

MANUAL - CHAPTER 15

SENTENCING

GENERALLY

Before you accept a guilty plea or start a criminal trial, you should know and follow URPJC 3.08

URJPC RULE 3.08 PLEAS

A defendant may plead not guilty, or guilty, or, with the permission of the court, nolo contendere.

- (a) Entry of a Guilty Plea. A person who is charged with the commission of a criminal offense and is represented by an attorney may appear before the court at any time the judge may fix, and enter a plea of guilty to the offense charged and be sentenced by the court.
- (b) Voluntariness. Before the court may accept a plea of guilty, the court must determine that a plea is voluntarily and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception, or improper inducements. A showing that the plea of guilty was voluntary and intelligently made must appear in the record.
- (c) Advice to the Defendant. When the defendant wishes to plead guilty to an offense charged, it is the duty of the court to address the defendant personally and to inquire and determine:
 - (1) that the accused is competent to understand the nature of the charge against him;
 - (2) that the accused understands the nature and consequences of his plea, and the maximum and minimum penalties provided by law;
 - (3) that the accused understands that by pleading guilty he waives his constitutional right of a trial by jury, the right to confront and cross-examine adverse witnesses, and the right against self-incrimination; and
 - (4) if the accused is not represented by an attorney, that he is aware of his right to an attorney at every stage of the proceedings and that one will be appointed to represent him if he is indigent.

If the statute doesn't list the penalty

GAME & FISH

§ 49-7-101 Class III Violations & Special Class II

§ 49-7-141 Class I Violations

§ 49-7-143 Class II Violations

NO DRIVER'S LICENSE

§ 63-1-5(4) "A person who violates this section is guilty of a misdemeanor and, upon conviction, may be punished by imprisonment for not less than two (2) days nor more than six (6) months, by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00), or both."

TRAFFIC § 63-3-# or § 63-5-# or § 63-7-#

§ 63-9-11(2) "Every person convicted of a misdemeanor for a violation of any of the provisions of [Chapters 3, 5, or 7 of Title 63] for which another penalty is not provided shall for first conviction thereof be punished by a fine of not more than One Hundred Dollars (\$100.00) or by imprisonment for not more than ten (10) days. . . ."

NON-TRAFFIC

§ 99-19-31. "Offenses for which a penalty is not provided elsewhere by statute, and offenses indictable at common law, and for which a statutory penalty is not elsewhere prescribed, shall be punished by fine of not more than one thousand dollars (\$1,000.00) and imprisonment in the county jail not more than six (6) months, or either."

1. Sam, a member of the board of supervisors, says to you "If the judges will give the maximum fine allowed to all defendants who plead guilty or are found guilty, county revenue will increase and we can increase pay for the court clerks and bailiffs and also provide the judges with a nicer courtroom, judge's chambers, and office furniture." What do you do?

Tell Sam that judges decide fines based on the law and the amount, within the minimum and maximum allowed, that will serve as justice and the judges do NOT assess fines to increase county revenue.

2. A defendant pleads guilty to speeding. You sentence him to \$100 plus costs and assessments. Proper or Improper?

Proper. § 63-9-11(2) "Every person convicted of a misdemeanor for a violation of any of the provisions of [Chapters 3, 5, or 7 of Title 63] for which another penalty is not provided shall for first conviction thereof be punished by a fine of not more than One Hundred Dollars (\$100.00) or by imprisonment for not more than ten (10) days. . . ."

3. A defendant pleads guilty to speeding 120 in a 70 mph zone. You sentence him to \$100 plus costs and state assessments and 10 days in jail. Proper or Improper?

Improper. § 63-9-11 written to allow fine or jail - not both.

4. A defendant pleads guilty to speeding 71 in a 70 mph zone. You sentence him to \$5 plus costs and state assessments. Proper or Improper?

Improper. § 99-33-3 "[O]n conviction, [the justice court] shall order such punishment to be inflicted as the law provides; provided, however, that no fine imposed shall be in an amount less than Fifteen Dollars (\$15.00)."

5. A defendant pleads guilty to speeding 71 in a 70 mph zone. You sentence him to \$15 plus costs and state assessments with all but \$5 of the fine suspended. Proper or Improper?

Proper. § 99-19-25 "The justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court. . . ."

6. A defendant pleads guilty to speeding 71 in a 70 mph zone. You sentence him to \$15 plus costs and state assessments with the state assessments suspended. Proper or Improper?

Improper. Judge cannot suspend state assessments.

§ 99-19-73(9) "If a fine or other penalty imposed is suspended, in whole or in part, such suspension shall not affect the state assessment under this section. No state assessment imposed under the provisions of this section may be suspended or reduced by the court."

7. A defendant pleads guilty to first offense DUI. The possible penalties are \$250 - \$1,000 fine and 0 - 48 hours in jail. You sentence him to \$500 plus costs and assessments and MASEP with \$250 of the fine suspended. Proper or Improper?

Improper. Judge cannot suspend any part of a DUI fine. § 99-19-25 "The justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court. . . . Provided, however, the justice courts in cases arising under Sections 49-7-81, 49-7-95 and the Implied Consent Law shall not suspend any fine."

8. A defendant pleads guilty to first offense DUI. The possible penalties are fine of \$250 to \$1,000 and imprisonment of 0 - 48 hours. You sentence him to fine of \$250 plus costs and assessments and MASEP. Proper or Improper?

Proper. Judge cannot suspend any part of a DUI fine. § 99-19-25 "The justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court. . . . Provided, however, the justice courts in cases arising under Sections 49-7-81, 49-7-95 and the Implied Consent Law shall not suspend any fine."

9. A defendant pleads guilty to second offense DUI. Possible penalties include fine of \$600 to \$1,500; imprisonment of 5 days to 1 year; and community service work of 10 days to 1 year. You sentence him to fine of \$600; imprisonment of 5 days; community service work of 10 days; and the imprisonment of 5 days is suspended subject to 5 days of house arrest. Proper or Improper?

Improper. You cannot suspend the minimum penalties. § 63-11-30(2)(b)(i) "... The minimum penalties shall not be suspended or reduced by the court ..."

10. A defendant pleads guilty to second offense DUI. You sentence him to fine of \$1,500; jail of 1 year; community service work of 10 days. He goes to jail. Thirty (30) days later, the sheriff brings defendant to court and says defendant's medical condition is causing the county a lot of money and asks you to let defendant out of jail. Can you do it?

Yes. § 99-19-25 allows you suspend a sentence given earlier if you were originally allowed to suspend all or part of the sentence.

§ 99-19-25 "... Subsequent to original sentencing, the justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court, if (a) the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed; and (b) such conviction (i) has not been appealed; or (ii) has been appealed and the appeal has been voluntarily dismissed. ..."

11. A defendant pleads guilty to second offense DUI. You sentence him to fine of \$1,500; jail of 1 year; community service work of 10 days. He immediately appeals his case to county court and 2 days later, county judge finds defendant guilty and gives defendant the same sentence you ordered. Ten (10) days later, defendant's attorney asks you to reduce the sentence and tells you defendant had 30 days to appeal and you still have jurisdiction. Proper or Improper?

Improper. § 99-19-25 does not authorize you to suspend this sentence.

§ 99-19-25 "... Subsequent to original sentencing, the justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court, if (a) the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed; and (b) such conviction (i) has not been appealed; or (ii) has been appealed and the appeal has been voluntarily dismissed. ... "

12. A defendant pleads guilty to second offense DUI. You sentence him to fine of \$1,500; jail of 1 year; community service work of 10 days. He immediately appeals his case to county court and 2 days later, he voluntarily dismisses his appeal. Ten (10) days later, defendant's attorney asks you to reduce the sentence. Can you do it?

Yes. § 99-19-25 allows you suspend a sentence given earlier if you were originally allowed to suspend all or part of the sentence.

§ 99-19-25 "... Subsequent to original sentencing, the justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court, if (a) the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed; and (b) such conviction (i) has not been appealed; or (ii) has been appealed and the appeal has been voluntarily dismissed. ..."

13. A defendant pleads guilty to second offense DUI. You sentence him to fine of \$1,000; jail of 45 days; community service work of 10 days. He does not appeal his case. Two (2) days later, defendant's attorney asks you to reduce the sentence and tells you that defendant agrees for you to increase the fine if you suspend part of the jail time and suggests resentencing to fine of \$1,500; jail of 45 days with 30 days suspended; and community service work of 10 days. Proper or Improper?

Improper. § 99-19-25 allows you suspend a sentence given earlier if you were originally allowed to suspend all or part of the sentence. You can suspend part of the jail time (as long as defendant serves any minimum jail time that you are originally prohibited from suspending) but you cannot raise the fine even if defendant agrees.

§ 99-19-25 "... Subsequent to original sentencing, the justice courts, in misdemeanor cases, are hereby authorized to suspend sentence and to suspend execution of a sentence, or any part thereof, on such terms as may be imposed by the judge of the court, if ... the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed ..."

14. A defendant pleads guilty to second offense DUI. Possible penalties include fine of \$600 to \$1,500; imprisonment of 5 days to 1 year; and community service work of 10 days to 1 year. You sentence him to fine of \$600; imprisonment of 5 days; community service work of 10 days; and the imprisonment of 5 days may served as follows: for 24 hours starting at 6 AM this Saturday and the same beginning time and amount of time for the following 4 Saturdays.

Proper. § 99-33-15(c) "... [T]he court may, in its discretion, sentence any convicted person to split periods of incarceration in lieu of serving the sentence of imprisonment all in one (1) period."

15. A defendant is found guilty of resisting arrest and of disorderly conduct. The possible penalties for EACH crime is a fine not exceeding \$500 and imprisonment not exceeding 6 months. For each crime, you sentence him to 6 months imprisonment and a fine of \$500 plus costs and state assessments with the imprisonment to be served consecutively. Note that this means he will go to jail for 12 months (6 months plus 6 months). Proper or Improper?

Proper. § 99-19-21(1) allows two or more sentences to be served concurrently (at the same time) or consecutively (one sentence does not start until another sentence is completed).

16. A defendant pleads guilty to resisting arrest which has possible penalties of a fine not exceeding \$500 and imprisonment not exceeding 6 months. He tells you a municipal court in your county just sentenced him to 6 months for a different resisting arrest. You sentence him to 6 months imprisonment and a fine of \$500 plus costs and state assessments with the imprisonment to be served consecutively to the sentence in the municipal court. Proper or Improper?

Proper.

§ 99-19-21(1) allows two or more sentences to be served concurrently (at the same time) or consecutively (one sentence does not start until another sentence is completed).

§ 99-19-23 "The number of days spent by a prisoner in incarceration in any municipal or county jail while awaiting trial on a criminal charge, or awaiting an appeal to a higher court upon conviction, shall be applied on any sentence rendered by a court of law or on any sentence finally set after all avenues of appeal are exhausted."

See *Foster v. Durr*, 123 So. 3d 940, 941 (Miss. Ct. App. 2013) ("[T]his Court clarified in *Stanley v. State*, 850 So. 2d 154, 157 (Miss. Ct. App. 2003), that 'prisoner actually serving time for another conviction is not, within the meaning of [s]ection 99-19-23, being held to await trial.'")

17. A defendant pleads guilty to resisting arrest. You sentence him to 6 months in jail and a fine of \$500 plus costs and state assessments. You then order "While in jail, if you post a bond to keep the peace and to be of good behavior for two years, then I will suspend the remaining jail time subject to that good behavior." Proper or Improper?

Proper.

§ 99-23-27 "Every court before which any person shall be convicted of an offense less than a felony may, in addition to the penalty prescribed by law, require the convict to enter into bond in a reasonable sum, with or without sureties, to keep the peace and to be of good behavior for any time not longer than two years, and may order him to stand committed until such bond be executed; and for any breach thereof it may be proceeded on by scire facias as in other cases."

18. A defendant pleads guilty to resisting arrest which has possible penalties of a fine not exceeding \$500 and imprisonment not exceeding 6 months. You sentence him to 6 months imprisonment and a fine of \$500 plus costs and state assessments. He says "I have been in jail now for 60 days. Do I get credit for that time?" Your response?

You ask the clerk to verify his jail status. If he has been in jail on the charge for which he just pled guilty, he gets credit for the actual time he has served. If he has been in jail for a different charge, he does NOT get credit for that time.

19. A minor pleads guilty to speeding. What do you do?

1. Sentence the minor to a fine of no more than \$100 plus costs and state assessments; OR
2. Pursuant to § 63-1-55, you "may, in lieu of the penalties otherwise provided by law and the provision of said section, suspend such minor's driver's license by taking and keeping same in custody of the court for a period of time not to exceed ninety (90) days. The judge so ordering such suspension shall enter upon his docket 'DEFENDANT'S DRIVER'S LICENSE SUSPENDED FOR DAYS IN LIEU OF CONVICTION' and such action by the trial judge shall not constitute a conviction. The trial judge also may require the minor to successfully complete a defensive driving course approved by the judge as a condition of the suspension. Costs of court and penalty assessment for driver education and training program may be imposed in such actions within the discretion of the court."

20. A defendant is charged with driving while license suspended ("DWLS"). He says "I ain't got any money, I need a court-appointed lawyer." You say "I won't send you to jail, so I won't even think about appointing you a lawyer." Proper or Improper?

Improper. DWLS carries mandatory jail time, but the jail time may be suspended. The standard for appointing an attorney is if the crime includes possible jail time even if you intend to suspend all jail time, you shall evaluate if the defendant is indigent and qualifies for a court-appointed attorney.

21. A defendant pleads guilty to driving while license suspended ("DWLS"). What is the possible sentence?

Imprisonment of 2 days to 6 months and an optional fine of \$200 to \$500.

§ 63-1-57. "Any person whose license issued pursuant to this article or driving privilege as a nonresident has been canceled, suspended or revoked as provided in this title or in Section 93-11-157 or 93-11-163, as the case may be, and who drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended or revoked, is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than two (2) days or more than six (6) months. There may be imposed in addition thereto a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) for each offense."

22. A defendant pleads guilty to driving while license suspended ("DWLS"). You sentence him to imprisonment of 2 days and a fine of \$200 plus costs and state assessments and you suspend the imprisonment and the fine for 90 days to allow him to reappear with a valid driver's license. Proper or Improper?

Proper.

23. A defendant pleads guilty to driving while license suspended ("DWLS"). He shows you that his license has been reinstated. You tell him "I am glad your license has been reinstated and therefore, I will sentence you to only a fine of \$200 plus costs and state assessments and I am going to suspend the fine. Proper or Improper?"

Improper. Review § 63-1-57. The sentence must include imprisonment, but the imprisonment may be suspended.

24. A defendant is charged with resisting arrest. You tell him his rights and the minimum and maximum penalties. He signs a waiver. You ask him "Guilty or Not Guilty?" He says "I can pay all of that today if you don't send me to jail." Your response?

You tell the defendant that the judge doesn't do plea bargaining, but he can talk to the prosecutor and see if the prosecutor wants to make a recommendation.

25. A defendant is charged with resisting arrest. You tell him his rights and the minimum and maximum penalties. He signs a waiver. You ask him "Guilty or Not Guilty?" He says "I talked to the prosecutor and he said that I am going to jail today, but I can pay all of that today if you don't send me to jail." Your response?

You tell the defendant "If you plead guilty without a plea agreement from the prosecutor or if we have trial and I find you guilty, the prosecutor can comment on the penalty and you can comment on the penalty. I am not required to follow the prosecutor's recommendation or your recommendation. Do you want to plead Guilty or Not Guilty?"

26. A defendant pleads guilty to resisting arrest which has possible penalties of a fine not exceeding \$500 and imprisonment not exceeding 6 months. You sentence him to 6 months imprisonment and a fine of \$500 plus costs and state assessments. The clerk promptly tells him the total amount due and he says "I ain't got any money." Your response?

You have already sentenced him to 6 months. You may tell him, "You are going to serve a jail sentence of 6 months and I am instructing the court clerk that prior to the end of your time in jail, you shall be brought back to court so we can review your financial status."

27. A defendant pleads guilty and when told the amount he owes, he says "Will you let me make payments?" Are you allowed to let him do a payment plan?

Yes. § 99-19-20(1) "When any court sentences a defendant to pay a fine, the court may order (a) that the fine be paid immediately, or (b) that the fine be paid in installments to the ... clerk, or (c) that payment of the fine be a condition of probation, or (d) that the defendant be required to work on public property for public benefit under the direction of the sheriff for a specific number of hours, or (e) any combination of the above."

28. A defendant pleads guilty to resisting arrest which has possible penalties of a fine not exceeding \$500 and imprisonment not exceeding 6 months. You sentence him to 6 months imprisonment with the jail time suspended and a fine of \$500 plus costs and state assessments. The clerk promptly tells him the total amount due and he says "I ain't got any money." Your response?

You question him to determine his true financial status, preferably making him complete an affidavit of indigency form or a payment plan request form. If you conclude that he is able to pay, then pursuant to § 99-19-20, you may order that "the defendant shall be imprisoned until he pays \$_____ (the amount that you have determined that he is able to pay), but in no event shall such period of imprisonment exceed 1 day for each \$25 of the fine."

Carefully consider § 99-19-20(b) which provides that "[i]f a sentence of imprisonment, as well as a fine, were imposed, the aggregate of such term for nonpayment of a fine and the original sentence of imprisonment shall not exceed the maximum authorized term of imprisonment."

This means that if a defendant receives a jail sentence AND a fine and is able to pay but chooses not pay, he cannot be incarcerated for longer than the maximum possible jail sentence for the crime. For example, if the maximum penalty for a crime is imprisonment for 6 months and a fine of \$500, if he is sentenced to 6 months and until the fine is paid, he would be released at the end of 6 months even though the fine has not been paid.

29. A defendant pleads guilty to resisting arrest. You sentence him to jail of one year and fine of \$500 plus costs and assessments. Sixty (60) days later, you realize the maximum jail time for resisting arrest is 6 months. What can you do?

§ 9-11-33 allows you to enter a corrected order.

§ 9-11-33 "A justice court judge may correct any errors or mistakes in any proceedings that are conducted before such judge or in the records of proceedings conducted before such judge. A justice court judge may set aside any proceeding or judgment in a case conducted before such judge upon a written order as may be just and proper after a proceeding in which the judge determines that good cause has been shown to support such order."

30. A defendant pleads guilty to resisting arrest before another current justice court judge in your county. He is sentenced to jail of one year and fine of \$500 plus costs and assessments. Sixty (60) days later, the deendant's attorney asks you to correct the sentencing because the maximum jail time for resisting arrest is 6 months. What can you do?

Tell the attorney to present the issue to the sentencing judge.

"While [§ 9-11-33] allows a justice court judge to set aside a judgment of a case heard before that same judge, there is no authority for a justice court judge to set aside a judgment in a case heard before another judge." Op. Atty. Gen. Cooper, July 3, 1997.

Consider having all of the justice court judges in your county enter an order allowing any justice court judge to correct orders regardless of the original judge.

31. A defendant pleads guilty to resisting arrest before the justice court judge you replaced. He is sentenced to jail of one year and fine of \$500 plus costs and assessments. Sixty (60) days later, the defendant's attorney asks you to correct the sentencing because the maximum jail time for resisting arrest is 6 months. What can you do?

§ 9-11-33 allows you to enter a corrected order because you are "such judge" since you replaced the judge and the original judge no longer has any authority.

§ 9-11-33 "A justice court judge may correct any errors or mistakes in any proceedings that are conducted before such judge or in the records of proceedings conducted before such judge. A justice court judge may set aside any proceeding or judgment in a

case conducted before such judge upon a written order as may be just and proper after a proceeding in which the judge determines that good cause has been shown to support such order."

32. A defendant is charged with simple possession of marijuana. He asks you to allow him to be nonadjudicated. Proper or Improper?

Proper under § 99-15-26 if defendant has never before been nonadjudicated on this type of charge.

33. A defendant is charged with DUI. He asks you to allow him to be nonadjudicated under § 99-15-26. Proper or Improper?

Improper because § 99-15-26 doesn't authorize nonadjudication of DUI.

34. You allowed a defendant to be nonadjudicated if he complied with certain conditions. Defendant's bonding company now asks to be released from the bond. Proper or Improper?

Proper under § 99-15-26(3).

35. You allowed a defendant to be nonadjudicated if he complied with certain conditions. He has complied and now asks you to dismiss the case? Proper or Improper?

Proper under § 99-15-26(4).

36. You allowed a defendant to be nonadjudicated if he complied with certain conditions. He has NOT complied and the prosecutor files a motion asking you to accept the defendant's guilty plea and to sentence the defendant and to enter his conviction. Proper or Improper?

Proper if the defendant has notice of the motion and an opportunity at the hearing on the motion to convince you to deny the motion.

37. You allowed a defendant to be nonadjudicated. He complied with the conditions you ordered. He has filed a petition to expunge the records in the case. Proper or Improper?

Proper under § 99-15-26(5).

38. A defendant pleads guilty to misdemeanor simple assault. The victim claimed financial damages of \$6,000 and she asks you to order the defendant to pay restitution of \$6,000. The defendant disputes the restitution amount and asks you to order restitution of only \$3,000. What do you do?

You allow the prosecutor to convince you of the proper amount of restitution and you give the defendant the opportunity to challenge the evidence (e.g., by cross-examining the victim and/or by defendant's testimony and/or by testimony of defendant's witnesses) and to produce evidence of the proper amount. You determine the proper amount, but under § 99-37-3, you may award a maximum restitution amount of \$5,000. If you order defendant to pay restitution, you may order it all paid at once or all by a certain date or in installments.

EXPUNGEMENT STATUTE - MISDEMEANOR PORTION

§ 99-19-71

"(1) Any person who has been convicted of a misdemeanor, excluding a conviction for a traffic violation, and who is a first offender, may petition the justice, county, circuit or municipal court in which the conviction was had for an order to expunge any such conviction from all public records.

. . .
(4) Upon petition therefor, a justice, county, circuit or municipal court shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case. . ."

HOW MANY TIMES?

"[Section 99-19-71(1)] allows for the expungement of only one misdemeanor for a first offender." Op. Atty. Gen. Morris, November 14, 2011.

WHAT IS A "FIRST OFFENDER"?

"[T]he term "first offender" as used in [Section 99-19-71] means an individual who has no prior non-traffic convictions of any offense." Op. Atty. Gen. Mitchell, October 24, 2003.

CAN AN EXPUNGED OFFENSE BE USED FOR ENHANCEMENT?

"[O]nce an offense has been expunged, it cannot be used to enhance a penalty for a subsequent offense. The purpose of the nonpublic record is to determine the eligibility of the offender for the expungement." Op. Atty. Gen. Carson, May 9, 2003.

DO JUSTICE COURT JUDGES HAVE DUTY ABOUT REPORTING?

§ 45-27-9(4) requires justice court judges (not clerks) to report expunction orders to the center that maintains criminal records.

JUSTICE COURT COSTS AND FEES

§ 11-53-79 "It shall be the duty of the clerks of the circuit and chancery courts, and of the sheriff, to post in a conspicuous place in his office, and each justice of the peace at his place of holding court, a copy of the bill of fees which he is entitled to receive, and on failure to do so he shall not be entitled to receive or collect any fee for any service rendered during the time of such failure."

PAYMENTS TO CONSTABLES

§ 25-7-27(2) "Marshals and constables shall be paid all uncollected fees levied under subsection (1) of this section in full from the first proceeds received by the court from the guilty party or from any other source of payment in connection with the case."

Indigent Defendant

"If the defendant is indigent and cannot pay any costs, the defendant should be put on a work program to work off the fines and costs and as a result, the constable will not collect a fee." Op. Atty. Gen. Moore, July 20, 2001.

MANUAL - CHAPTER 16

ENFORCING CRIMINAL JUDGMENTS

1600 COLLECTING FINES, COSTS AND ASSESSMENTS

§ 9-11-27 Clerk may refuse personal check for payment.

§ 63-9-12 Personal checks shall be accepted from Mississippi residents in payment of any FINE imposed as a result of a violation of Chapters 3, 5 and 7 of Title 63. Note: Can't use a personal check to pay for DUI which is a violation of Chapter 11 of Title 63.

§ 99-19-73(10) State assessments may not be paid by personal check.

§ 17-25-1 Credit or debit cards may be used but defendant is responsible for any fees charged by the financial institution.

§ 99-37-13 Collecting fines and costs:

"A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected."

§ 15-1-51 Statutes of limitation:

"Statutes of limitation in civil cases shall not run against the state, or any subdivision ... thereof, except that any judgment ... shall not be a lien on the property of the defendant therein for a longer period than seven (7) years from the date of filing notice of the lien, unless an action is brought before the expiration of such time or unless the state or such subdivision or municipal corporation refiles notice of the lien."

1. The board of supervisors has signed a contract with a collection agency to collect delinquent justice court fines. Is that allowed?

Yes. § 19-3-41(2).

2. The collection agency sends a defendant a letter on collection agency letterhead that says "You are ordered to appear in justice court at 9:00 AM on 1/25/16 or you will be arrested." Proper or Improper?

Improper. This implies that the collection agency is an extension of the court and the court would never (or should never) make such a statement because the defendant is entitled to due process.

3. The collection agency sends a defendant a letter dated 1/25/16 on collection agency letterhead that says "You owe justice court \$1,250. If don't pay \$1,250 within 10 days, you will be arrested and you will go to jail for six months." Proper or Improper?

Improper. This implies that the collection agency is an extension of the court and the court would never (or should never) make such a statement because the defendant is entitled to due process.

4. The collection agency adds 25% to the balance owed on a justice court fine. Proper or Improper?

Improper. § 19-3-41(2) authorizes 25% to be added to a delinquent payment, but only the judge can make a determination that a payment is delinquent because pursuant to § 99-37-1, the judge "may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine ... or the unpaid portion thereof in whole or in part." A determination of the amount due is a judicial function. See § 99-19-73(10). Note: The judge should determine when an account becomes delinquent because the defendant may ask the judge to allow a time period when monthly payments are not required (e.g., defendant hospitalized, defendant lost his job, etc.).

5. The collection agency adds 50% to the delinquent amount when collecting a delinquent justice court fine if the defendant lived outside of Mississippi when originally in justice court. Proper or Improper?

Improper for the reasons in the previous question and even if the judge determined that the amount is delinquent, § 19-3-41(2) allows 50% to be added "for collections made outside of this state." You can't add 50% unless the actual collection is made outside of this state. Defendant may now live in Mississippi.

§ 19-3-41(2) "... There shall be due to the county from any person whose delinquent payment is collected pursuant to a contract executed under this subsection an amount, in addition to the delinquent payment, of not to exceed twenty-five percent (25%) of the delinquent payment for collections made within this state and not to exceed fifty percent (50%) of the delinquent payment for collections made outside of this state. ..."

6. The county uses county employees (e.g., justice court clerks) rather than a collection agency to collect delinquent justice court fines. The clerk adds 25% to amount owed by a justice court defendant after the account is at least 90 days delinquent. Proper or Improper?

Proper. § 19-3-41(4) authorizes the addition, but the judge should determine when an account becomes delinquent because the defendant may ask the judge to allow a time period when monthly payments are not required (e.g., defendant hospitalized, defendant lost his job, etc.).

7. The county contracts with one or more of the constables to collect delinquent justice court fines. The contracting constable(s) add 25% to the delinquent amount when collecting a delinquent justice court fine. Proper or Improper?

Improper. § 19-3-41(3) authorizes a contract with one or more of the constables, but does not authorize the addition of a percentage.

1601 IMPRISONMENT FOR NONPAYMENT OF FINE OR RESTITUTION

8. A defendant has been ordered to pay a fine on a TRAFFIC offense (e.g., \$50 per month on the 5th of each month, etc.). The clerk notifies you that defendant has failed to comply. Your response?

Tell the clerk to issue the 10 day notice provided in § 63-1-53.

“[P]rior to filing a contempt proceeding on a traffic offense for failure to pay the court should issue the 10 day notice provided in section 63-1-53 of the Mississippi Code.”
Op. Atty. Gen. Fike, August 29, 2008.

9. A defendant has been ordered to pay a fine or restitution in a certain manner on a NON-TRAFFIC offense or on a TRAFFIC offense after clerk has issued the 10 day notice provided in § 63-1-53 (e.g., \$100 per month on the 5th of each month, etc.). The clerk notifies you that defendant has failed to comply. Your response?

Have the clerk complete an affidavit describing the failure of defendant to comply.

When affidavit is completed, either

- (1) have clerk send to defendant (a) a copy of the affidavit; and (b) a notice to appear at a specific time on a specific date to show cause why the defendant should not be held in contempt for failure to comply with a court order; OR
- (2) if the defendant has a suspended sentence (e.g., 30 days suspended), have clerk send to defendant (a) a copy of the affidavit; and (b) a notice to appear at a specific time on a specific date to show cause why the court should not revoke the suspension for the defendant's failure to comply with a court order; OR
- (3) issue a warrant for the arrest of defendant for contempt.

10. What is the penalty for contempt?

A fine of not more than One Thousand Dollars (\$1,000.00) or six (6) months' imprisonment, or both.

§ 9-11-15(1) "... [Justice court] shall be a court of record, with all the power incident to a court of record, including power to fine in the amount of fine and length of imprisonment as is authorized for a municipal court in Section 21-23-7(11) for contempt of court."

§ 21-23-7(11) "The municipal court shall have the power to impose punishment of a fine of not more than One Thousand Dollars (\$1,000.00) or six (6) months' imprisonment, or both, for contempt of court."

SHOW CAUSE HEARING

§ 99-37-7(1) "When a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court, on motion of the district attorney, or upon its own motion, may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance."

The court must inquire into the reasons for a defendant's failure to pay a fine. See *Bearden v. Georgia*, 461 U.S. 660, 672 (1983) ("If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternate measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay."); *Cassibry v. State*, 453 So. 2d 1298, 1299 (Miss. 1984) ("[I]t is established beyond per adventure that an indigent may not be incarcerated because he is financially unable to comply with an otherwise lawfully imposed sentence of a fine."); *McClinton v. State*, 799 So. 2d 123, 127 (Miss. Ct. App. 2001)

WHAT CONSTITUTES CONTEMPT?

§ 99-37-7(2) "Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid."

11. If you hold a show cause hearing and you decide the defendant is NOT in contempt, what can you do?

§ 99-37-11 "If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part."

12. You find defendant in contempt for failure to make restitution of \$100. Are there any limitations on the penalty?

Yes. Imprisonment cannot exceed 4 days in this case because imprisonment cannot exceed 1 day for each \$25 currently owed. ($\$100 \div \$25 = 4$)

§ 99-37-9 "The term of imprisonment for contempt for failure to make restitution shall be set forth in the commitment order, and shall not exceed one (1) day for each twenty-five dollars (\$25.00) of the restitution, or thirty (30) days ... whichever is the shorter period. A person committed for failure to make restitution shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order."

1604 WORK CREDIT ON FINE AND COSTS

§ 47-1-47(1) "... Every convict, for each day's work he is required to do, shall receive credit on his fine and costs assessed against him at the rate provided under Section 99-19-20, until such fine and costs are fully paid. In case the convict is serving a sentence of imprisonment, each day that he works in serving such sentence shall entitle him credit for equal time on his sentence of imprisonment, but in no instance shall a convict receive credit on the fine and costs and on the time sentenced to imprisonment for the same work. ..."

§ 99-19-20

- "(1) When any court sentences a defendant to pay a fine, the court may order (a) that the fine be paid immediately, or (b) that the fine be paid in installments to the clerk of said court or to the judge, if there be no clerk, or (c) that payment of the fine be a condition of probation, or (d) that the defendant be required to work on public property for public benefit under the direction of the sheriff for a specific number of hours, or (e) any combination of the above.
- (2) The defendant may be imprisoned until the fine is paid if the defendant is financially able to pay a fine and the court so finds, subject to the limitations hereinafter set out. The defendant shall not be imprisoned if the defendant is financially unable to pay a fine and so states to the court in writing, under oath, after sentence is pronounced, and the court so finds, except if the defendant is financially unable to pay a fine and such defendant failed or refused to comply with a prior sentence as specified in subsection (1) of this section, the defendant may be imprisoned.
- This subsection shall be limited as follows:
- (a) In no event shall such period of imprisonment exceed one (1) day for each Twenty-five Dollars (\$25.00) of the fine. If a defendant is unable to work or if the county or the municipality is unable to provide work for the defendant, the defendant shall receive a credit of Twenty-five Dollars (\$25.00) for each day of imprisonment.
 - (b) If a sentence of imprisonment, as well as a fine, were imposed, the aggregate of such term for nonpayment of a fine and the original sentence of imprisonment shall not exceed the maximum authorized term of imprisonment.
 - (c) It shall be in the discretion of the judge to determine the rate of the credit to be earned for work performed under subsection (1)(d), but the rate shall be no lower than the rate of the highest current federal minimum wage.
- (3) Periods of confinement imposed for nonpayment of two (2) or more fines shall run consecutively unless specified by the court to run concurrently."

13. Defendant is sentenced to 60 days in jail. How long will he be in jail for the imprisonment time?

30 days. One day credit for each day he works. § 47-1-47(1)

14. Defendant is sentenced to 60 days in jail and a fine of \$100. He is able to pay but chooses not to pay. How long will he be in jail?

34 days = 30 days for unsuspended jail time and 4 days for the fine.

30 days = 60 days divided by 2. One day credit for each day he works. § 47-1-47(1)
4 days = \$100 fine divided by \$25. § 99-19-20(2)

§ 99-19-20(2) "The defendant may be imprisoned until the fine is paid if the defendant is financially able to pay a fine and the court so finds, subject to the limitations hereinafter set out. ... This subsection shall be limited as follows: (a) In no event shall such period of imprisonment exceed one (1) day for each Twenty-five Dollars (\$25.00) of the fine. ..."

1605 PURGING JUDGMENT ROLLS OF FINES AND FEES

15. Defendant owes delinquent fines. The clerk tells you defendant is dead. What can you do?

Enter an order purging the fines and fees owed by defendant.

§ 9-1-47 "The municipal and justice courts are authorized to purge judgment rolls of all fines and fees owed by any deceased person upon presentation of proof that the person liable for such fines or fees is deceased."