

**GENERAL DISTRIBUTION**

**WEST VIRGINIA  
DIVISION OF CORRECTIONS  
& REHABILITATION**

**NUMBER: 111.06**

**EFFECTIVE DATE: 01 December 2023**

**SUBJECT: FINANCIAL RESPONSIBILITY  
PROGRAM FOR  
INMATES/RESIDENTS**

# **POLICY DIRECTIVE**

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**PURPOSE:**

To comply with the statutory mandate that inmates be encouraged to meet his or her court-ordered and other financial obligations; to ensure the collection of filing fees for state court prisoner litigation and federal court filing fees; and to outline the formula for the distribution of an inmate's/resident's income.

**REFERENCE:**

WV Code §§15A-4-11, 15A-5-8, 25-1A-3, and 25-1A-7; and 28 U.S. Code 1915 Proceedings in Forma Pauperis.

**RESPONSIBILITY:**

No additional written instructions on this subject are required.

**CANCELLATION:**

Any previous written instruction on the subject, including DCR Policy Directive 111.06, dated 01 June 2022.

**APPLICABILITY:**

All adult facilities within the Division of Corrections and Rehabilitation. The portions of this Policy that lawfully apply to juveniles shall be applicable to juvenile facilities also. This Policy is available for general distribution and is to be made available for inmate/resident review upon the effective date.

**DEFINITIONS:**

**Child Support:** All court ordered child support from a court of competent jurisdiction of this state or other state or territory of the United States.

**Court Ordered Obligations:** Any sum of money for which the inmate/resident has been ordered to pay to an entity or individual by a court of competent jurisdiction of this state or other state or territory of the United States.

**Earnings:** All sums of money paid to an inmate/resident on account of any work assignment, or other allowable means by which an inmate/resident may be compensated for work performed or goods sold, including earnings from work in Correctional Industries and indigent pay; proceeds from any arts and craft sale; all sums of money received by the inmate/resident on account of a settlement of a lawsuit, civil judgement, or other lawful process; proceeds from any inheritance, bequest, or gift; **or funds provided the inmate/resident by family or friends.**

**Jail Processing Fee:** As stipulated in State Code §15A-5-8, a person committed to be housed in jail by order of a magistrate, circuit judge or by temporary commitment order shall pay a processing fee of thirty dollars (\$30.00).

**Trustee Account:** An account established by the DCR to manage inmate/resident personal funds in FDIC insured financial institutions for both checking and savings accounts. Said funds are controlled by generally accepted accounting procedures.

**Victim Restitution:** The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological, or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense to the greatest extent economically practicable when considering the defendant's financial circumstances.

## **POLICY:**

- I. In order to support the legislative finding of an urgent need for vigorous enforcement of child support, victim restitution, and other court ordered obligations; the duty of inmates to provide for the needs of dependent children, including their necessary food, clothing, shelter, education, and health care should not be avoided because of where the inmate resides; a person owing a duty of child support who chooses to engage in behaviors that result in the person becoming incarcerated should not be able to avoid child support obligations; and each sentenced inmate should be encouraged to meet his or her legitimate court ordered obligations, the Division of Corrections and Rehabilitation (DCR) shall ensure the following.
  - A. As part of the intake process into a facility, appropriate staff shall review file material to determine the existence of any court ordered obligations. Copies of documentation shall be forwarded to the designated fiscal staff for processing.
  - B. As part of the initial classification process, staff shall assist each inmate in developing a financial plan for meeting the inmate's child support obligations, if any exist. At subsequent classification reviews, staff shall consider the inmate's efforts to fulfill those obligations as indicative of that individual's acceptance and demonstrated level of responsibility.

- C. Inmates with child support obligations shall be provided copies of the Petition for Modification (**Attachment #1**) as provided by the West Virginia Supreme Court of Appeals. Copies of this form shall also be made available in inmate Law Libraries.
- II. Restitution ordered by a Correctional Hearing Officer upon a guilty finding of a rule violation, shall also create a financial obligation for an inmate/resident.
- A. Correctional Hearing Officers may order restitution to compensate another person, business, or the state for repair or replacement costs, special housing or treatment costs, related extra staff expenses (overtime, mileage, etc.) and any other identifiable costs related to the offense.
  - B. Restitution ordered by a Correctional Hearing Officer shall be made by deductions from the inmate's/resident's trustee account.
  - C. A copy of the disposition/hearing report ordering such restitution shall be provided by the Correctional Hearing Officer to the designated fiscal staff member as authorization for the deductions(s).
  - D. Upon subsequent bookings/intakes into a DCR correctional facility, if an inmate has debt from a previous incarceration for restitution ordered by a Correctional Hearing Officer, and the inmate has more than the thirty-dollar (\$30.00) jail processing fee (if applicable), the entire amount shall be applied toward the payment of this debt.
- III. Upon verifying the existence of a financial obligation, the designated fiscal staff member shall provide a Financial Responsibility Program Notice (**Attachment #2**) to the inmate/resident, advising the inmate/resident the facility shall deduct from the inmate's/resident's earnings in order to meet the financial obligations.
- A. Designated fiscal staff shall scan copies of the court order(s), disposition/hearing reports, any other supporting documentation, and the Financial Responsibility Program Notice into the inmate's/resident's account/transaction in the trustee system.
  - B. Should the inmate/resident provide proof the court ordered obligation has been fully satisfied or otherwise set aside and after verification from the Court, no funds shall be withheld for that specific court ordered obligation. However, if other obligations exist, funds shall be applied to other obligations.
- IV. In the event an inmate/resident has financial obligations as identified in this policy, the facility shall deduct fifty percent (50%) of the inmate's/resident's earnings and distribute evenly among the following:
- A. Child support orders;
  - B. Victim restitution and/or other court ordered fees/costs;

- C. Jail processing fees (in accordance with DCR Policy Directive 111.07); and
  - D. Reimbursements to the facility including, but not limited to:
    - 1. Legal copies (in accordance with DCR Policy Directive 328.00)
    - 2. Medical co-payments (in accordance with DCR Policy Directive 424.01)
    - 3. Correctional hearing officer ordered restitution
    - 4. Expenses authorized by Superintendent or higher authority for work release status inmates.
  - E. In no event shall an inmate/resident pay less than fifty percent (50%) unless the actual obligation is lower than the amount and the remaining balance shall be returned to the inmate/resident.
  - F. Any court order which is expressly at variance with the provisions of this Policy shall be referred by the Administrator to the appropriate Assistant Commissioner through his/her chain of command.
  - G. Any compensatory damages awarded to an inmate in connection with a civil action, after deduction for any attorney fees, shall be paid directly to satisfy any outstanding court-ordered payments pending against the inmate, including, but not limited to victim restitution or child support. The remainder of the award after full payment of all pending court orders shall be forwarded to the inmate.
  - H. Work release status inmates working in the community for a private sector employer and have a child support obligation, the private sector employer may withhold the child support obligation. If so, and there are no orders requiring additional child support withholdings, deductions shall be applied to other court ordered obligations as though no child support order exists.
  - I. Disbursements of court ordered financial obligations shall be made payable to the Clerk of the Court, unless otherwise specified in the court order.
- V. Should an inmate/resident still have unpaid financial obligations for Correctional Hearing Officer ordered restitution, medical co-payments and/or jail processing fees upon his/her authorized release, fifty percent (50%) of his/her trustee spending account shall be deducted prior to his/her departure, and distributed as follows:
- A. Twenty-five percent (25%) shall be applied towards jail processing fees.
  - B. Twenty-five percent (25%) shall be divided evenly between Correctional Hearing Officer ordered restitution and medical co-payments.

- C. If the inmate/resident does not owe jail processing fees, the fifty percent (50%) deducted shall be evenly divided among the Hearing Officer ordered restitution and medical co-payments.
  - D. If the inmate/resident does not owe Correctional Hearing Officer ordered restitution or medical co-payments, the fifty percent (50%) deducted shall be applied towards the jail processing fees.
  - E. In no event shall an inmate/resident pay less than fifty percent (50%) unless the actual obligation is lower than the amount and the remaining balance shall be returned to the inmate/resident.
- VI. When an inmate seeks to file a civil action with any court of this state and requests the customary filing fees and court costs be waived, the court will notify the superintendent/designee of the facility where the inmate resides.
- A. Upon receiving this notification, the designated fiscal staff member shall compute the average monthly balance of the inmate's trustee account on the last calendar day of each of the preceding three (3) month period and deduct from the inmate's trustee account thirty percent (30%) of the average balance as a partial filing fee.
  - B. The designated fiscal staff member shall deduct that same amount or up to thirty percent (30%) of the balance of the inmate's trust account, whichever is greater, on a monthly basis until the filing fee is paid in full.
  - C. The amount(s) deducted from the inmate(s) trustee account(s) shall be held in a "filing fees account," and the designated fiscal staff member shall distribute the balance to the applicable circuit clerk biannually, which shall be on the first (1<sup>st</sup>) business day in January and July of each year.
  - D. Designated fiscal staff shall scan supporting documentation received from the court into the inmate's account/transaction.
- VII. Inmates seeking to bring a civil action or appeal a judgement in a civil action or proceeding in any court of the United States must pay court filing fees in full. If the inmate does not have the money in advance of filing, he or she can pay the filing fee over time through installments from his/her trustee account, but the filing fee will not be waived.
- A. A complex statutory formula requires the inmate to pay an initial filing fee of twenty percent (20%) of the greater of his/her average balance or the average deposits to the account for the preceding six (6) months.
  - B. After the initial payment, the inmate shall pay monthly installments of twenty percent (20%) of the earnings credited to the account in the previous month until the fee has been paid.

- C. The designated fiscal staff shall forward payments to the clerk of the court each time the amount in the inmate's trustee account exceeds ten dollars (\$10) until the filing fees are paid in full.
- D. Designated fiscal staff shall scan supporting documentation received from the court into the inmate's account/transaction.

**ATTACHMENT(S):**

- #1 Petition for Modification (SCA-FC-201) (3 pages)
- #2 Financial Responsibility Program Notice

APPROVED SIGNATURE: \_\_\_\_\_

*William K. Marshall III*

William K. Marshall III, Commissioner

*Dec. 3<sup>rd</sup> 2023*

Date

IN THE FAMILY COURT OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

IN RE:

The Marriage / Children Of:

Civil Action No. \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_  
Petitioner (First/Middle/Last) Respondent (First/Middle/Last)

**PETITION FOR MODIFICATION**

**1. General Information**

a. The Petitioner is \_\_\_\_\_, who is

- the parent/spouse whose name is listed in the case style at the top of this page; or
- other person, whose relationship to the Respondent / children is \_\_\_\_\_

b. The Petitioner requests that the Order entered on the date of \_\_\_\_ / \_\_\_\_ / \_\_\_\_ be modified with regard to:

- Parenting Plan
- Child Support
- Spousal Support
- Other: (Explain) \_\_\_\_\_

**2. I want the Court to modify the Order in these ways: (Check all that apply.)**

- Increase Child Support
- Decrease Child Support
- End Child Support
- Change Parenting Plan with regards to:
  - decision making;
  - time spent with the children;
  - Other: (Explain) \_\_\_\_\_

Order child support *paid to* another person, who is \_\_\_\_\_

Order child support *paid by* another person, who is \_\_\_\_\_

- Increase Spousal Support
- Decrease Spousal Support
- End Spousal Support

Other modification request(s): *(Explain.)*

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**3. The following circumstances justify the modification I am requesting.**

*(Explain all of the changes in circumstances you think justify the modifications you requested.)*

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**4. Information concerning Public Assistance and Child Support Enforcement Services**

- a.  A Public Assistance Check from Health and Human Services is now being received by
- the Children;
  - the Petitioner; and/or
  - the Respondent.
- b.  A Public Assistance Check from Health and Human Services was received in the past by
- the Children;
  - the Petitioner; and/or
  - the Respondent.
- c.  Services from the Bureau for Child Support Enforcement have been applied for by
- the Petitioner; and/or
  - the Respondent.
- d.  Income withholding services are currently being received from the Bureau for Child Support Enforcement.

**5. Information concerning Child Protective Services (CPS) and other court cases.**

- a.  Child Protective Services is currently providing services to the child(ren) and parties in this case.
- b.  Child Protective Services is currently investigating allegations of abuse and/or neglect of the child(ren) in this case.
- c.  Someone other than the parents currently has custody of the child(ren) in this case.
- d.  The parents are involved in another court case involving the custody of the child(ren) in this case.
- e.  The child(ren) is/are involved in another court case such as a juvenile delinquency or status offender case.

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Petitioner's Signature

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Date



**You must sign the Verification below before a Notary Public.**

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**VERIFICATION**

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I, \_\_\_\_\_, after making an oath or affirmation to tell the truth, say that the facts I have stated in this Petition are true to the best of my personal knowledge and belief; and if I have provided information given to me by others, I believe that information to be true.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

This Verification was sworn to or affirmed before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public / Other Official

My commission expires: \_\_\_\_\_.

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**CERTIFICATE OF SERVICE**

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State of West Virginia

County of \_\_\_\_\_

I, \_\_\_\_\_, the Petitioner for Modification, mailed my Petition by first class United States Mail, postage paid, to \_\_\_\_\_, at the address of \_\_\_\_\_,

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**and**

to, \_\_\_\_\_, at the address of \_\_\_\_\_,

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

\_\_\_\_\_  
Date

## FINANCIAL RESPONSIBILITY PROGRAM NOTICE

TO: \_\_\_\_\_  
(Inmate/Resident Name)

OID # \_\_\_\_\_

Pursuant to West Virginia State Code and West Virginia Division of Corrections & Rehabilitation Policy Directive, you are hereby notified that a review of your records has revealed that you have the following financial obligations:

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The facility will deduct from your earnings in order to satisfy these obligations. Earnings are defined as all sums of money paid to an inmate/resident on account of any work assignment, or other allowable means by which an inmate/resident may be compensated for work performed or goods sold, including earnings from work in Correctional Industries and indigent pay; proceeds from any arts and crafts sale; all sums of money received by the inmate/resident on account of a settlement of a lawsuit, civil judgment, or other lawful process; proceeds from any inheritance, bequest, or gift; **or funds provided the inmate/resident by family or friends.**

You may dispute these charges by filing a grievance pursuant to Policy Directive. You should, however, be aware that the Division of Corrections & Rehabilitation cannot alter or reduce obligations imposed by outside authorities.

\_\_\_\_\_  
Superintendent/designee

\_\_\_\_\_  
Date