

# **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,

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.

## CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

### ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.

#### §17B-3-3a. Suspending license for failure to respond or appear in court.

1           (a) The division shall suspend the license of any resident of this state or the privilege of a  
2 nonresident to drive a motor vehicle in this state upon receiving notice from a magistrate court or  
3 municipal court of this state that such person has failed to respond or appear in court when  
4 charged with a motor vehicle violation.

5           (b) For the purposes of this section, §50-3-2a of this code and §8-10-2b of this code,  
6 “motor vehicle violation” is as any violation designated in chapters 17A, 17B, 17C, 17D, or 17E of  
7 this code, or the violation of any municipal ordinance relating to the operation of a motor vehicle  
8 for which the violation thereof would result in a fine or penalty: *Provided*, That any parking violation  
9 or other violation for which a citation may be issued to an unattended vehicle shall not be  
10 considered a motor vehicle violation for the purposes of this section, §50-3-2a of this code, or §8-  
11 10-2b of this code.

#### §17B-3-3c. Suspending license for failure to appear in court.

1           (a) The division shall suspend the license of any resident of this state or the privilege of a  
2 nonresident to drive a motor vehicle in this state upon receiving notice from a circuit court,  
3 magistrate court, or municipal court of this state, pursuant to §8-10-2b or §62-4-17 of this code,  
4 that the person has failed to appear in court when charged with a criminal offense. For the  
5 purposes of this section, §8-10-2b or §62-4-17 of this code, “criminal offense” shall be defined as  
6 any violation of the provisions of this code, or the violation of any municipal ordinance, for which  
7 the violation of the offense may result in a fine, confinement in jail, or imprisonment in a  
8 correctional facility of this state: *Provided*, That any parking violation or other violation for which  
9 a citation may be issued to an unattended vehicle shall not be considered a criminal offense for  
10 the purposes of this section, §8-10-2b or §62-4-17 of this code.



11 (b) A copy of the order of suspension shall be forwarded to the person by certified mail,  
12 return receipt requested. No order of suspension becomes effective until 10 days after receipt of  
13 a copy of the order. The order of suspension shall advise the person that because of the receipt  
14 of notice of the failure to appear, a presumption exists that the person named in the order of  
15 suspension is the same person named in the notice. The commissioner may grant an  
16 administrative hearing which substantially complies with the requirements of the provisions of  
17 §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named  
18 in the notice of conviction is not the same person whose license is being suspended. The request  
19 for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The  
20 sole purpose of this hearing shall be for the person requesting the hearing to present evidence  
21 that he or she is not the person named in the notice. In the event the commissioner grants an  
22 administrative hearing, the commissioner shall stay the license suspension pending the  
23 commissioner's order resulting from the hearing.

24 (c) A suspension under this section and §17B-3-3a of this code will continue until the  
25 person provides proof of compliance from the municipal, magistrate, or circuit court and pays the  
26 reinstatement fee as provided in §17B-3-9 of this code. The reinstatement fee is assessed upon  
27 issuance of the order of suspension regardless of the effective date of suspension.

28 (d) Upon notice from an appropriate state official that the person is successfully  
29 participating in an approved treatment and job program as prescribed in §61-11-26a of this code,  
30 and that the person is believed to be safe to drive, the Division of Motor Vehicles shall stay or  
31 supersede the imposition of any suspension under this section or §17B-3-3a of this code. The  
32 Division of Motor Vehicles shall waive the reinstatement fee established by the provisions §17B-  
33 3-9 upon receipt of proper documentation of the person's successful completion of a program  
34 under §61-11-26a of this code and proof of compliance from the municipal, magistrate, or circuit  
35 court. The stay or supersedeas shall be removed by the Division of Motor Vehicles upon receipt

36 of notice from an appropriate state official of a participant's failure to complete or comply with the  
37 approved treatment and job program as established under §61-11-26a of this code.

## **CHAPTER 50. MAGISTRATE COURTS.**

### **ARTICLE 3. COSTS, FINES AND RECORDS.**

#### **§50-3-2a. Payment by electronic payments, credit card payments, cash, money orders, or certified checks; payment plan; failure to pay fines results in a late fee and judgment lien.**

1 (a) A magistrate court may accept electronic payments, credit cards, cash, money order,  
2 or certified check for payment of all costs, fines, fees, forfeitures, restitution, or penalties in  
3 accordance with rules promulgated by the Supreme Court of Appeals. Any charges made by the  
4 credit company shall be paid by the person responsible for paying the cost, fine, forfeiture or  
5 penalty.

6 (b) Upon request and subject to the following requirements, the magistrate clerk shall  
7 establish a payment plan for a person owing costs, fines, forfeitures, or penalties imposed by the  
8 court, so long as the person signs and files with the clerk, an affidavit stating that he or she is  
9 financially unable to pay the costs, fines, forfeitures, or penalties imposed:

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

12 (2) Unless incarcerated, a person must enroll in a payment plan no later than 180 calendar  
13 days after the date the court enters the order assessing the costs, fines, forfeitures, or penalties;  
14 and

15 (3) If the person is incarcerated, he or she may enroll in a payment plan within 180  
16 calendar days after release.

17 (c) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan  
18 form and financial affidavit for requests for the establishment of payment plan pursuant to

19 subsection (a) of this section. The forms shall be made available for distribution to the offices of  
20 magistrate clerks, and magistrate clerks shall use the payment plan form and affidavit form  
21 developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

22 (d)(1) The payment plan shall specify: (A) The number of payments to be made; (B) The  
23 dates on which the payments are due; (C) The amount due for each payment; (D) All acceptable  
24 payment methods; and (E) The circumstances under which the person may receive a late fee,  
25 have a judgment lien recorded against him or her, or have the debt sent to collections for  
26 nonpayment.

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

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

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

37 (A) Is not incarcerated;

38 (B) Has not brought the account current;

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

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

41 (2) If, after 90 days, a payment has not been received, the clerk may do one or both of the  
42 following: (A) Record a judgment lien as described in subsection (f) of this section, or (B) Consign  
43 the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the  
44 State Tax Commissioner's list of eligible debt collection agencies established and maintained

45 pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the  
46 entire amount of all delinquent payments collected shall be remitted to the court and may not be  
47 reduced by any collection costs or fees: *Provided, however*, That the collection fee may not  
48 exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically  
49 or by U.S. mail, to remind the person of an upcoming or missed payment.

50 (f)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to  
51 pay his or her costs, fines, forfeitures, or penalties, the clerk may assess a \$10 late fee and shall  
52 notify the person of the following:

53 (A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, or  
54 penalties imposed pursuant to a judgment of the court;

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

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

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

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

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

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

69 (g) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county  
70 of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The

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

85 (h) A person whose driver's license was suspended before July 1, 2020, solely for the  
86 nonpayment of costs, fines, forfeitures, or penalties, if otherwise eligible, shall have his or her  
87 license reinstated:

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

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

94 (i)(1) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by  
95 the magistrate court for a hunting violation described in chapter 20 of this code are not paid within  
96 180 days from the date of judgment and the expiration of any stay of execution, the magistrate

97 court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of  
98 the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of  
99 Natural Resources shall suspend any privilege the person failing to appear or otherwise respond  
100 may have to hunt in this state, including any hunting license issued to the person by the Division  
101 of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid  
102 in full.

103 (2) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the  
104 magistrate court for a fishing violation described in chapter 20 of this code are not paid within 180  
105 days from the date of judgment and the expiration of any stay of execution, the magistrate court  
106 clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the  
107 Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of  
108 Natural Resources shall suspend any privilege the person failing to appear or otherwise respond  
109 may have to fish in this state, including any fishing license issued to the person by the Division of  
110 Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in  
111 full.

112 (j)(1) If a person charged with any criminal violation of this code fails to appear or  
113 otherwise respond in court, the magistrate court shall notify the Commissioner of the Division of  
114 Motor Vehicles thereof within 90 days of the scheduled date to appear unless the person sooner  
115 appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the  
116 Division of Motor Vehicles shall suspend any privilege the person failing to appear or otherwise  
117 respond may have to operate a motor vehicle in this state, including any driver's license issued  
118 to the person by the Division of Motor Vehicles, until final judgment in the case and, if a judgment  
119 of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.  
120 The suspension shall be imposed in accordance with the provisions of §17B-3-6 of this code.

121 (2) In addition to the provisions of subdivision (1) of this subsection, if a person charged  
122 with any hunting violation described in chapter 20 of this code fails to appear or otherwise respond

123 in court, the magistrate court shall notify the Director of the Division of Natural Resources of the  
124 failure thereof within 15 days of the scheduled date to appear unless the person sooner appears  
125 or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of  
126 the Division of Natural Resources shall suspend any privilege the person failing to appear or  
127 otherwise respond may have to hunt in this state, including any hunting license issued to the  
128 person by the Division of Natural Resources, until final judgment in the case and, if a judgment of  
129 guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

130 (3) In addition to the provisions of subdivision (1) of this subsection, if a person charged  
131 with any fishing violation described in chapter 20 of this code fails to appear or otherwise respond  
132 in court, the magistrate court shall notify the Director of the Division of Natural Resources of the  
133 failure thereof within 15 days of the scheduled date to appear unless the person sooner appears  
134 or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of  
135 the Division of Natural Resources shall suspend any privilege the person failing to appear or  
136 otherwise respond may have to fish in this state, including any fishing license issued to the person  
137 by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty,  
138 until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

139 (k) In every criminal case which involves a misdemeanor violation, a magistrate may order  
140 restitution where appropriate when rendering judgment.

141 (l) Notwithstanding any provision of this code to the contrary, except as authorized by this  
142 section, payments of all costs, fines, fees, forfeitures, restitution, or penalties imposed by the  
143 magistrate court in civil or criminal matters shall be made in full. Partial payments of costs, fines,  
144 fees, forfeitures, restitution, or penalties made pursuant to this section shall be credited to  
145 amounts due in the following order:

- 146 (1) Regional Jail Fund;
- 147 (2) Worthless Check Payee;
- 148 (3) Restitution;

- 149 (4) Magistrate Court Fund;
- 150 (5) Worthless Check Fund;
- 151 (6) Per Diem Regional Jail Fee;
- 152 (7) Community Corrections Fund;
- 153 (8) Regional Jail Operational Fund;
- 154 (9) Law Enforcement Training Fund;
- 155 (10) Crime Victims Compensation Fund;
- 156 (11) Court Security Fund;
- 157 (12) Courthouse Improvement Fund;
- 158 (13) Litter Control Fund;
- 159 (14) Sheriff arrest fee;
- 160 (15) Teen Court Fund;
- 161 (16) Other costs, if any;
- 162 (17) Fine.

## **CHAPTER 62. CRIMINAL PROCEDURE.**

### **ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.**

#### **§62-4-17. Suspension of licenses for failure to appear in court; payment plan; failure to pay fines will result in late fee and judgment lien.**

1 (a) Upon request and subject to the following requirements, the circuit clerk shall establish  
2 a payment plan for a person owing costs, fines, forfeitures, or penalties imposed by the court, so  
3 long as the person signs and files with the clerk, an affidavit, stating that he or she is financially  
4 unable to pay the costs, fines, forfeitures, or penalties imposed:

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



7 (2) Unless incarcerated, a person must enroll in a payment plan no later than 180 calendar  
8 days after the date the court enters the order assessing the costs, fines, forfeitures, or penalties;  
9 and

10 (3) If the person is incarcerated, he or she enroll in a payment plan within 180 calendar  
11 days after release.

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

17 (c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) The  
18 dates on which such payments are due; (C) The amount due for each payment; (D) All acceptable  
19 payment methods; and (E) The circumstances under which the person may receive a late fee,  
20 have a judgment lien recorded against them, or have the debt sent to collections for nonpayment.

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

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

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

31 (A) Is not incarcerated;

32 (B) Has not brought the account current;

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

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

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

44 (e)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails  
45 to pay his or her costs, fines, forfeitures, or penalties, the clerk may assess a \$10 late fee and  
46 shall notify the person of the following:

47 (A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, or  
48 penalties imposed pursuant to a judgment of the court;

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

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

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

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

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

57 (B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency  
58 contained on the State Tax Commissioner's list of eligible debt collection agencies established

59 and maintained pursuant to §14-1-18c of this code, an internal collection division, or both:  
60 *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the  
61 court and may not be reduced by any collection costs or fees: *Provided, however*, That the  
62 collection fee may not exceed 25 percent of the delinquent payment amount.

63 (f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county  
64 of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The  
65 prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county  
66 commission in the county where the defendant was convicted and in any county wherein the  
67 defendant resides or owns property. The clerk of the county commission shall record and index  
68 these abstracts of judgment without charge or fee to the prosecuting attorney, and when recorded,  
69 the amount stated to be owed in the abstract constitutes a lien against all property of the  
70 defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for  
71 which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court  
72 shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney  
73 with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code,  
74 for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk,  
75 the prosecuting attorney shall file the release of judgment in the office of the clerk of the county  
76 commission in each county where an abstract of the judgment was recorded. The clerk of the  
77 county commission shall record and index the release of judgment without charge or fee to the  
78 prosecuting attorney.

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

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

84           (2) Upon establishing a payment plan pursuant to subsection (a) and the payment of a  
85 \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan  
86 is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

87           (h) If a person charged with a criminal offense fails to appear or otherwise respond in  
88 court after having received notice to do so, the court shall notify the Division of Motor Vehicles  
89 thereof within 15 days of the scheduled date to appear unless such person sooner appears or  
90 otherwise responds in court to the satisfaction of the court. Upon such notice, the Division of Motor  
91 Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this  
92 state until such time that the person appears as required.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect July 1, 2020.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2020.

.....  
*Governor*