



FINES AND FEES INDEX DELAWARE

National Rank:

23rd

Score:

32/100

In Delaware and across the country, state and local governments impose fines as punishment for everything from traffic and municipal code violations to felonies. Courts then tax people with fees, surcharges, and other assessments that fund law enforcement, the court system, and other government operations. Fines and fees for even a single incident can add up to thousands of dollars. People unable to pay these sums immediately may face steep penalties, including additional fees, driver's license suspensions, revocation of voting rights, and even incarceration.

Fines and fees can keep people in a cycle of poverty, causing people to lose their jobs, their homes, and sometimes their children. The same monetary sanction that trivially inconveniences an affluent person can prevent a low-income family from paying the rent. But fines and fees are often set without regard to a person's financial situation. They create a two-tiered system, placing justice out of reach for many low-income people, including a disproportionate number of people of color.¹

That is why the National Center for Access to Justice (NCAJ) based at Fordham Law School convened a task force of experts from around the country to identify best policies to rein in these abuses. In all, NCAJ identified 17 policies that are critical to creating a fairer system that does not criminalize poverty and respects the rights of litigants. NCAJ researched state and local laws in all 50 states and Washington, D.C. and graded the jurisdictions on a scale of 0 to 100 according to how their policies measure up, creating the Fines and Fees Justice Index. In short, no state did well. Only three states scored higher than 50 out of 100 and no state received a passing score.

The good news, however, is that almost every policy we track has been adopted by at least one state. That means that states need not invent good policies whole cloth. Rather, each state could implement more rights-respecting policies simply by looking to what other states are already doing.

This report provides a snapshot of how Delaware fared on all 17 policy benchmarks — and sub-benchmarks — along with recommendations for how the state can improve access to justice. To see how all states scored on the Fines and Fees Justice Index, read about their policies, and see the methodology for how NCAJ arrived at the scores, visit the Fines and Fees Justice Index at <https://ncaj.org/state-rankings/fines-and-fees>.



Fines and Fees Justice Index

Delaware Score At-a-Glance

National Rank:

23rd

Score:

32/100

1. Abolition of fees		Weight	Score: 5/10
Has the state abolished all fees?		10	No
Or:	a. Has at least one county or municipality abolished all local fees?	1	No
	b. Has the state abolished "counsel fees"?	2	Yes
	c. Has the state abolished "incarceration fees"?	2	No
	d. Did the state take steps to end fees in past 4 years?	3	Yes
2. Abolition of juvenile court fees and fines		Weight	Score: 6/6
Has the state abolished all juvenile court fees and fines?		6	Yes
Or:	a. Do all but some counties/municipalities meet the benchmark?	3	N/A
	b. Do most counties/municipalities meet the benchmark?	1	N/A
	c. Has the state abolished juvenile fees but not fines?	2	N/A
	d. Has the state abolished juvenile fines but not fees?	4	N/A
	e. Has the state taken significant steps to abolish juvenile court fines and/or fees in the last 4 years?	2	N/A
3. Conflicts of interest		Weight	Score: 0/6
Does the state ensure that fines & fees revenue does not directly fund law enforcement and courts?		6	No
Or:	a. Do all but some counties/municipalities meet the benchmark?	1	No
	b. Does at least one major county/municipality meet the benchmark?	1	No
	c. Has the state capped the % of local budgets raised from fines & fees?	1	No
4. Private debt collection		Weight	Score: 0/3
Does the state bar courts from using private collection firms?		3	NO
Or:	a. Do all but some counties/municipalities meet the benchmark?	1.5	No
	b. Does at least one major county/municipality meet the benchmark?	1	No
	c. Does the state require private collectors' compensation be unrelated to the amount collected?	1	No
	d. Does the state bar courts from imposing surcharges on fines and fees in private collection?	1	No
	e. Does the state have protections of the Fair Debt Collections Practices Act?	1	N/A
5. Ability to pay determinations		Weight	Score: 0/6
Does the state require courts to conduct an ability to pay determinations when imposing fines, fees, assessments or surcharges?		6	No
Or:	a. Do all but some counties/municipalities meet the benchmark?	3	No
	b. Does at least one major county/municipality meet the benchmark?	1	No
	c. Does the state require ability to pay determinations for fines?	3	No
	d. Can people request an ability to pay determination?	2	No
6. Willful failure to pay		Weight	Score: 0/10
Does the state require the government to prove failure to pay is willful before imposing sanctions, including incarceration?		10	No
Or:	a. Do most counties/municipalities meet the benchmark?	5	No
	b. Does at least one major county/municipality meet the benchmark?	1	No
7. Ability to pay standards		Weight	Score: 0/5
Has the state codified standards for judges to determine ability to pay?		5	No
Or:	a. Do all but some counties/municipalities meet the benchmark?	2.5	No
	b. Does at least one major county/municipality meet the benchmark?	1	No

8. Presumption of indigence	Weight	Score: 0/5
Has state codified standards for the presumption of indigence?	5	No
Or:		
a. Do all but some counties/municipalities meet the benchmark?	2.5	No
b. Does at least one major county/municipality meet the benchmark?	1	No
9. Waiver or modification of fines and fees	Weight	Score: 4/8
Do judges have discretion to waive or modify fines and fees?	8	No
Or:		
a. Do all but some counties/municipalities meet the benchmark?	3	No
b. Does at least one major county/municipality meet the benchmark?	1	No
c. Does the state meet the benchmark a) only for fines, or b) only for some fees, assessments and/or surcharges?	4	Yes
10. Payment plans	Weight	Score: 0/3
Can anyone pay fines & fees on a payment plan without penalty?	3	No
Or:		
a. Do all but some counties/municipalities meet the benchmark?	1.5	No
b. Does at least one major county/municipality meet the benchmark?	1	No
11. Day fines	Weight	Score: 0/3
Does the state mandate or encourage courts to use day fines?	3	No
Or:		
a. Is at least one court in the state piloting or using day fines?	1	No
12. Right to counsel	Weight	Score: 0/6
Is there a right to counsel for people facing incarceration for failure to pay?	6	No
Or:		
a. Do all but some counties/municipalities meet the benchmark?	3	No
b. Does at least one major county/municipality meet the benchmark?	1	No
13. Driver's license suspension	Weight	Score: 6/6
Does the state law bar driver's license suspension for failure to pay and failure to appear in court?	6	Yes
Or:		
a. Does the state allow suspension of driver's licenses for failure to pay, but only in some driving-related cases?	2	N/A
b. Does the state bar driver's license suspension for failure to pay but permit it for failure to appear?	3	N/A
c. Does the state bar driver's license suspension for failure to appear but permit it for failure to pay?	3	N/A
14. Voting Rights	Weight	Score: 6/6
Does the state allow restoration of voting rights if people have unpaid fines and fees, including where fines and fees are a condition of probation or parole?	6	Yes
15. Records expungement	Weight	Score: 0/6
Does the state allow sealing of records or records expungement if people have outstanding fines and/or fees?	6	No
Or:		
a. Do all but some counties/municipalities meet the benchmark?	3	No
16. Data collection and reporting	Weight	Score: 0/6
a. Does the state collect/publish data on fines & fees imposed, and revenue collected?	1	No
b. Data on people incarcerated for failure to pay fines and fees?	1	No
c. Data on fines and fees imposed, broken down by race?	1	No
d. Data on fines and fees imposed, broken down by age?	1	No
e. Data on fines and fees imposed, broken down by gender?	1	No
17. COVID response	Weight	Score: 5/5
Did the state enact at least one significant, temporary measure to mitigate impact of fines and fees during the COVID-19 pandemic?	5	Yes
a. Does at least one major county/municipality meet the benchmark?	2	N/A

Delaware’s Fines and Fees Justice Index Score

Delaware scored 32 out of 100 points on the Fines and Fees Justice Index. It tied with Connecticut and Michigan for 23rd. Below, we explain in more detail how Delaware fared on each of the Fines and Fees Justice Index benchmarks and we describe how it could do better.

Benchmark 1: Abolition of Fees

Delaware Score: 5 out of 10 points

Recognizing that fees serve no role in making communities safer and that they unfairly force people who come into contact with the courts to pay for a system that serves all of society, the Justice Index sets a goal of abolishing all court fees. No state has yet abolished all court fees, but one in three has moved to abolish some of the most pernicious fees. These include fees for appointed counsel in criminal cases and fees for a person’s incarceration, such as per diem “pay to stay” fees and charges for the cost of meals and other basic necessities. Delaware imposes a range of fees. It received partial credit, however, because in 2022 it passed HB 244, which eliminated some fees, including fees for appointed counsel and probation fees.ⁱⁱ

***Recommendation:** Delaware should continue its recent progress and abolish all fees. Short of that, it should abolish the most pernicious fees, including incarceration fees.*

Benchmark 2: Juvenile Court Fines and Fees

Delaware Score: 6 out of 6 points

A growing body of research shows that juvenile court fines and fees, which require children or their families to pay when a child has contact with the juvenile courts, impede rehabilitation, increase recidivism, and can create family instability by placing financial stress on families already struggling to make ends meet. For that reason, a growing number of states are moving to abolish juvenile court fines and fees. Delaware abolished juvenile court fines and fees in 2022.ⁱⁱⁱ

***Recommendation:** Delaware should continue its current policies.*

Benchmark 3: Barring Conflicts of Interest Around Fines and Fees Revenue

Delaware Score: 0 out of 6 points

In many states, fines and fees pay for some or all of law enforcement and court system budgets. This use of the revenue can create perverse incentives, encouraging police to make more stops and arrests and court personnel to ratchet up punishments to pay their own salaries. Alaska, New York, South Dakota, and Utah have all avoided this conflict of interest by ensuring that revenue raised from fines and fees

does not go directly into law enforcement or court budgets. Delaware, however, has not taken this critical step.^{iv}

Recommendation: *To eliminate conflicts of interest that can increase fines and fees, the state should ensure that revenue from these charges does not go into law enforcement or court budgets.*

Benchmark 4: Private Collection of Fines and Fees Debt

Delaware Score: 0 out of 3 points

Debt collection agencies often add large surcharges to bills they are collecting. Because they may only get paid when they collect money, debt collection agencies also have an incentive to use predatory practices to squeeze money from people who may not be able to afford it. When states allow private agencies to collect fines and fees, those agencies profit while people who cannot pay incur even more debt. For that reason, one in three have either outlawed the use of private debt collection agencies to collect unpaid court debts or have taken steps to rein in abusive practices. Delaware has not barred the use of private collections firms to collect court debt.^v

Recommendation: *Delaware should bar the use of private collections firms to collect court debt.*

Benchmark 5: Consideration of Ability to Pay at Sentencing

Delaware Score: 0 out of 6 points

Recognizing the harms of charging people fines and fees they simply cannot afford to pay, one in four states require courts to conduct ability to pay assessments every time they order a person to pay a fine, fee, assessment or surcharge. Delaware imposes costs and additional penalties without regard to a person's ability to pay.^{vi}

Recommendation: *Delaware should require courts to conduct an ability to pay assessment every time they order a person to pay a fine, fee, assessment, or surcharge.*

Benchmark 6: Proof of Willful Failure to Pay Before Incarceration or Other Sanctions

Delaware Score: 0 out of 10 points

In 1983 the United States Supreme Court ruled in *Bearden v. Georgia* that courts cannot incarcerate a person for failure to pay court debts unless the failure to pay was "willful." Nevertheless, only 15 states require courts to conduct a hearing and find that the person's failure to pay was willful before ordering incarceration or the imposition of other sanctions, including the suspension of a driver's license. Delaware does not require the state to prove that a person's failure to pay was willful before a judge orders incarceration.^{vii}

Recommendation: Delaware should abolish incarceration as a sanction for failure to pay. Short of that, the state should require courts to conduct a hearing and find that a person's failure to pay was willful before ordering incarceration or imposing other sanctions.

Benchmark 7: Ability to Pay Standards

Delaware Score: 0 out of 5 points

When courts conduct ability to pay determinations, they often do so without clear, uniform standards about how to conduct the proceedings, the evidence to consider, and the criteria to gauge what a person is able to pay. This can lead to wildly different results across court rooms, leaving many people unprotected. For that reason, 11 states have codified standards giving clear guidance to judges. Delaware has not codified an ability to pay standard.^{viii}

Recommendation: Delaware should codify a substantive ability to pay standard that all state and local courts must use so that there is consistency across the state in determining whether a person can afford to pay and, if so, how much.

Benchmark 8: Standards that Trigger a Presumption of Indigence

Delaware Score: 0 out of 5 points

Eight states have codified standards that trigger a presumption that a person is indigent and, therefore, unable to pay fines, fees, costs, surcharges or assessments. In some states, the fact that a person is entitled to appointed counsel or receives public benefits is enough to trigger the presumption that they cannot pay fines and fees. In others, a certain income threshold triggers the presumption. Delaware has not codified a standard that triggers a presumption of indigence.^{ix}

Recommendation: Delaware should codify a clear standard that triggers the presumption that a person is indigent and, therefore, cannot afford to pay fines or fees.

Benchmark 9: Discretion to Modify or Waive Fines and Fees

Delaware Score: 4 out of 8 points

To ensure that fines and fees reflect what people can actually afford to pay, judges must have discretion in individual cases. Eighteen states give judges the ability to waive or modify all fines, fees, surcharges and assessments according to the person's ability to pay, and nearly every state give judges the ability to waive or modify these costs in at least some circumstances. Delaware does not allow for modification or waiver of all fines and fees, but it received partial credit because judges have discretion with regard to some fines and fees.^x

Recommendation: Delaware should give judges discretion to waive or modify all fines, fees, and other costs.

Benchmark 10: Payment Plans

Delaware Score: 0 out of 3 points

Bars on payment plans create needless barriers to payment for people who cannot pay an entire fine or fee up front, but some states never allow people to use payment plans. Others authorize—but do not require—judges to allow payment plans, leaving some people who cannot afford to pay upfront vulnerable. States should mandate that anyone can choose to pay fines and fees on a payment plan if they cannot afford to pay immediately, without incurring any additional fees or interest charges, but only five do so to date. Delaware authorizes—but does not require—judges to allow people to pay fines and fees in installment plans.^{xi}

Recommendation: Delaware should mandate that anyone can choose to pay fines and fees on a payment plan, without incurring any additional fees or interest charges.

Benchmark 11: Individualized Fines

Delaware Score: 0 out of 3 points

To date, Oklahoma is the only state that has adopted individualized fines, sometimes referred to as “day fines.” Individualized fines, long used in Germany and other European countries, are scaled to the severity of the offense and the person’s income, helping to ensure that fines are adjusted to what people can afford to pay, and that people with greater income experience penalty of equivalent impact for violation of the same law.^{xii}

Recommendation: Delaware should follow Oklahoma's lead and institute day fines. Scaling fines not only to the severity of the person's offense but also to their income helps to ensure that people who are poor or working class do not experience much harsher punishments for the same behavior as wealthy people who can afford to pay.

Benchmark 12: Right to Counsel When Incarceration is Possible

Delaware Score: 0 out of 6 points

More than half of states give people the right to an attorney at court hearings if the person may face jail time for failure to pay a fine, fee, surcharge, or assessment. Delaware does not provide a right to counsel in such hearings.^{xiii}

Recommendation: Delaware should eliminate incarceration as a possible punishment for failure to pay. Short of that, the state should ensure that people have a right to counsel at any hearing where they might face jail time for failure to pay fines, fees, surcharges, assessments, or other costs.

Benchmark 13: Driver's License Suspension for Failure to Pay Fines and Fees

Delaware Score: 6 out of 6 points

Eighty-six percent of Americans drive to work. A driver's license is also necessary to take children to school, buy groceries, go to doctor's appointments, and meet many other basic needs. But courts often suspend driver's licenses for failure to pay fines and fees, or for failure to appear at hearings connected with fines and fees payments, forcing people either to lose their jobs and face other hardships, or drive with a suspended license risking further penalties and punishments. For that reason, there is growing momentum to end the suspension of driver's licenses. Now, three in five states bar the suspension of driver's licenses for failure to pay fines and fees. In 2022, HB 244 ended Delaware's practice of suspending driver's licenses for failure to pay.^{xiv}

Recommendation: Delaware should continue its current policies.

Benchmark 14: Voting Rights

Delaware Score: 6 out of 6 points

During the Jim Crow era, states passed laws designed to prevent Black people from voting, including poll taxes. There is no defensible good government nexus between money and voting. Today, however, a form of poll tax still exists. In many states, people lose the right to vote when they are convicted of a felony. Almost half of states block people from restoring their voting rights unless and until they pay all fines and fees. In 2016, Delaware eliminated the requirement that people pay all fines, fees, and restitution before regaining the right to vote.^{xv}

Recommendation: Delaware should continue to allow people to exercise the fundamental right to vote.

Benchmark 15: Conditioning Expungement on the Payment of Fines and Fees

Delaware Score: 0 out of 6 points

One in three people in the United States has a criminal record, which can interfere with a person's ability to find a job, rent or buy a home, enroll in higher education, access government benefits and more. Some criminal records can be sealed from public view or removed through expungement, making it easier for people to get back on their feet after satisfying a criminal sentence. One in four states allows people to expunge or seal their records notwithstanding that they have unpaid fines and fees. Delaware, however, does not allow people to expunge or seal their records unless and until they have paid all fines and fees.

If, however, a person has an outstanding fine or fee and the court finds that the non-payment is not a result of "wilful non-compliance," the court may waive the fines or fees.^{xvi}

Recommendation: Delaware should expand access to expungements and record sealing, including by allowing people to expunge or seal their records if they have outstanding fines and fees.

Benchmark 16: Data Transparency

Delaware Score: 0 out of 6 points

To understand the magnitude of the problem and to identify solutions, it is critical for states to collect and publicize data about fines and fees, including the totals that state and local governments assess and actually collect; fines and fee amounts imposed, broken down by race and ethnicity, age, gender, and income level; and number of people incarcerated for failure to pay. In 2022 Delaware passed HB 244 requiring the collection and publication of data on the amount of fines and fees collected, but it did not receive credit because it does not collect and publish data on the amount of fines and fees imposed.^{xvii}

Recommendation: Delaware should collect and report data about fines and fees, including amounts imposed—broken down by race and ethnicity, age, gender, and income level—as well as revenue collected. It should also collect and report on the number of people incarcerated for failure to pay.

Benchmark 17: Temporary Measures to Mitigate the of Fines and Fees During the COVID-19 Pandemic

Delaware Score: 5 out of 5 points

The COVID-19 pandemic and resulting economic fallout caused financial hardship across our society. Early in the crisis, tens of millions of people lost their jobs. Although employment numbers gradually improved, the challenges persisted. Near the end of 2021, 20 million households reported that they did not have enough to eat and 10 million households reported that they were behind on rent.^{xviii} Almost half of states took steps to change their fines and fees policies in light of these new economic circumstances. Delaware State Courts stopped issuing failure to pay warrants and suspended the active collection of debts for criminal, civil and traffic assessments. They also suspended the imposition of late fees and interest accrual.^{xix}

Recommendation: The COVID-19 pandemic and its financial toll revealed many ways society could be operating differently, including in practices around fines and fees. In anticipation of future pandemic surges and other potential challenges, including financial hardships, Delaware should continue to review and reform its policies on fines and fees, guided by the benchmarks set forth above.

Conclusion

The overall findings of the Fines and Fees Justice Index are sobering. No state received a passing score. The findings do, however, provide some room for optimism. Almost all of the 17 benchmarks have been

adopted by at least one state. That means that states need not reinvent the wheel. To implement better, more rights-respecting policies, in most cases they need only look to what other states are already doing. To see how other states fare, visit <https://ncaj.org/state-rankings/fines-and-fees>.

End Notes

ⁱ See, e.g., U.S. Comm’n on Civil Rights, Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications (Sept. 2017), <https://perma.cc/W7Y7-C7MW>.

ⁱⁱ See, e.g., Del. Code tit. 11, § 4101. But see Del. Code tit. 29 § 4607; Del. Code tit. 11 § 6504.

ⁱⁱⁱ Del. Code Ann. tit. 10, §§ 1002, 1007c(e).

^{iv} See, e.g., Del. Code tit. 11, § 4101.

^v See “Office of State Courts Collections Enforcement,” Admin. Office of the Courts, <https://perma.cc/9ENC-GFB4> (“The Office of State Court Collections Enforcement (OSCCE) pursues the collection of court-ordered financial assessments through a variety of State and private sector sanctions to ensure the enforcement of judicial branch orders.”) At least some localities within Delaware use private debt collection agencies to collect unpaid court debts. See, e.g., “An Ordinance to Authorize a Multi-Year Amendment of Contract 15055DFPS (Parking Citation Processing and Collection Services) Between the City of Wilmington and Conduent State and Local Solutions, Inc.,” Wilmington City Council (Dec. 12, 2019), <https://perma.cc/KXJ7-5KA4>.

^{vi} See Del. Code tit. 11, § 4101.

^{vii} Delaware statute provides, “No person sentenced to pay a fine, costs or restitution upon conviction of a crime shall be ordered to be imprisoned in default of the payment of such fine, costs or restitution.” Del. Code tit. 11, § 4105(a). However, notwithstanding that subsection, where a person is sentenced to a term of imprisonment in addition to fines, costs, and restitution, the court may order an additional term of imprisonment of up to 30 days in lieu of requiring payment. 11 Del. Code § 4105(d). Furthermore, courts have the power to treat any failure to pay as either civil contempt or “as if the defendant had been placed on probation and the probation violated; provided, however, that any sentence for violation of probation may not exceed 30 days.” 11 Del. Code § 4105(e).

^{viii} The statute that governs default and inability to pay is silent with regard to how courts determine ability to pay. See Del. Code tit. 11, § 4105. Similarly, court rules make no mention of ability to pay determinations. See, e.g., Del. Super. Ct. Crim. R. 17(b).

^{ix} The statute that governs default and inability to pay is silent with regard to any triggering presumptions. Del. Code tit. 11, § 4105.

^x See generally Del. Code Ann. tit. 11, § 4101 (referencing fines and fees that can and cannot be modified). See also Del. Code Ann. tit. 11, § 4105(b)(1) (providing that judges may order the person to report for work to discharge the costs.)

^{xi} See 11 Del. Code § 4104(a); 11 Del. Code § 4204(e).

^{xii} See 22 Okla. Stat. Ann. § 991a(A)(1)(y).

^{xiii} Delaware codifies a right to counsel only when a person is “charged with a crime in which incarceration may be imposed as a penalty and found to be indigent.” This does not include situations where a person faces possible incarceration for failure to pay. See Del. Code tit. 29, § 4602(a); How Do I Get An Attorney?, The Office of Defense Services, available at <https://perma.cc/H2WK-KMMP>.

^{xiv} See Del. Code tit. 11, § 4104(e).

^{xv} See Governor Signs Legislation Expanding Access to the Ballot Box, Builds on Record of Criminal Justice Reform, Office of the Governor, Jul. 13, 2016, <https://perma.cc/HWP6-C473>. See also Persons Convicted of a Felony, State of Delaware, <https://perma.cc/968D-QXF4> (“Payment of any fees, fines, costs, or restitution which a felony offender may be required to pay as part of the criminal sanctions imposed on such offender is NOT considered in determining discharge of sentence for purposes of eligibility to register to vote.”)

^{xvi} Del. Code tit. 11, § 4372(l) (“For a conviction to be eligible for an expungement under this subchapter, all fines, fees, and restitution associated with the conviction must be paid. However, if an outstanding fine or fee is not yet satisfied due to reasons other than wilful noncompliance, but the person is otherwise eligible for an expungement, the court may grant the expungement and waive the fines or fees or convert outstanding financial obligations to a civil judgment.”).

^{xvii} Del. Code tit. 11, § 4107. See, e.g., Gayle P. Lafferty, The Delaware Judiciary Annual Report 2019, Admin. Office of the Courts, 2019 at 15, <https://perma.cc/3ZQT-FW7P> (providing totals for fines, fees and costs, but notes, “Figures represent only revenue actually received, not the total amount of fines and costs assessed.”)

^{xviii} “Tracking the COVID-19 Economy’s Effect on Food, Housing, and Employment Hardships,” Center on Budget and Policy Priorities, Feb. 10, 2022, <https://perma.cc/E9GQ-SFNI>.

^{xix} “COVID-19 Fines and Fees Policy Tracker,” Fines and Fees Justice Center (2020), <https://perma.cc/E6F8-H7YC>. See also, “Ending the Burden of Fines and Fees During COVID-19,” Brennan Center for Justice (Jan. 7, 2022), <https://perma.cc/7N85-E6F9>.