

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER ESTABLISHING AN “ABILITY §
TO PAY” TASK FORCE §

ORDER

This 29th day of November 2021, IT APPEARS THAT:

WHEREAS, important questions have arisen nationally over the last decade concerning the imposition of criminal fines, fees, costs, penalties, surcharges, and assessments (“Legal Financial Obligations” or “LFOs”), and the disproportionate impact LFOs have on the poor and on communities of color;

WHEREAS, national groups have called for LFO reforms that promote access, fairness, and transparency, and include requiring courts to make a meaningful inquiry into a defendant’s ability to pay at the time LFOs are imposed;¹

¹ See National Task Force on Fines, Fees, and Bail Practices, *Principles on Fines, Fees, and Bail Practices*, found at https://www.ncsc.org/_data/assets/pdf_file/0016/1609/principles-fines-fees.ashx.pdf (Rev. Feb. 2021); American Bar Association Task Force on Building Public Trust in the American Justice System, *Ten Guidelines on Court Fines and Fees*, found at https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/aba-ten-guidelines.pdf (Aug. 2018); Conference of State Court Administrators, *The End of Debtors’ Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations*, found at https://cosca.ncsc.org/_data/assets/pdf_file/0014/26330/end-of-debtors-prisons-2016.pdf (2016).

WHEREAS, the Delaware 151st General Assembly introduced House Bill 244 on June 10, 2021, which would, if passed, achieve important reforms affecting the imposition of LFOs on individuals sentenced in Delaware;

WHEREAS, one of the provisions of HB 244 would give courts discretion to waive, modify, or suspend any LFO;

WHEREAS, to that end, it is advisable to form a Task Force of interested criminal justice system partners to consider policies that would guide judges in the exercise of judicial discretion to impose LFOs and to set standards and provide for processes for courts to follow when assessing a person's ability to pay and granting a waiver, modification, or suspension of LFO payment amounts.

NOW, THEREFORE, IT IS ORDERED THIS 29th day of November 2021,

that:

1. An Ability to Pay Task Force shall be established;
2. The Task Force shall recommend policies to guide judges in the exercise of judicial discretion to impose LFOs that consider an individual's ability to pay;
3. The Task Force shall recommend processes and written policies and procedures for setting, collecting, reducing or waiving LFOs;
4. The Committee shall be composed of the following members:

State Court Administrator Gayle Lafferty, Chair
The Honorable Jan R. Jurden or her designee
The Honorable Michael K. Newell or his designee
The Honorable Carl C. Danberg or his designee
The Honorable Alan Davis or his designee
Attorney General Kathleen Jennings or her designee
Chief Defender Kevin O’Connell or his designee
Elmer Setting, Administrative Office of the Courts

5. Administrative Office of the Courts’ staff and the staff of the various courts shall provide support and advice, when called upon.
6. The Committee shall submit a preliminary report with recommendations to the Chief Justice and presiding judges on or before February 1, 2022 and a final report on or before March 1, 2022.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice