

Philadelphia DAO Policy on Fines and Costs



Effective Date: 6/27/2019

I. Support Waiving Fines and Costs When a Defendant is Indigent

All policies are presumptive, not mandatory, requirements. Where extraordinary circumstances suggest that an exception is appropriate, specific supervisory approval must be obtained. Wherever the term “supervisory approval” is used, it means that:

- 1) An Assistant District Attorney must obtain the approval of the unit’s supervisor and the unit’s supervisor must then obtain approval from the District Attorney, or in his absence, the approval of one of the First Assistants.
- 2) If an Assistant District Attorney’s request is not approved by the unit’s supervisor, the Assistant District Attorney may, but is not required to, request reconsideration of the decision by the District Attorney, or, in his absence, one of the First Assistants. Any reconsideration will be a discussion between the ADA, the unit supervisor and the District Attorney, or in his absence, one of the First Assistants. Freedom of thought is encouraged in the Philadelphia DAO. No adverse consequences to the ADA will result from requesting reconsideration.
- 3) Bona fide verbal approvals and disapprovals are sufficient and must be noted in the case file, including all relevant dates and identities of all personnel involved.

Imposing fines and costs on indigent individuals convicted of crimes needlessly and disproportionately punishes those individuals and their families and serves no public safety purpose. To the contrary, unaffordable fines and costs make it more difficult for individuals to complete probation terms, finish diversionary programs, and take advantage of expungement and sealing laws that would allow them to be more productive members of the community.

Furthermore, under our current system, when a defendant makes a payment, the money is divided among fines, costs, and restitution. In cases where restitution is awarded, it is most important that to insure quick compensation to the victim, what limited funds an individual may be able pay go towards restitution, rather than court administrative costs.

The DAO believes that the judiciary has the power to waive fines and costs under Pennsylvania

Rule of Criminal Procedure 706(c). This office intends to do our part to limit the extent to which the criminal justice system becomes a poverty trap, while ensuring that victims recover whatever money a defendant is able to pay.

II. Situations in Which the Defendant Should Be Presumed Indigent

- a.** ADAs shall presume that a defendant is indigent where any one of the following conditions apply:
 - i.** The defendant is represented by the public defender, has appointed counsel, pro bono counsel or is represented by any free legal services organization, or
 - ii.** The defendant receives means-based public assistance, or
 - iii.** The defendant provides evidence that his or her income is at or below 125% of the Federal Poverty Guidelines, or **iv.** The defendant otherwise can make a showing that s/he is indigent, by clear and convincing evidence.
- b.** Notwithstanding that the defendant has met one of the criteria listed in section II(a), if an ADA has reason to suspect the defendant of fraud or misrepresentation regarding the defendant's financial circumstances, the ADA may ask the defendant to provide additional evidence of his or her financial circumstances.

III. Presumptions Regarding Fines and Costs for Indigent Defendants

- a.** An ADA may not oppose an indigent defendant's request to the court to waive or reduce fines and costs, at either the sentencing phase or in any motion brought by the defendant after sentencing.
- b.** Where a probation or parole officer alleges a violation of probation or parole based upon an indigent defendant's failure to pay fines and costs, an ADA should not agree that a failure to pay represents a violation of probation or parole, absent evidence that the defendant's failure to pay is willful.
- c.** An ADA should never ask to extend probation based upon a defendant's failure to pay fines and costs.
- d.** No defendant shall be denied access to a diversion program because s/he cannot afford to pay fines or costs.
- e.** Indigent defendants who are admitted to diversionary programs cannot be expelled from or prevented from completing such programs simply because they are unable to pay fines or costs, provided they can show that they have attempted to pay these obligations.

IV. Restitution

- a.** The above policy concerns fines and costs only. Questions about waiving or reducing restitution should be handled on a case-by-case basis and ADAs should consult with their supervisors for guidance.