculate the amount of the monthly payment the defendant will need to pay as part of their plan.

Assets – The defendant should list the value of any of the assets listed in this section. These amounts are not used in the calculation of the payment plan but may be used if liens are issued for delinquent payment plans.

The defendant must sign the completed affidavit and their signature must be notarized. If court staff is not a Notary Public, or the defendant cannot produce identification required by WV state law applicable to notaries, the form should be given to the defendant for them to fill out and return with a notarized signature.

No payment plan may be issued without the defendant's completed, signed, and notarized financial affidavit.

2.2 Calculating payment amounts and number of payments, and completing the payment contract

The new statute has implemented a formula for calculating the maximum amount of payments and the number of payments in a plan. There is no longer a uniform time limit on the length of payment plans. The payment plan contract has been developed by the West Virginia Supreme Court in accordance with the statute and must be used by municipal courts without material modification.

Step One – Calculate the maximum monthly payment amount

The first step in developing the payment plan is to determine the maximum monthly payment amount that can be charged by the court. According to the statute, the maximum payment allowable is 2% of the defendant's annual net income divided by 12. The court calculates this amount by subtracting the total monthly expenses reported in the *Expenses* section of the financial affidavit from the total reported in the *Net Income* section of the financial affidavit. The result is then multiplied by 2%¹.

There is a \$10.00 minimum payment, so if the calculated amount is less than \$10.00, the defendant's monthly payment amount is \$10.00.

¹ This formula will not always result in a whole number. For determining the monthly payment, round any decimals in the result.

Example

Defendant 1 -

The defendant reports a monthly income of \$1,500.

\$1,500

The defendant reports monthly expenses of \$250.

\$250

The defendant's net income is \$1,250.

$1,500 - 250 = 1,250$

Multiply net income by 2%.

$1,250 \times .02 = 25$

25 is greater than 10

The maximum monthly payment for this defendant is \$25

Defendant 2 -

The defendant reports a monthly income of \$500.

\$500

The defendant reports monthly expenses of \$200.

\$200

The defendant's net income is \$300.

$500 - 200 = 300$

Multiply net income by 2%.

$300 \times .02 = 6$

6 is less than 10

The maximum monthly payment for this defendant is \$10

This calculation will result in the maximum monthly payment that a court can **require** a defendant to pay. However, if a defendant requests a higher payment amount in writing, the court may increase the monthly payment amount.

Step Two – Calculate the number payments

To determine the number of monthly payments, divide the total amount of fines, costs, and fees due by the maximum monthly payment. **Do not include the \$25 plan administration fee in this calculation.** This calculation will rarely result in a whole number, and the number of payments should always be rounded up to make sure the total amount is included in the plan. If the number of payments is rounded, the last payment will be less than the monthly maximum amount. If the defendant has deferred paying the plan administration fee, divide it among the appropriate number of payments at the beginning of the plan in addition to the maximum payment amount.

Example

Total amount due ÷ maximum monthly payment

Defendant 1 from step one (\$25/month)

Defendant's total fines, costs, and fees.

362

Divided by maximum monthly payment

$362 \div 25 = 14.48$

Round up number of payments

14.48 rounded to 15

The plan will be 14 payments of \$25

$25 \times 14 = 350$

And one payment of \$12

$350 + 12 = 362$

If the defendant has deferred the \$25 plan administration fee for the maximum number of five payments the plan will be

First five payments \$30

$25 + 5 \text{ plan fee} = 30$

Nine payments of \$25 and one payment of \$12

Example (continued)

Defendant 2 from step one (\$10/month)
Defendant's total fines, costs, and fees 362
Divided by Maximum monthly payment $362 \div 10 = 36.2$
Round up number of payments 36.2 rounded up to 37
The plan will be 36 payment \$10
And one payment of \$2

Step Three – Complete the Payment Contract

When the calculations from Step One and Step Two are complete, the Payment Contract can be completed. The WV Supreme Court has developed the form for the Payment Contract and the statute requires that municipal courts use this form. A sample of the Payment Contract is included in Appendix B. On the payment contract, the court should fill in the personal information (name, address, phone) as it appears on the Financial Affidavit. The court will detail all of the cases that are included in the payment plan. The specifications of the plan –the total amount due, the amount of the payments, the number of payments, the date on which the plan starts, and when the payments are due – are all included on the Payment Contract.

There is a section of the contract that includes all of the methods of payment that the court accepts, the Acceptable Payment Methods. Prior to issuing a Payment Contract, the court should make sure that all payment methods accepted by the court are included in this section.

The defendant must sign the Payment Contract. The document may be notarized, but notarization is not required.

There will be one payment plan per defendant. All of a defendant's cases will be in one plan, with one contract.

2.3 Applying payments

Payments received by the court should be applied first to municipal court fines and fees. When the court's fines and fees have been paid in full, money received through the payment plan should be applied to any restitution owed to any third party and paid to the third party. After the debt to the court and any third-party restitution has been collected, money received should be applied to state costs and fees. The court should remit the state's costs and fees through the Treasurer's Office online reporting portal. User guides and additional information are available on their website:

<https://wvtreasury.com/Banking-Services/Court-Fee-Remittance>.

2.4 Late payments and defaulted payment plans

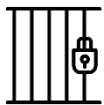
Defendants have 30 days after any missed payment to bring their account current and avoid any adverse action or penalty taken against them. The new statute allows the court to assess a late fee of \$10.00 for every 30 days a payment is delinquent and allows collection processes to be initiated after a payment is 90 days delinquent. The court may, but is not obligated to, send the defendant reminders of payments that are overdue.

The new statute also provides that no adverse action can be taken against defendants who are incarcerated. If a defendant is incarcerated **on the date their payment is due**, no late fee is assessed, the payment is deferred for that month and the duration of the payment plan is extended by 30 days for each payment missed due to the defendant's incarceration. A deferred payment is not considered delinquent.

2.4.1 Management of Late Payments

If the defendant misses a payment, the court will set a diary for 90 days. If the defendant does not bring the account current before the 90-day deadline, the court may add a \$10 late fee for each thirty days - a total of \$30 in late fees - and may consign the unpaid amount to collection, record a judgement lien, or both.

If the defendant contacts the court prior to the expiration of the 90 days to bring the account current, the court will need to calculate the amount owed. Depending on when the defendant makes contact, the court may add a \$10 late fee for every 30 days the payment has been delinquent unless the defendant was incarcerated **on the date the payment was due**. The applicable late fees must be paid by the defendant in addition to the missed payments to bring the payment plan current.



The court must ask the defendant if they were incarcerated for any period during the time they have been delinquent in payments. If they respond affirmatively, the court should ask for the date that they were incarcerated. If they report being incarcerated **on the date the missed payment(s) was due**, the court may not assess a late fee for that thirty-day period. Additionally, the payment plan will be extended by an additional month or months if the defendant was incarcerated on a payment due date. If the defendant was incarcerated, but not on the dates that the missed payment(s) was due, then the court may assess a \$10 late fee, and the duration of the payment plan remains the same. Again, independent verification of a defendant's incarceration is at the discretion of the court.

2.4.2 Alternative Monthly Management of Late Payments

In lieu of setting a 90-day diary for a missed payment, courts may review the plan's status every thirty days and assess late fees in thirty-day intervals until the delinquency reaches 90 days.



Depending on the case load and administrative capacity of the court, monthly checks on a defendant's incarceration status may also be performed. Remember that these searches do not return historical data and will have to be performed **on the day the payment is due** in order to be accurate. Instructions for performing a search of West Virginia jail and prison databases is outlined in Section 5.

Thirty days after a defendant misses a scheduled payment, the court may make a reasonable effort to determine if the defendant is incarcerated on the day the payment is due. If the defendant is incarcerated, the payment is deferred, and the plan is extended for a month. The next payment is due on the date of the next regularly scheduled payment. The count of days delinquent is reset to zero.

If the defendant is not incarcerated, the court may assess a \$10.00 late fee. The court may send a notice of delinquent payment to the defendant but is not required by the statute to do so. The court should then set a diary for an additional thirty days. The defendant may bring their account current at any time by paying in full all back amounts owed, and any late fees assessed. If the defendant has not brought their account current by the expiration of a second 30-day period (60 days cumulative from the missed payment), the court may make a reasonable effort to determine if the defendant is incarcerated. If the defendant is incarcerated, the payment is deferred, and the payment plan is extended for a month. The next payment is due on the date of the next regularly scheduled payment. The count of days delinquent is stayed at its current level.

If the defendant is not incarcerated, the court may assess an additional \$10.00 late fee. Again, the court may send a notice of delinquent payment to the defendant but is not required by the statute to do so. The court should then set a diary of an additional thirty days. The defendant may bring their account current at any time by paying in full all back amounts owed, and any late fees assessed. If the defendant has not brought their account current by the expiration of the third 30-day period (90 days cumulative from the missed payment) the court may make a reasonable effort to determine if the defendant is incarcerated. If the defendant is incarcerated, the payment is deferred, and the payment plan is extended for a month. The next payment is due on the date of the next regularly scheduled payment. The count of days delinquent is stayed at its current level.

If the defendant is not incarcerated, the court may assess an additional \$10.00 late fee and consign unpaid amounts to collection, record a judgement lien, or both.

2.5 Combining payment plans for subsequent offenses

It is the intention of the legislation that defendants only have one payment plan with any individual court regardless of how many citations or cases the defendant has, and that the monthly payment does not exceed the maximum monthly payment amount calculated regardless of the number of citations or fines that a defendant incurs. This means that the court will have to combine amounts owed to the courts into one plan if the defendant is convicted of a subsequent offense and requests a payment plan for newly incurred fines and penalties. The maximum amount of the payment will stay the same if the defendant has not undergone a change in economic circumstances, but the duration of the plan will change according to the new total amount due.

Combined payment plans are only available to defendants who are current with their existing payment plan. If the defendant is in arrears with their existing plan, the existing plan must be brought current, including the payment of any late fees, prior to establishing a new combined payment plan. If the defendant cannot bring the account current, the court should advise the defendant that they have 90 days to remit the entire amount owed to the court, or the amount may be consigned to collection, or be placed as a judgement lien, or both.

It is important to determine if the defendant has undergone a change in economic circumstances that would affect the maximum payment due on the payment plan. If the defendant has undergone a change in economic circumstances, the court may need to recalculate the maximum payment amount and apply that amount to the recalculated plan. Before combining subsequently incurred fines and fees into an existing payment plan, the court should ask the defendant to review the most recent affidavit on file and either confirm that none of the information has changed by signing a new affidavit indicating no changes, or by completing a new affidavit if there are any changes.

To combine subsequently incurred fines and fees into an existing payment plan, determine the total amount still due in the existing plan and add the total amount of the new fines and fees to it. The court may also assess an additional \$25 administration fee for recalculating the payment plan. As with the initial fee, the \$25 may be paid in full at the time of recalculation or divided into no more than five payments to be added to the minimum payment amount on the first payments in the plan.

If the defendant's economic circumstances have changed, recalculate the maximum monthly payment amount and then calculate the number of payments for the combined amount as indicated in Step One of Section 2.2. If the defendant has not had any change in economic circumstances, calculate the number of payments for the combined amount as indicated in Step Two of Section 2.2.

Example

Defendant incurs charges in July 2020 in the amount of \$362 with a \$25 maximum payment. Their payment plan is 14 payments of \$25 and 1 payment of \$12, beginning in August 2020 and ending in October 2021.

The defendant pays the first seven payments (totaling \$175) then is convicted of an additional offense in March of 2021 with fines and fees of \$268 and requests a payment plan for the new charges.

Calculate the new amount due:

\$187	unpaid from original plan ($362 - 175 = 187$)
<u>\$268</u>	new fines and fees
\$455	new total due

No change in economic circumstances - the maximum payment amount remains at \$25.

Defendant's total fines, costs, and fees.	455
Divided by maximum monthly payment	$455 \div 25 = 18.2$
Round up number of payments	18.2 rounded to 19
The amended plan will be 18 payments of \$25	$25 \times 18 = 450$
And one payment of \$5	$450 + 5 = 455$

The payment plan will now run from March of 2021, to September of 2022.

Change in economic circumstances - the defendant indicates that they are now earning a net of \$20,000 rather than \$15,000.

The defendant's annual net income is \$20,000.	20,000
2% of the annual net income	$20,000 \times .02 = 400$
Divide by 12	$400 \div 12 = 33$
33 is greater than 10	

The maximum monthly payment for this defendant is now \$33

Defendant's total fines, costs, and fees.	455
Divided by maximum monthly payment	$455 \div 33 = 13.78$
Round up number of payments	13.78 rounded to 14
The amended plan will be 13 payments of \$33	$33 \times 13 = 429$
And one payment of \$26	$429 + 26 = 455$

The payment plan will now run from March of 2021, to April of 2022.

After the combined plan is calculated, the court will complete a new Payment Contract that will replace the prior Payment Contract.

Section 3 – Collections and Liens

The new law provides methods for collecting defaulted payment plans and unpaid fines and costs. Courts may record a judgement lien, consign unpaid amounts to collection, or **both**. When assigned to collection, courts may use a collection agency², an internal collection division, or both.

3.1 Filing Liens

The statute allows courts to file liens for delinquent amounts owed. This process uses prosecuting attorneys to file the liens with county clerks at no charge to the municipality. At this time, the operational details of this process have not been finalized with all involved parties and is not currently available to courts. Once the necessary forms and channels for processing these liens are in place, additional guidance on how to file liens will be provided.

3.2 Collection Consignment

Under the new statute, when a defendant does not pay in full or request a payment plan within 120 days, or if a payment plan remains delinquent for 90 days, the court has the option of consigning the amount due for collection. The court may contract with a collection agency to pursue payment or may pursue collection internally either directly by the court or through a collection process established by its town or city.

3.2.1 Collection Agency Consignment

The new statute allows for the consignment of court debt to a collection agency. If the court contracts with a collection agency, the agency must remit back to the court the entire amount of all delinquent payments collected and may not reduce the amount by any costs of collection or fees. The collection agency may add a collection fee in an amount up to 25% of the total delinquent payment amount to cover any collection costs or fees. The court may contract with any eligible collection agency, but for the convenience of the courts, the Municipal League will be providing information and forms necessary for enrollment with a corporate partner for court collection services.

3.2.2 Internal Collection

Either instead of or in addition to collection agency consignment, the new statute also allows for the collection of delinquent amounts owed to the court using an internal court or city collection process. If a court exclusively uses an internal collection process, the court may add an additional fee of up to 25% of the total delinquent payment amount to

² Collection agencies must be on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to W. Va. Code §14-1-18c.

cover any collection costs. The amount of the collection fee must be reasonably proportional to the actual costs of pursuing collection.

Please Note

Although the statute allows for internal collection efforts in combination with agency collection, many agencies do not allow duplicate collection efforts. Consult your agency's contract before pursuing duplicate collection efforts.

Only one entity may impose the collection fee. If the court has contracted with a collection agency, and the agency is charging an additional collection fee, the court may not also impose a collection fee for its collection efforts.

Payment received through collection efforts should be applied to amounts owed consistent with Section 2.3.

Section 4 – Suspensions effective before July 1, 2020

Defendants whose driver's licenses were suspended for non-payment prior to July 1, 2020, may now have their licenses reinstated if they either pay their outstanding fines and fees in full or set up a payment plan with the court. If defendants do not contact the court to either make full payment or set up a payment plan, all prior suspensions remain in full force and effect. Courts do not have an obligation to contact defendants who have had their licenses suspended prior to July 1, 2020.

4.1 Payment in Full

If the defendant pays in full all amounts of fines, fees, restitution, and court costs, the court should send notice of satisfaction to the DMV indicating the citation has been paid in full. On the Universal Suspension/Compliance Form from the DMV, check the "Paid in Full" box on the form and enter the date and receipt # in the spaces provided on the form.

FOR NON-PAYMENT ONLY

Suspensions of driver's licenses for failure to appear remain in full force and effect until the defendant appears. Courts are not obligated to contact defendants about existing suspensions.

4. Compliance/Satisfaction Information (To Be Completed AFTER Citation/Case is Resolved)

Paid in Full Date / / Receipt # _____

Dismissed Date / /

Other (Explain below) Date / /

Authorized Signature _____ Date / /

4.2 Payment Plan

If a defendant requests a payment plan, follow the instructions in Section 2 to establish the plan for the defendant. Once the payment plan has been established and the \$25 administrative fee has been paid in full, the court should send verification of satisfaction to the DMV indicating a payment plan has been established by checking the “Other” box on the Universal Suspension/Compliance Form from the DMV, entering the date in the space provided and using the explanation “Defendant has entered into a payment plan and paid the \$25 administrative fee pursuant to W. Va. Code 8-10-2b(g)(2).”³ A copy of the payment contract needs to be transmitted to the DMV with the verification of satisfaction.

4. Compliance/Satisfaction Information (To Be Completed AFTER Citation/Case is Resolved)

Paid in Full Date / / Receipt # _____

Dismissed Date / /

Other (Explain below) Date / /

Defendant has entered into a payment plan and paid the \$25 administrative fee pursuant to W. Va. Code 8-10-2b(g)(2).

Authorized Signature _____ Date / /

Note: The full \$25 administrative fee must be paid prior to reinstatement of their driver’s license. If the \$25 administrative fee is divided into payments, the payments in which the administrative fee is included must be paid in full before notice of satisfaction is sent to the DMV.

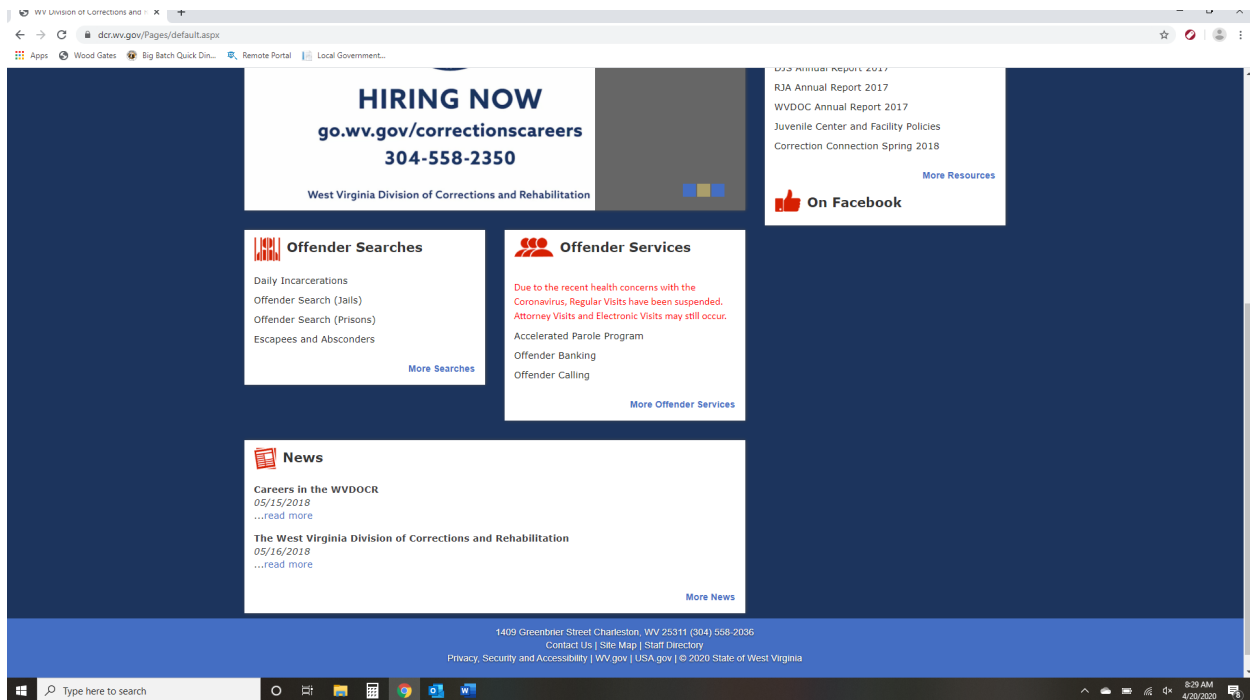
Defendants must be advised that until the \$25 administrative fee is paid in full, their license will not be reinstated.

³ It is important to cite the State Code section to ensure that the DMV will waive its reinstatement fee for reinstating the driver’s license.

Section 5 – Incarcerated defendants search

If a court determines that it would like to reconcile payment plans on a monthly basis, a search of the West Virginia Division of Corrections databases will help to determine if a defendant is incarcerated in West Virginia.

There are two searchable databases on the website: one for the regional jail system, and the other for the state’s prisons. The portal to both of these search engines is <https://dcr.wv.gov>. On the main page, the links to both search engines are in the “Offender Searches” box.



Remember that the search returns results only for persons under active supervision of the WV Regional Jail Authority or the WV Division of Corrections at the time the search is performed. When using these searches in association with payment plans, the searches will have to be performed on the same day the payment is due.

5.1 Searching the regional jail system

To begin a search for a defendant in the WV Regional Jail System, click on the link “Offender Search (Jails).” This will take you to the search screen where you enter the last and first names of the defendant. Check the robot verification box, and then click the “Search” button. If no defendant with the name entered is under active supervision of the WV Regional Jail Authority, the search will result in a red box stating, “No results found with specified criteria.” If this message appears, the search for that defendant in the Regional Jail System is complete.

If there are one or more defendants with the same name under active supervision of the WV Regional Jail Authority, their name or names, jail location, and photograph (if available) will be shown. To the left of the name is a link for “More Info”. If you click for more information, the inmate’s date of birth will be shown. The date of birth can be used to verify that the incarcerated person is the defendant, especially in cases where the initial search returned more than one defendant with the same name. The “More Info” section also contains the date the defendant was booked into the jail, and court order under which they are incarcerated. This information can be helpful when trying to determine the duration for which the inmate may be incarcerated for the purposes of issuing a continuance for a future appearance.

5.2 Searching the WV Division of Corrections prison system

If the court has determined that the defendant is not in the active custody of the WV Regional Jail System, the court should try to determine if the defendant is in the custody of the Division of Corrections. From the Division of Corrections main page in the “Offender Searches” box, select “Offender Search (Prisons)”. Enter the defendant’s last and first names, check the robot verification box and press the “Search” button. If the defendant is not under active custody of the Division of Corrections, the search will result in a red box stating, “No results found with specified criteria.” If this message appears, the search for that defendant in the Division of Corrections is complete.

If there are one or more defendants with the name entered under active supervision of the Division of Corrections, their name or names, jail location, and photograph (if available) will be shown. To the left of the name is a link for “More Info”. If you click for more information, the inmate’s date of birth will be shown. The date of birth can be used to verify that the incarcerated person is the defendant, especially in cases where the initial search returned more than one defendant with the same name. The “More Info” section also contains the projected release date of the defendant. This information can be helpful when trying to determine the duration for which the inmate may be incarcerated for the

purposes of issuing a continuance for a future appearance, or for the necessity of additional searches when different waiting periods required by the statute expire.

Remember that if a defendant reports that he was incarcerated in a facility outside of West Virginia, the court will need to accept the defendant's word, or independently verify the defendant's incarceration with the institution.

Appendix A – House Bill 4958

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4958

BY DELEGATES HAMRICK, CANESTRARO, D. KELLY,

LOVEJOY, MILLER, SHOTT, NELSON, MANDT,

FLEISCHAUER, PUSHKIN AND PYLES

[Passed March 7, 2020; in effect July 1, 2020.]

1 AN ACT to amend and reenact §8-10-2a and §8-10-2b of the Code of West Virginia, 1931, as
2 amended; to amend and reenact §17B-3-3a and §17B-3-3c of said code; to amend and
3 reenact §50-3-2a of said code; and to amend and reenact §62-4-17 of said code, all
4 relating to eliminating the ability of a person's driver's license to be suspended for the
5 failure to pay court fines and costs; allowing court clerks to accept electronic payments,
6 credit cards, cash, money orders, or certified checks; requiring magistrate, municipal, and
7 circuit clerks to set up a payment plan if an individual signs an affidavit stating that he or
8 she is unable to pay the court fines and costs imposed; authorizing a court to review the
9 reasonableness of the payment plan; authorizing court to waive, modify, or convert the
10 outstanding costs, fines, forfeitures, or penalties to community service; requiring the
11 Supreme Court of Appeals to develop and distribute forms; authorizing magistrate,
12 municipal, and circuit clerks to assess late fees, to record a judgment lien for unpaid fines
13 and costs in the county clerk's office, and to cosign a debt to collections; authorizing a
14 process for the recording and release of a judgment lien; requiring clerks to issue a notice
15 of delinquency; authorizing the reinstatement of driver's licenses suspended prior to July,
16 1, 2020; removes Tax Commissioner's authority to withhold income tax returns;
17 establishing fees; and placing limits on collection of fees.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2a. Payment of fines by electronic payments, credit cards, cash, money orders, or certified checks.

1 A municipal court may accept electronic payments, credit cards, cash, money order, or
2 certified checks for all costs, fines, forfeitures, or penalties electronically, by mail, or in person.

3 Any charges made by the credit company shall be paid by the person responsible for paying the
4 cost, fine, fee, or penalty.

**§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; suspension
of licenses for failure to pay fines and costs or failure to appear in court.**

1 (a) Upon request and subject to the following requirements, the municipal court clerk or,
2 upon a judgment rendered on appeal, the clerk shall establish a payment plan for a person owing
3 costs, fines, forfeitures, or penalties imposed by the court for a motor vehicle violation as defined
4 in §17B-3-3a of this code, a criminal offense as defined in §17B-3-3c of this code, or other
5 applicable municipal ordinances, so long as the person signs and files with the clerk, an affidavit,
6 stating that he or she is financially unable to pay the costs, fines, forfeitures, or penalties imposed:

7 (1) A \$25 administrative processing fee shall be paid at the time the payment form is filed
8 or, in the alternative, the fee may be paid in no more than 5 equal monthly payments;

9 (2) Unless incarcerated, a person must enroll in a payment plan no later than 90 calendar
10 days after the date the court enters the order assessing the costs, fines, forfeitures, or penalties;
11 and

12 (3) If the person is incarcerated, he or she may enroll in a payment plan within 90 calendar
13 days after release.

14 (b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan
15 form and financial affidavit for requests for the establishment of a payment plan pursuant to
16 subsection (a) of this section. The forms shall be made available for distribution to the offices of
17 municipal clerks, and municipal clerks shall use the payment plan form and affidavit form
18 developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

19 (c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) The
20 dates on which such payments are due; (C) The amount due for each payment; (D) all acceptable
21 payment methods; and (E) the circumstances under which the person may receive a late fee,

Enr. HB 4958

22 have a judgment lien recorded against him or her, or have the debt sent to collections for
23 nonpayment;

24 (2) The monthly payment under the payment plan shall be calculated based upon all costs,
25 fines, forfeitures, or penalties owed within the court, and shall be two percent of the person's
26 annual net income divided by 12, or \$10, whichever is greater;

27 (3) The court may review the reasonableness of the payment plan, and may on its own
28 motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, or
29 penalties to community service if the court determines that the individual has had a change in
30 circumstances and is unable to comply with the terms of the payment plan.

31 (d) (1) The clerk may assess a \$10 late fee each month if a person fails to comply with the
32 terms of a payment plan and if any payment due is not received within 30 days after the due date,
33 and the person:

34 (A) Is not incarcerated;

35 (B) Has not brought the account current;

36 (C) Has not made alternative payment arrangements with the court; or

37 (D) Has not entered into a revised payment plan with the clerk before the due date.

38 (2) If after 90 days, a payment has not been received, the clerk may do one or both of the
39 following (A) Record a judgment lien as described in subsection (f) of this section, or (B) Consign
40 the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the
41 State Tax Commissioner's list of eligible debt collection agencies established and maintained
42 pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the
43 entire amount of all delinquent payments collected shall be remitted to the court and may not be
44 reduced by any collection costs or fees: *Provided, however*, That the collection fee may not
45 exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically
46 or by U.S. mail, to remind the person of an upcoming or missed payment.

47 (e)(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to
48 pay their costs, fines, forfeitures, or penalties, the clerk may assess a \$10 late fee and shall notify
49 the person of the following:

50 (A) That he or she is 90 days past due in the payment of costs, fines, forfeitures, or
51 penalties imposed pursuant to a judgment of the court;

52 (B) That he or she has failed to enroll in a payment plan;

53 (C) Whether a \$10 late fee has been assessed; and

54 (D) That he or she may be the subject of a judgment lien or have his or her debt sent to a
55 collection agency if the overdue payment of costs, fines, forfeitures, or penalties is not resolved
56 within 30 days of the date of the notice issued pursuant to this subsection.

57 (2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this
58 subsection, a payment has not been received, the clerk may do one or both of the following:

59 (A) Record a judgment lien as described in subsection (f) of this section; or

60 (B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency
61 contained on the State Tax Commissioner's list of eligible debt collection agencies established
62 and maintained pursuant to §14-1-18c of this code, an internal collection division, or both:
63 *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the
64 court and may not be reduced by any collection costs or fees: *Provided, however*, That the
65 collection fee may not exceed 25 percent of the delinquent payment amount.

66 (f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county
67 of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The
68 prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county
69 commission in the county where the defendant was convicted and in any county in which the
70 defendant resides or owns property. The clerk of the county commission shall record and index
71 these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded,
72 the amount stated to be owed in the abstract constitutes a lien against all property of the

73 defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution or penalties for
74 which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court
75 shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney
76 with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code,
77 for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk,
78 the prosecuting attorney shall file the release of judgment in the office of the clerk of the county
79 commission in each county where an abstract of the judgment was recorded. The clerk of the
80 county commission shall record and index the release of judgment without charge or fee to the
81 prosecuting attorney.

82 (g) A person whose driver's license was suspended prior to July 1, 2020, solely for the
83 nonpayment of costs, fines, forfeitures, or penalties, if otherwise eligible, shall have his or her
84 license reinstated:

85 (1) Upon payment in full of all outstanding costs, fines, forfeitures, or penalties and a \$25
86 reinstatement fee paid to the Division of Motor Vehicles; or

87 (2) Upon establishing a payment plan pursuant to subsection (a) and the payment of a
88 \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan
89 is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

90 (h) If a person charged with a motor vehicle violation as defined in §17B-3-3a of this code
91 or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall
92 notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any
93 other provision of this code to the contrary, for residents of this state, the municipal court clerk
94 shall wait at least 90 days from the date of the person's failure to appear or otherwise respond
95 before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles
96 shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until
97 such time that the person appears as required.

Appendix B – Sample Forms

Financial Affidavit

IN THE MUNICIPAL COURT OF _____

, v _____



**FINANCIAL AFFIDAVIT:
PAYMENT PLAN APPLICATION**

A. Information for the Applicant:

In order to enter into a payment plan agreement with this court, to pay in full all outstanding balances you may owe, you must enroll in the clerk's office payment plan and pay an administrative fee of \$25.00. Additionally:

1. You must complete the affidavit for the court to determine the amount and number of your monthly payments as mandated by W.Va. Code § 8-10-2b.
2. You may be required to file a separate affidavit and application anytime your financial situation changes.
3. The information you give in this form will be confidential.
4. Except for signatures, all information must be clearly printed.

APPLICATION INFORMATION

Applicant Information:

Defendant(s) Name *(First/Middle/Last)*

Social Security No. _____ - _____ - _____

Date of Birth: ____ / ____ / ____

Street Address

Phone Number: (____) _____

City, State, Zip Code

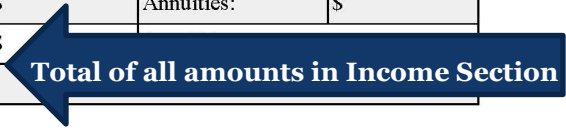
Drivers License #: _____

1. What is the total number of dependents, including yourself?
(Include only those persons listed on your U.S. Income tax return.)
2. Are you married? Yes No Does your spouse work? Yes No
Spouse's Yearly Income: _____

NET INCOME:

3. Current **monthly** net (take-home) income from **all** sources:
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

Employer:	\$	Second Job:	\$	Self-Employment:	\$
Public Assistance:	\$	Food Stamps:	\$	Unemployment:	\$
Benefits:	\$	Disability Benefits:	\$	Social Security/SSI:	\$
Alimony:	\$	Pensions:	\$	Rental Income:	\$
Interest:	\$	Dividends:	\$	Annuities:	\$
Odd Jobs:	\$	Other:	\$		
TOTAL:	\$				



EXPENSES:

4. Regular monthly household debt-payment and other expenses:

Mortgage/Rent:	\$	Car Payment:	\$	Loan Payments:	\$
Credit Card Payments:	\$	Other Debt Payments:	\$	Utilities:	\$
Cell Phone:	\$	Food:	\$	Child Care:	\$
Child Support:	\$	Alimony:	\$	Medical Bills:	\$
Other Expenses	\$	(specify):			

What is the total amount of these monthly expenses?

Total of all amounts in Expenses Section

ASSETS:

5. List the value of any individually or jointly owned assets.

Cash:	\$	Savings Account:	\$	Boats/ATVs	\$
Bank Accounts:	\$	Stocks/Bonds:	\$	Tax Refund Due:	\$
Certificate of Deposits	\$	Real Estate:	\$	Money Owed you:	\$
Money Market Accts.	\$	Vehicle/s:	\$		
Other Assets:	\$	(specify):			

This "Assets" section is not used in the calculations but may be used when filing liens on delinquent plans. The Defendant should complete this

What is the total amount of these assets?

5a. List the name of each bank/institution in which you have cash, checking/savings accounts, CD's, stocks/bonds, or money market accounts:

5b. List all cars, trucks, motorcycles, or recreational vehicles (all-terrain vehicles, motor homes, snowmobiles, boats), including their make, model, and year, that you own individually or jointly:

5c. List the county and address of all real estate (houses, lots, land, rental property, or commercial property) that you, individually or jointly, own:

By signing my name on this form, I swear to or affirm the completeness and truthfulness, to the best of my ability and knowledge, of the information I have provided.

Signature of Applicant: _____ Date: _____

Must be Notarized

Taken, subscribed, and sworn or affirmed before me, by the person whose signature appears above, on this _____ day of _____, 20____, in _____, West Virginia.

Signature of Notary: _____

For Court Use Only

The affiant's application for a Payment Agreement (initial one) _____ granted _____ denied.

Date: _____ Signature of Clerk : _____

Uniform Payment Contract

IN THE MUNICIPAL COURT OF [name], WEST VIRGINIA

Fill In Court Name

Defendant(s) Name (First/Middle/Last)

Social Security No. _____

Street Address

Date of Birth: ____ / ____ / ____

City, State, Zip Code

Phone Number: (____) _____

Drivers License #: _____

RE: In the matter of the following cases:

Case Number	Date	Amount	Case Number	Date	Amount
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

All cases to be included in the contract

PAYMENT CONTRACT

WV Code § 8-10-2b

Pursuant to WV Code § 8-10-2b, I _____ have requested and been qualified to enter a payment plan to make payment in full for my outstanding fees, service charges, costs, or fines and restitutions. I am, therefore, entering into this payment contract with [Clerk or Judge's name], [Clerk or Judge] of the Municipal Court of [Name], West Virginia.

I am obligated to pay court-related fees, service charges, costs fines, and restitution in the amount of \$ _____. I agree to pay the minimum of \$ _____ monthly, for _____ months beginning on ____ / ____ / ____ and continuing until paid in full.

I understand there is, in addition to the foregoing, a one-time, non-refundable administrative fee of \$25.00 payable to the court. The administrative fee may be paid in full at the initiation of the agreement or may be allocated over the first 5 payments of the payment plan.

PAYMENT PLAN SPECIFICATIONS

TERMS OF PLAN

This payment plan includes _____ monthly payments of \$ _____ each month, with a final payment of \$ ____.

The first payment is due ____ / ____ / ____ and payments are due on the _____ of each month thereafter until paid in full.

ACCEPTABLE PAYMENT METHODS

Include only payment methods accepted by the court

Amounts due the Court may be paid with [cash, personal, travelers, or certified checks, money orders, or debit or credit cards. Any convenience fee(s) associated with the use of debit or credit cards shall be paid by the person responsible for paying the cost, fine, forfeiture, or penalty.

LATE FEE

A \$10 late fee may be charged **each month** if a person fails to comply with the terms of the payment plan and if any payment is not received within 30 days after the due date, AND the person:

- A. Is not incarcerated
- B. Has not brought the account current
- C. Has not made alternative payment arrangements with the court; or
- D. Has not entered into a revised payment plan with the clerk before the due date.

PLAN MODIFICATION

This agreement may be modified depending on individual circumstances. A modification requires the signing of a new payment contract and approval of the court. In the event such modification is at the request of the above-named defendant, the modification shall be considered a new payment plan, and the defendant shall pay an additional plan fee of \$25.00 at the time of such modification or that fee can be allocated over the next 5 payments.

FAILURE TO PAY

If, after 90 days, a payment has not been received, I understand the Clerk may record a judgement lien or consign the delinquent costs to an authorized debt collection agency.

I certify that I have been open and honest in entering into this payment plan. I am satisfied with this payment plan and intend to be bound by it. I understand that failure to comply with this contract may result in collection enforcement as provided by law. Such collection enforcement may include referral to a collection agency authorized to add a collection fee of up to 25%, and/or a judgement against me for the outstanding balance of this contract.

Defendant's Signature

Date

State of WV, COUNTY OF _____

Sworn to or affirmed and signed before me on ____ / ____ / ____

My commission expires on ____ / ____ / ____ (If Notary Public)

May be Notarized

Notary Public/Clerk/Deputy Clerk/Judge

(Print, type, or stamp name of Court signatory)

Sample Notice of Failure to Pay or Respond

[date]

[defendant name, address]

Re: *Municipal Court of [municipality] v. [defendant name]*
Case No(s):

On [date], you [plead guilty/plead no contest/were found guilty] in the above captioned and were assessed fines and fees by the court in the amount of [total amount due]. Your assessed fines and fees are now ninety days past due. You have not paid your fines and fees, nor have you requested enrollment in a payment plan from the Court. [Your failure to pay or to request a payment plan has resulted in a ten dollar (\$10.00) late fee being assessed in addition to your fines and fees.]

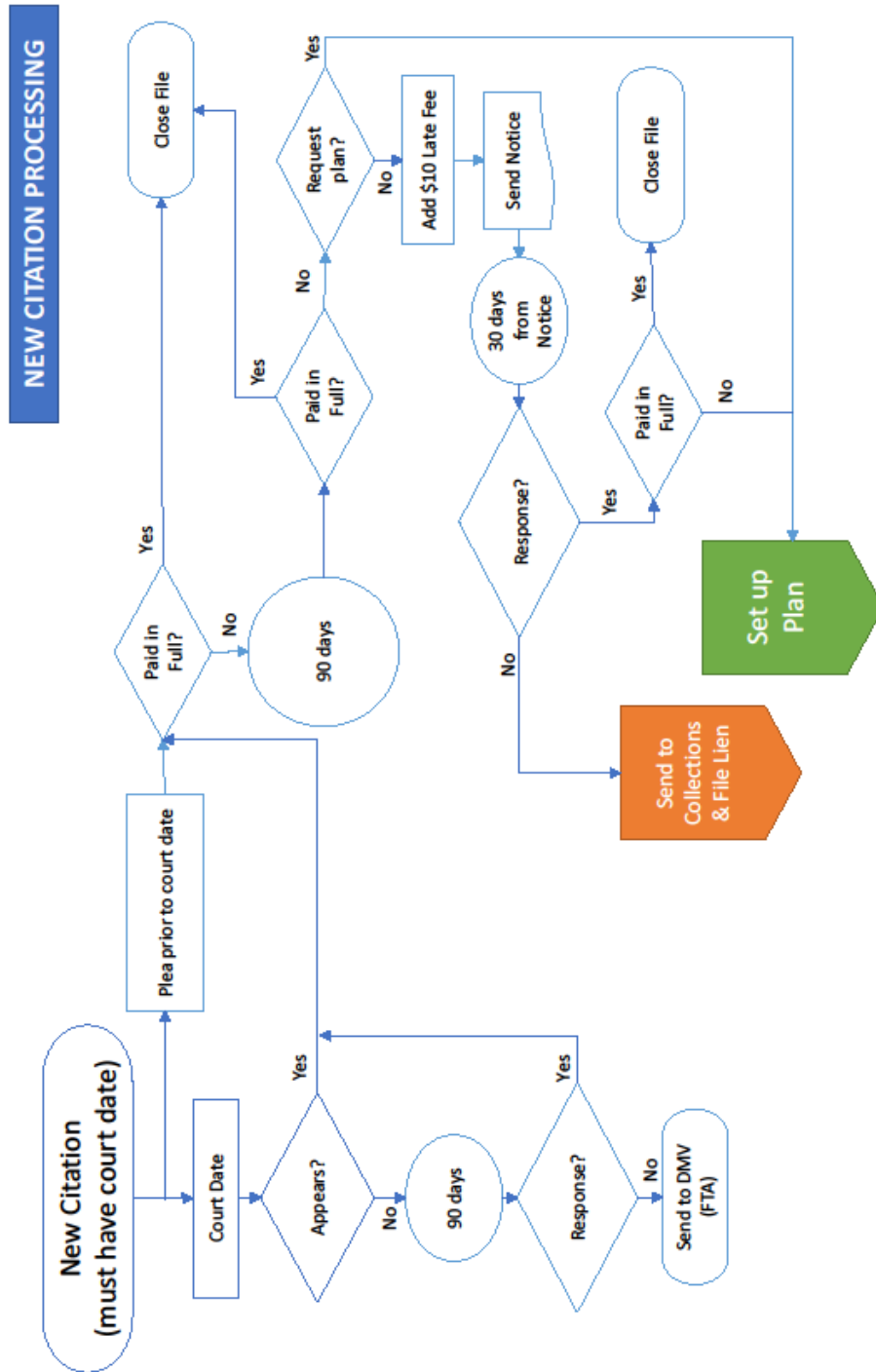
The total amount you now owe to the Court is [amount + late fee if applicable].

Please contact the Court immediately at: [contact info]

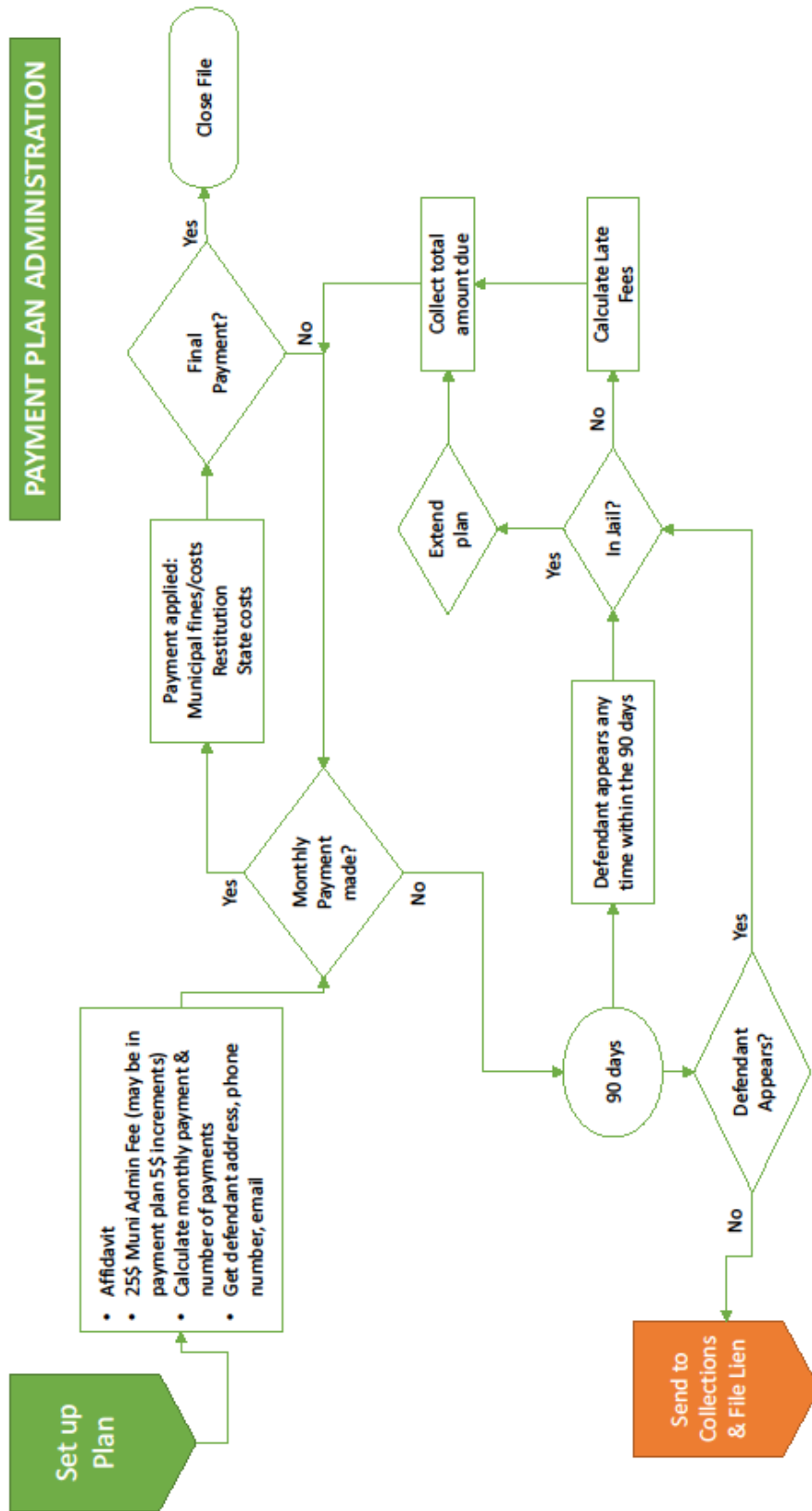
Failure to [promptly contact the Court] [contact the Court within 30 days from the date of this letter] may result in the Court filing a judgement lien against you, or having the unpaid amount consigned to a debt collection agency, or both.

[name of title of signatory]

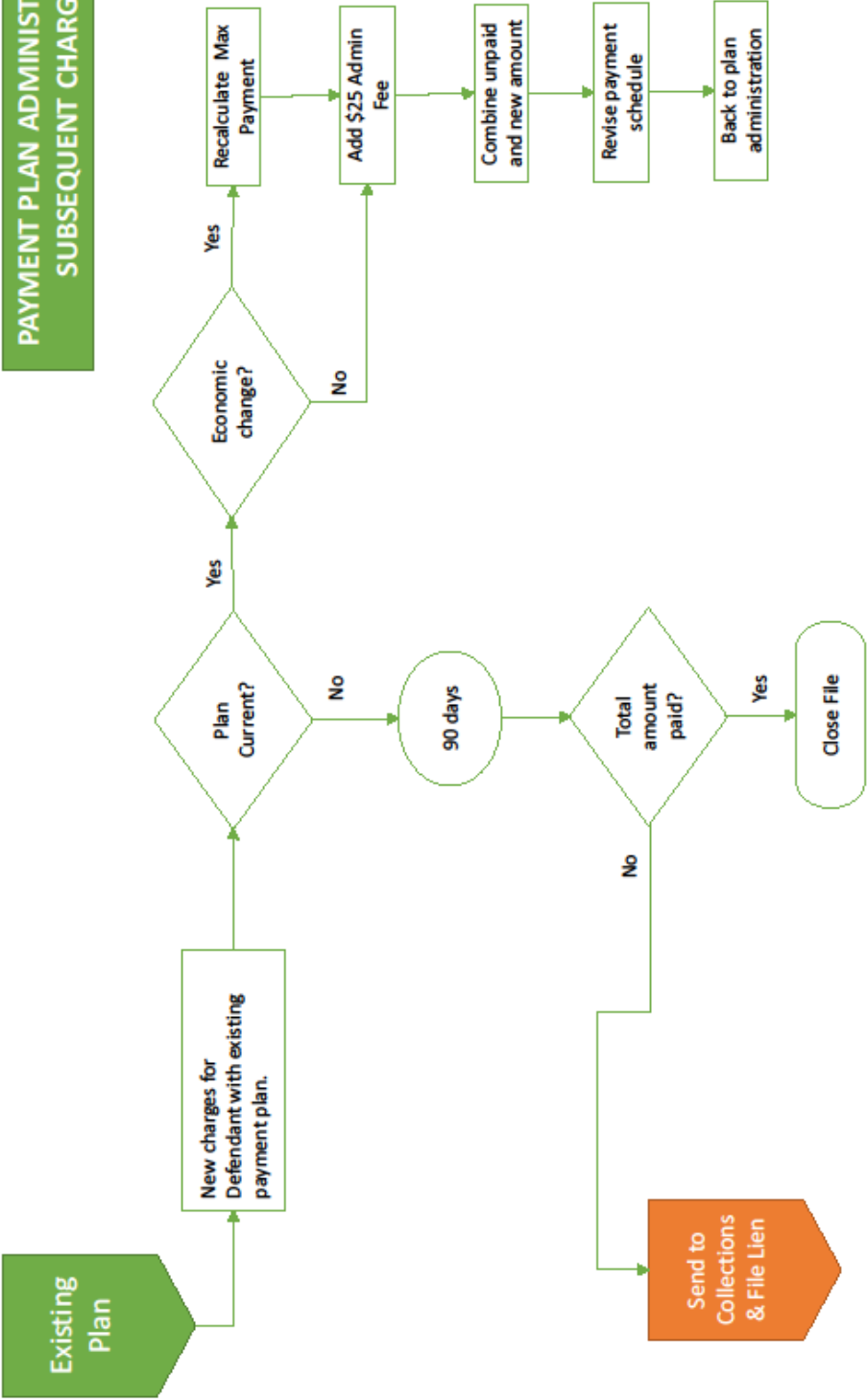
Appendix C – Process Workflow Diagrams



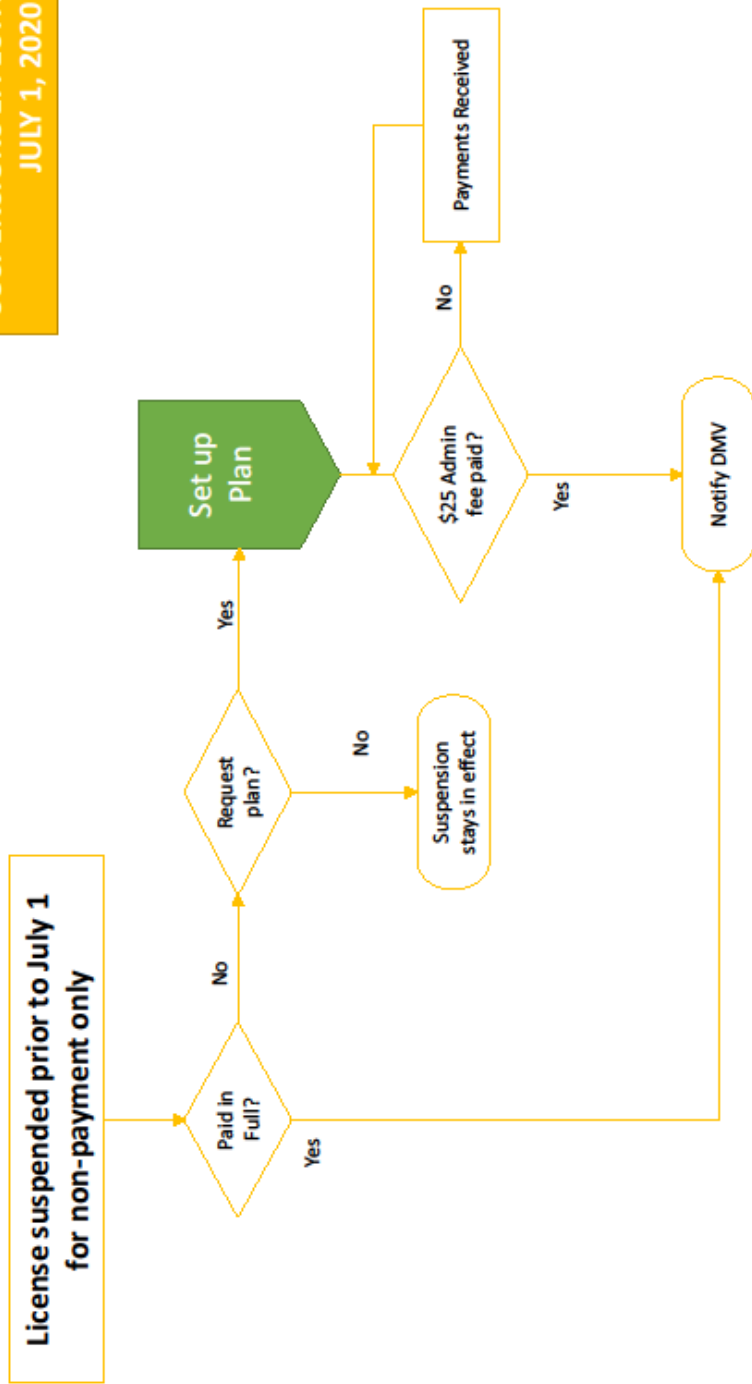
PAYMENT PLAN ADMINISTRATION



**PAYMENT PLAN ADMINISTRATION
SUBSEQUENT CHARGES**



**SUSPENSIONS EFFECTIVE BEFORE
JULY 1, 2020**



Appendix D – Frequently Asked Questions

Question:

Can courts charge the \$25.00 administrative fee per citation?

Answer:

No. The \$25.00 administrative fee will only be charged per payment plan regardless of the number of cases or citations included on the plan.

Example 1:

A defendant comes in with 5 prior citations to set up on a payment plan. One \$25.00 administrative fee will be charged for including all citations on the payment plan.

Example 2:

The same defendant comes in with a new citation and wants to add to existing payment plan. The court can charge the \$25.00 administrative fee to revise current payment plan in order to add in the subsequent citation.

Question:

Municipal police officers put a certain amount of days to appear and not an exact date on the citations they issue. Do we need to have officers write the exact date the defendant needs to appear?

Answer:

Yes. Have officers write an exact date on which the defendant needs to appear in court to plea and set up a payment plan.

Example 1:

Defendant receives a citation and the officer writes on the ticket that defendant must appear in court on a certain date. If the defendant does not appear on or before the date specified on the citation, the court may send information to suspend defendant's driver's license for failing to appear after waiting 90 days from the appearance date.

Note: Courts can only suspend for failure to appear when the defendant has been given a specific date to appear.

Question:

Is HB4958 doing away with the William R. Laird Second Chance Driver's License Program?

Answer:

Yes, eventually. The Laird program will end June 30, 2022 and as of July 1, 2020, the program is not accepting new applicants. The Second Chance Driver's License Program is through the Division of Justice and Community Services and aggregates a defendant's fines from many different courts. Fines from the court that have been approved for inclusion in a defendant's Second Chance program should not be included in a new payment plan with the court.

Question:

Are Municipal Courts the only ones having to offer the extended payment plans and restrict driver's license suspension?

Answer:

No. All courts in WV, Municipal Courts, Magistrate Courts and Circuit Courts are following the requirements set forth in HB4958. No West Virginia court can suspend a driver's license for failing to pay fines and fees.

Question:

Does the defendant have to pay the \$25.00 administrative fee up front to have their driver's license reinstated?

Answer:

The defendant does not have to pay the fee at the time they set up the plan, but courts cannot send the verification of satisfaction until the \$25.00 fee is paid.

Example:

The defendant comes in and asks for a payment plan for outstanding citations. Their driver's license was previously suspended for non-payment. The court can add the \$25.00 fee into the payment plan but **CAN NOT** send the verification of satisfaction to the DMV until the \$25.00 fee has been paid. If the defendant divides the administrative fee for \$5.00 a month then the defendant will have to make the first 5 monthly payments before the court sends the notice to the DMV to reinstate defendant's driver's license.

Question:

Can the defendant come in before court date and make a plea, pay in full or set up a payment plan?

Answer:

Yes.

Question:

How long does the court wait before sending the defendants information to collections?

Answer:

If the defendant has not made a plea, established a payment plan, or paid in full within 90 days of adjudication, the court must send a notice and wait 30 days from the date the notice is mailed before sending to collections. If the defendant has defaulted on their payment plan, the court must wait 90 days before sending to collections.

Question:

If the defendant does not show up for their court date, it is a failure to appear. Do I have to wait the 90 days to suspend driver's license?

Answer:

Yes, you must wait 90 days from the defendant's missed court date in order to suspend their driver's license.

Question:

The defendant came in and entered a plea but did not want to set up a payment plan or release their income verification, what now?

Answer:

If the defendant did show up for their court date but does not finish the process of paying in full, or establishing a payment plan, the court must wait 90 days, then send a 30-day notice that if they do not pay in full or set-up a payment plan they will be sent to collections.

Example:

The defendant shows up and pleads guilty on the citation but refuses to set up payment plan or release their income information. The court waits 90 days and then sends the 30-day notice that they will be sent to collections or have a lien placed against them. The defendant may come in anytime up to the 90th day to pay in full or set-up the payment plan. If they do not respond to the 30-day notice, they may be assigned to collections or a lien may be filed for the amount due.

Question:

The defendant was incarcerated when his payment was due, can I charge the \$10.00 late fee?

Answer:

No, the court **CAN NOT** charge the \$10.00 late fee if the defendant was incarcerated on the payment due date.

Example 1:

The defendant's due date was March 10th, 2020, and they were incarcerated from March 5th- March 15th, 2020. The court **CAN NOT** charge the defendant a late fee and the payment is deferred for a month adding an additional month to the length of the plan.

Example 2:

The defendant's due date was March 10th, 2020, and they were incarcerated from March 5th, 2020 – March 9th, 2020. The court **CAN** charge the defendant a late fee.

Question:

Can courts still submit delinquent amounts to the State Tax Department for an offset?

Answer:

No, municipal courts may no longer do tax offsets through the State Tax Department.

Question:

Do courts have to offer out-of-state defendants the payment plan?

Answer:

Yes. The defendant's signature is still required on the Financial Affidavit and the Uniform Payment Contract.

Note: You can email, mail, or fax documents to and from the defendant.