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LAW/RWH

P.L.2013, CHAPTER 180, *approved January 13, 2014*
Assembly, No. 581 (*Second Reprint*)

1 AN ACT concerning fines, assessments, fees and penalties¹and¹
2 amending N.J.S.2C:46-2 ¹and supplementing Title 2B of the
3 New Jersey Statutes **and R.S.39:5-36¹**.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. N.J.S.2C:46-2 is amended to read as follows:

9 2C:46-2. Consequences of Nonpayment; Summary Collection.

10 a. When a defendant sentenced to pay an assessment imposed
11 pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), a penalty
12 imposed pursuant to section 11 of P.L.2001, c.81 (C.2C:43-3.6), a
13 penalty imposed pursuant to section 1 of P.L.2005, c.73 (C.2C:14-
14 10), monthly probation fee, fine, a penalty imposed pursuant to
15 section 1 of P.L.1999, c.295 (C.2C:43-3.5), other ¹**court imposed**
16 court-imposed¹ financial ²**penalties** obligations² or to make
17 restitution ² or pay child support or other support or maintenance
18 ordered by a court² defaults in the payment thereof or of any
19 installment, upon the motion of the person authorized by law to
20 collect the payment, the motion of the prosecutor, the motion of the
21 victim entitled to payment of restitution, the motion of the **Violent**
22 **Crimes** Victims of Crime Compensation ¹**Board** Office¹, the
23 motion of the State or county Office of Victim and Witness
24 Advocacy or upon its own motion, the court shall recall him, or
25 issue a summons or a warrant of arrest for his appearance. The
26 court shall afford the person notice and an opportunity to be heard
27 on the issue of default. Failure to make any payment when due
28 shall be considered a default. The standard of proof shall be by a
29 preponderance of the evidence, and the burden of establishing good
30 cause for a default shall be on the person who has defaulted.

31 (1) If the court finds that the person has defaulted without good
32 cause, the court shall:

33 (a) Order the suspension of the driver's license or the
34 nonresident reciprocity driving privilege of the person; and

35 (b) Prohibit the person from obtaining a driver's license or
36 exercising reciprocity driving privileges until the person has made
37 all past due payments; and

38 (c) Notify the Chief Administrator of the New Jersey Motor
39 Vehicle Commission of the action taken; and

40 (d) Take such other actions as may be authorized by law.

EXPLANATION – Matter enclosed in bold-faced brackets **thus** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted February 11, 2013.

²Assembly AAP committee amendments adopted June 6, 2013.

1 (2) If the court finds that the person defaulted on payment of a
2 ~~1~~ **1** ~~court imposed~~ court-imposed¹ financial obligation ², restitution,
3 or child support or other support or maintenance ordered by a court²
4 without good cause and finds that the default was willful, the court
5 may, in addition to the action required by paragraph (1) of this
6 subsection a., impose a term of imprisonment or participation in a
7 labor assistance program or enforced community service to achieve
8 the objective of the ~~1~~ **1** ~~court imposed~~ court-imposed¹ financial
9 obligation ², restitution, or child support or other support or
10 maintenance ordered by a court². These options shall not reduce
11 the amount owed by the person in default. The term of
12 imprisonment or enforced community service or participation in a
13 labor assistance program in such case shall be specified in the order
14 of commitment. It need not be equated with any particular dollar
15 amount but, in the case of a fine it shall not exceed one day for each
16 ~~1~~ **1** ~~\$20.00~~ \$50¹ of the fine ~~1~~ **1** ~~nor 40 days if the fine was imposed~~
17 upon conviction of a disorderly persons offense nor 25 days for a
18 petty disorderly persons offense nor one year in any other case,
19 ~~whichever is the shorter period~~ **1** ~~nor shall it exceed a period of 90~~
20 consecutive days¹. In no case shall the total period of imprisonment
21 in the case of a disorderly persons offense for both the sentence of
22 imprisonment and for failure to pay a fine exceed six months.

23 (3) Except where incarceration is ordered pursuant to paragraph
24 (2) of this subsection a., if the court finds that the person has
25 defaulted ²the court may take one or more of the following actions²
26 :

27 (a) the court shall take appropriate action to modify or establish
28 a reasonable schedule for payment ~~1~~ **1** ~~, and,~~ **1** ~~;~~

29 (b) in the case of a fine, if the court finds that the circumstances
30 that warranted the fine have changed or that it would be unjust to
31 require payment, the court may revoke or suspend the fine or the
32 unpaid portion of the fine; ²or²

33 (c) if the ~~1~~ **1** ~~court finds that the~~ **1** ~~defendant~~ ¹ ~~is indigent and~~ **1**
34 has served jail time for default on a ~~1~~ **1** ~~court imposed~~ court-
35 imposed¹ financial obligation, the court may order that credit ¹ ~~for~~
36 each day of confinement¹ be given against the amount owed ¹ ~~for~~
37 each day of confinement **1** ~~.~~ ¹ The amount of the credit shall be
38 determined at the discretion of the court but shall be not less than
39 \$50 for each day of confinement served.¹

40 (4) When failure to pay an assessment imposed pursuant to
41 section 2 of P.L.1979, c.396 (C.2C:43-3.1), monthly probation fee,
42 restitution, a penalty imposed pursuant to section 1 of P.L.1999,
43 c.295 (C.2C:43-3.5), a penalty imposed pursuant to section 11 of
44 P.L.2001, c.81 (C.2C:43-3.6), a penalty imposed pursuant to section
45 1 of P.L.2005, c.73 (C.2C:14-10), or other financial penalties or to
46 perform enforced community service or to participate in a labor

1 assistance program is determined to be willful, the failure to do so
2 shall be considered to be contumacious.

3 (5) When a fine, assessment imposed pursuant to section 2 of
4 P.L.1979, c.396 (C.2C:43-3.1), other financial penalty or restitution
5 is imposed on a corporation, it is the duty of the person or persons
6 authorized to make disbursements from the assets of the corporation
7 or association to pay it from such assets and their failure so to do
8 may be held to be contumacious.

9 b. Upon any default in the payment of a fine, assessment
10 imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1),
11 monthly probation fee, a penalty imposed pursuant to section 1 of
12 P.L.1999, c.295 (C.2C:43-3.5), a penalty imposed pursuant to
13 section 11 of P.L.2001, c.81 (C.2C:43-3.6), a penalty imposed
14 pursuant to section 1 of P.L.2005, c.73 (C.2C:14-10), other
15 financial penalties, restitution, or any installment thereof, execution
16 may be levied and such other measures may be taken for collection
17 of it or the unpaid balance thereof as are authorized for the
18 collection of an unpaid civil judgment entered against the defendant
19 in an action on a debt.

20 c. Upon any default in the payment of restitution or any
21 installment thereof, the victim entitled to the payment may institute
22 summary collection proceedings authorized by subsection b. of this
23 section.

24 d. Upon any default in the payment of an assessment imposed
25 pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or any
26 installment thereof, the **【Violent Crimes】** Victims of Crime
27 Compensation ¹**【Board】** Office¹ or the party responsible for
28 collection may institute summary collection proceedings authorized
29 by subsection b. of this section.

30 e. When a defendant sentenced to make restitution to a public
31 entity other than the **【Violent Crimes】** Victims of Crime
32 Compensation ¹**【Board】** Office¹, defaults in the payment thereof or
33 any installment, the court may, in lieu of other modification of the
34 sentence, order the defendant to perform work in a labor assistance
35 program or enforced community service program.

36 f. If a defendant ordered to participate in a labor assistance
37 program or enforced community service program fails to report for
38 work or to perform the assigned work, the comprehensive
39 enforcement hearing officer may revoke the work order and impose
40 any sentence permitted as a consequence of the original conviction.

41 g. If a defendant ordered to participate in a labor assistance
42 program or an enforced community service program pays all
43 outstanding assessments, the comprehensive enforcement hearing
44 officer may review the work order, and modify the same to reflect
45 the objective of the sentence.

46 h. As used in this section:

47 (1) "Comprehensive enforcement program" means the program

1 established pursuant to the "Comprehensive Enforcement Program
2 Fund Act," ²sections 1 through 9 of² P.L.1995, c.9 (C.2B:19-1 et
3 seq.).

4 (2) The terms "labor assistance program" and "enforced
5 community service" have the same meaning as those terms are
6 defined in section 5 of the "Comprehensive Enforcement Program
7 Fund Act," P.L.1995, c.9 (C.2B:19-5).

8 (3) "Public entity" means the State, any county, municipality,
9 district, public authority, public agency and any other political
10 subdivision or public body in the State.

11 ¹(4) "Court-imposed financial obligation" means any fine,
12 statutorily-mandated assessment, surcharge, or other financial
13 penalty imposed by a court, but does not include restitution or child
14 support or other support or maintenance ordered by a court .¹

15 (cf: P.L.2005, c.73, s.4)

16

17 ¹[2. (New section) Notwithstanding any other provision of law
18 to the contrary, if a municipal court finds that the defendant is
19 indigent and has served jail time for default on any penalty, fine,
20 fee or statutorily mandated assessment, the court may order that
21 credit be given against the amount owed for each day of
22 confinement.]¹

23

24 ¹2. R.S.39:5-36 is amended to read as follows:

25 39:5-36. ²**【Imprisonment on default of payment of 【fine】**
26 **penalty】²**

27 **【Unless otherwise expressly provided in this subtitle, any person**
28 **who shall be convicted of a violation of any of the provisions of this**
29 **subtitle, and upon whom a fine shall be imposed, shall, in default**
30 **of payment thereof, be imprisoned】 a. The court may incarcerate in**
31 **the county jail or workhouse of the county where the offense was**
32 **committed【, but in】 any person upon whom a penalty ²or surcharge**
33 **pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-**
34 **97.2)² has been imposed for a violation of any of the provisions of**
35 **this subtitle where the court finds that the person defaulted on**
36 **payment of the penalty ²or surcharge pursuant to subsection f. of**
37 **section 1 of P.L.2000, c.75 (C.39:4-97.2)² without good cause and**
38 **that the default was willful. Incarceration ordered under this**
39 **subsection shall not reduce the amount owed by the person in**
40 **default. In no case shall such ²【imprisonment】 incarceration²**
41 **exceed 【1】 one day for each 【\$20.00】 \$50 of the 【fine】 penalty ²or**
42 **surcharge² so imposed, nor shall such ²【imprisonment】**
43 **incarceration² exceed【, in any case,】 a period of 【3 months】 90**
44 **consecutive days.**

45 **【Whenever a person is imprisoned by reason of default in the**
46 **payment of a fine or fines and costs imposed and assessed upon**

1 conviction of any violation of this subtitle wherein the committing
2 court, as a part of the sentence, ordered that such person stand
3 committed to the county jail or workhouse until such fine and costs
4 are paid, he shall be given credit against the amount of such fines
5 and costs at the rate of \$20.00 for each day of such confinement.】

6 b. Except where incarceration is ordered pursuant to subsection
7 a. of this section, if the court finds that the person has defaulted on
8 the payment of a penalty ²the court may take one or more of the
9 following actions²:

10 (1) the court shall take appropriate action to modify or establish
11 a reasonable schedule for payment;

12 (2) if the court finds that the circumstances that warranted the
13 penalty have changed or that it would be unjust to require payment,
14 the court may revoke or suspend the penalty or the unpaid portion
15 of the penalty; ²or²

16 (3) if the defendant has served jail time for default on a penalty,
17 the court may order that credit for each day of confinement be given
18 against the amount owed. The amount of the credit shall be
19 determined at the discretion of the court but shall be not less than
20 \$50 for each day of confinement served.

21 When such person shall have been confined for a sufficient
22 number of days to establish credits equal to the aggregate amount of
23 such 【fines】 penalties and costs, and is not held by reason of any
24 other sentence or commitment, he shall be discharged from such
25 imprisonment by the officer in charge of the county jail or
26 workhouse.

27 c. For the purposes of this section, “penalty” means any fine,
28 statutorily-mandated assessment, surcharge, or other financial
29 penalty imposed by a court pursuant to this subtitle, but does not
30 include a surcharge imposed pursuant to subsection f. of section 1
31 of P.L.2000, c.75 (C.39:4-97.2).¹

32 (cf: P.L.1975, c.144, s.4)

33

34 3. This act shall take effect immediately.

35

36

37

38

39 _____
40 Authorizes the court to credit a person in default of a court-
imposed financial obligation under certain circumstances.

ASSEMBLY, No. 581

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblywoman L. GRACE SPENCER

District 29 (Essex)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Co-Sponsored by:

Assemblymen Coutinho and Schaer

SYNOPSIS

Authorizes the court to credit an indigent person under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/12/2013)

1 AN ACT concerning fines, assessments, fees and penalties amending
2 N.J.S.2C:46-2 and supplementing Title 2B of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2C:46-2 is amended to read as follows:

9 2C:46-2. Consequences of Nonpayment; Summary Collection. a.
10 When a defendant sentenced to pay an assessment imposed pursuant
11 to section 2 of P.L.1979, c.396 (C.2C:43-3.1), a penalty imposed
12 pursuant to section 11 of P.L.2001, c.81 (C.2C:43-3.6), a penalty
13 imposed pursuant to section 1 of P.L.2005, c.73 (C.2C:14-10),
14 monthly probation fee, fine, a penalty imposed pursuant to section 1
15 of P.L.1999, c.295 (C.2C:43-3.5), other court imposed financial
16 penalties or to make restitution defaults in the payment thereof or of
17 any installment, upon the motion of the person authorized by law to
18 collect the payment, the motion of the prosecutor, the motion of the
19 victim entitled to payment of restitution, the motion of the **[Violent**
20 **Crimes]** Victims of Crime Compensation Board, the motion of the
21 State or county Office of Victim and Witness Advocacy or upon its
22 own motion, the court shall recall him, or issue a summons or a
23 warrant of arrest for his appearance. The court shall afford the
24 person notice and an opportunity to be heard on the issue of default.
25 Failure to make any payment when due shall be considered a
26 default. The standard of proof shall be by a preponderance of the
27 evidence, and the burden of establishing good cause for a default
28 shall be on the person who has defaulted.

29 (1) If the court finds that the person has defaulted without good
30 cause, the court shall:

31 (a) Order the suspension of the driver's license or the
32 nonresident reciprocity driving privilege of the person; and

33 (b) Prohibit the person from obtaining a driver's license or
34 exercising reciprocity driving privileges until the person has made
35 all past due payments; and

36 (c) Notify the **[Director of the Division of Motor Vehicles]**
37 Chief Administrator of the New Jersey Motor Vehicle Commission
38 of the action taken; and

39 (d) Take such other actions as may be authorized by law.

40 (2) If the court finds that the person defaulted on payment of a
41 court imposed financial obligation without good cause and finds
42 that the default was willful, the court may, in addition to the action
43 required by paragraph (1) of this subsection a., impose a term of
44 imprisonment or participation in a labor assistance program or
45 enforced community service to achieve the objective of the court

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 imposed financial obligation. These options shall not reduce the
2 amount owed by the person in default. The term of imprisonment
3 or enforced community service or participation in a labor assistance
4 program in such case shall be specified in the order of commitment.
5 It need not be equated with any particular dollar amount but, in the
6 case of a fine it shall not exceed one day for each \$20.00 of the fine
7 nor 40 days if the fine was imposed upon conviction of a disorderly
8 persons offense nor 25 days for a petty disorderly persons offense
9 nor one year in any other case, whichever is the shorter period. In
10 no case shall the total period of imprisonment in the case of a
11 disorderly persons offense for both the sentence of imprisonment
12 and for failure to pay a fine exceed six months.

13 (3) Except where incarceration is ordered pursuant to paragraph
14 (2) of this subsection a., if the court finds that the person has
15 defaulted;

16 (a) the court shall take appropriate action to modify or establish
17 a reasonable schedule for payment[, and,];

18 (b) in the case of a fine, if the court finds that the circumstances
19 that warranted the fine have changed or that it would be unjust to
20 require payment, the court may revoke or suspend the fine or the
21 unpaid portion of the fine;

22 (c) if the court finds that the defendant is indigent and has
23 served jail time for default on a court imposed financial obligation,
24 the court may order that credit be given against the amount owed
25 for each day of confinement.

26 (4) When failure to pay an assessment imposed pursuant to
27 section 2 of P.L.1979, c.396 (C.2C:43-3.1), monthly probation fee,
28 restitution, a penalty imposed pursuant to section 1 of P.L.1999,
29 c.295 (C.2C:43-3.5), a penalty imposed pursuant to section 11 of
30 P.L.2001, c.81 (C.2C:43-3.6), a penalty imposed pursuant to section
31 1 of P.L.2005, c.73 (C.2C:14-10), or other financial penalties or to
32 perform enforced community service or to participate in a labor
33 assistance program is determined to be willful, the failure to do so
34 shall be considered to be contumacious.

35 (5) When a fine, assessment imposed pursuant to section 2 of
36 P.L.1979, c.396 (C.2C:43-3.1), other financial penalty or restitution
37 is imposed on a corporation, it is the duty of the person or persons
38 authorized to make disbursements from the assets of the corporation
39 or association to pay it from such assets and their failure so to do
40 may be held to be contumacious.

41 b. Upon any default in the payment of a fine, assessment
42 imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1),
43 monthly probation fee, a penalty imposed pursuant to section 1 of
44 P.L.1999, c.295 (C.2C:43-3.5), a penalty imposed pursuant to
45 section 11 of P.L.2001, c.81 (C.2C:43-3.6), a penalty imposed
46 pursuant to section 1 of P.L.2005, c.73 (C.2C:14-10), other
47 financial penalties, restitution, or any installment thereof, execution
48 may be levied and such other measures may be taken for collection

1 of it or the unpaid balance thereof as are authorized for the
2 collection of an unpaid civil judgment entered against the defendant
3 in an action on a debt.

4 c. Upon any default in the payment of restitution or any
5 installment thereof, the victim entitled to the payment may institute
6 summary collection proceedings authorized by subsection b. of this
7 section.

8 d. Upon any default in the payment of an assessment imposed
9 pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or any
10 installment thereof, the **【Violent Crimes】** Victims of Crime
11 Compensation Board or the party responsible for collection may
12 institute summary collection proceedings authorized by subsection
13 b. of this section.

14 e. When a defendant sentenced to make restitution to a public
15 entity other than the **【Violent Crimes】** Victims of Crime
16 Compensation Board, defaults in the payment thereof or any
17 installment, the court may, in lieu of other modification of the
18 sentence, order the defendant to perform work in a labor assistance
19 program or enforced community service program.

20 f. If a defendant ordered to participate in a labor assistance
21 program or enforced community service program fails to report for
22 work or to perform the assigned work, the comprehensive
23 enforcement hearing officer may revoke the work order and impose
24 any sentence permitted as a consequence of the original conviction.

25 g. If a defendant ordered to participate in a labor assistance
26 program or an enforced community service program pays all
27 outstanding assessments, the comprehensive enforcement hearing
28 officer may review the work order, and modify the same to reflect
29 the objective of the sentence.

30 h. As used in this section:

31 (1) "Comprehensive enforcement program" means the program
32 established pursuant to the "Comprehensive Enforcement Program
33 Fund Act," P.L.1995, c.9 (C.2B:19-1 et seq.).

34 (2) The terms "labor assistance program" and "enforced
35 community service" have the same meaning as those terms are
36 defined in section 5 of the "Comprehensive Enforcement Program
37 Fund Act," P.L.1995, c.9 (C.2B:19-5).

38 (3) "Public entity" means the State, any county, municipality,
39 district, public authority, public agency and any other political
40 subdivision or public body in the State.

41 (cf: P.L.2005, c.73, s.4)

42

43 2. (New section) Notwithstanding any other provision of law to
44 the contrary, if a municipal court finds that the defendant is indigent
45 and has served jail time for default on any penalty, fine, fee or
46 statutorily mandated assessment, the court may order that credit be
47 given against the amount owed for each day of confinement.

1 3. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 The bill provides that when an indigent person is imprisoned as a
7 result of a default on payment of a court imposed financial
8 obligation, the court may order that credit be given against the
9 amount owed for each day of confinement.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 581

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 11, 2013

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 581.

The bill provides that when an indigent person is imprisoned as a result of a default on payment of a court-imposed financial obligation, the court may order that credit be given against the amount owed for each day of confinement.

Section 1 of the bill amends N.J.S.2C:46-2 to provide that if a person has willfully defaulted on payment of a court-imposed financial obligation without good cause, the court may impose a term of imprisonment or participation in a labor assistance program or enforced community service to achieve the objective of the court-imposed financial obligation, not to exceed one day for each \$50 of the fine and not to exceed a period of 90 consecutive days. Under current law, if a person willfully defaults without good cause the term shall not exceed one day for each \$20 of the fine, nor 40 days if the fine was imposed upon conviction of a disorderly persons offense, nor 25 days for a petty disorderly persons offense nor one year in any other case, whichever is the shorter period.

As introduced, section 1 of the bill had also provided that if the court finds that the defendant is indigent and has served jail time for default on a court-imposed financial obligation, the court may order that credit be given against the amount owed for each day of confinement. The committee amendments remove the requirement for the court to make a finding of indigency. In addition, the amendments specify the amount of the credit shall be determined at the discretion of the court but shall be not less than \$50 for each day of confinement served.

The amendments provide that the term "court-imposed financial obligation" means any fine, statutorily-mandated assessment, surcharge, or other financial penalty imposed by a court, but does not include restitution or child support or other support or maintenance ordered by a court.

The amendments add a new section 2 to the bill, amending R.S.39:5-36. Currently, this statute provides that if a person defaults in the payment of a fine for a motor vehicle offense, he may be

imprisoned in the county jail or workhouse for up to one day for each \$20 of the fine. As amended, the term “fine” is changed to “penalty” to more accurately reflect the provisions of the motor vehicle laws. Under the amendments, imprisonment could not exceed one day for each \$50 of the fine imposed, and the term of imprisonment could not exceed a period of 90 consecutive days.

As amended by the committee, this statute also provides that if a person is imprisoned for default of payment of a penalty and the defendant has served jail time, the court may order that credit be given for each day of confinement against the amount owed. The amount of the credit would be determined at the discretion of the court but be not less than \$50 for each day of confinement served.

The amendments provide that for the purposes of the motor vehicle statutes the term “penalty” means any fine, statutorily-mandated assessment, surcharge, or other financial penalty imposed by a court, but does not include the \$250 surcharge imposed pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2) (“unsafe driving”). The unsafe driving surcharge monies are collected by the court and distributed to the Division of Revenue in the Department of the Treasury as a New Jersey Merit Rating Plan surcharge pursuant to subsection b.(2)(a) of section 6 of P.L.1983, c.65 (C.17:29A-35).

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

1. Amend section 1 as follows: (a) provide that the credit for imprisonment could not exceed one day for each \$50 of the fine and not exceed a period of 90 consecutive days; (b) remove the requirement that the court must find that the defendant is indigent; and (c) add a definition of “court-imposed financial obligation.”

2. Insert new section 2, amending R.S.39:5-36 as follows: (a) change the term “fine” to “penalty” and provide a definition for the term “penalty”; (b) provide that except where incarceration is ordered, if the court finds that the person has defaulted on payment of a penalty the court shall take appropriate action to modify or establish a payment schedule; (c) if the court finds that circumstances have changed the court may revoke or suspend the penalty; (d) if the defendant has served jail time for default, the court may order credit for each day of confinement against the amount owed; and (e) the amount shall be not less than \$50 for each day of confinement.

3. Make technical changes: update the name of the “Violent Crimes Compensation Board” to the “Victims of Crime Compensation Office” and correct the phrase “court imposed financial penalties” to read “court-imposed financial penalties.”

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 581

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 6, 2013

The Assembly Appropriations Committee reports favorably Assembly Bill No. 581 (1R), with committee amendments.

As amended, the bill authorizes the court to credit a person in default of a court-imposed financial obligation, such as a fine, statutorily-mandated assessment, surcharge, or penalty, when that person has served, pursuant to N.J.S.2C:46-2, jail time for the default. The bill specifies that a “court-imposed financial obligation” does not include restitution, child support, or other support or maintenance ordered by a court. The bill allows the court to order credit for each day of confinement; the amount of the credit would be determined by the court, but would not be less than \$50 for each day of confinement served.

The bill further modifies the court’s enforcement authority concerning willful defaults on court-imposed financial obligations and willful defaults on payment of child support, or other support or maintenance ordered by a court, which under the existing statutory scheme may be addressed by imposing a term of imprisonment, participation in a labor assistance program, or enforced community service. As to all of these options, if the enforcement action relates to a default on a fine, the term imposed for imprisonment, or labor or community service participation could not exceed one day for each \$50 of the fine imposed, and the term could not exceed a period of 90 consecutive days.

The bill also amends R.S.39:5-36, concerning defaults on penalties for motor vehicle offenses and the \$250 unsafe driving surcharge imposed pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2).

For such a penalty or surcharge, instead of the current law’s requirement that imprisonment in a county jail or workhouse be imposed upon a default, the bill gives the court the option to impose such incarceration. Additionally, this option would only be available if the court finds that the person defaulted on the motor vehicle penalty or surcharge without good cause and that the default was willful. As above concerning limitations on enforcement actions dealing with

finer, any term of imprisonment ordered by a court for a default on a motor vehicle penalty could not exceed one day for each \$50 of the penalty imposed, and the term could not exceed a period of 90 consecutive days.

Further, except when incarceration is ordered for a person who defaulted on a motor vehicle penalty or surcharge without good cause and did so willfully, the court, in addressing a person's default: (1) would take appropriate action to modify or establish a reasonable payment schedule; (2) could revoke or suspend the penalty or unpaid portion thereof, if the court finds that the circumstances that warranted the penalty have changed or that it would be unjust to require payment; or (3) could order credit against the amount owed, if the person has served jail time for the default, credited for each day of confinement in an amount determined by the court, but not less than \$50 for each day of confinement served. The first two courses of action established in the bill are actions that exist under the current law, in paragraph (3) of subsection a. of N.J.S.2C:46-2, for court-imposed financial obligations, and the third course of action permitting credit against the penalty amount owed matches the same crediting action established by the bill for court-imposed financial obligations as described above.

FISCAL IMPACT:

This bill has not been certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The amendments:

expand the court's modified enforcement authority concerning willful defaults on court-imposed financial obligations to willful defaults on payment of child support or other support or maintenance ordered by a court;

clarify that incarceration may be imposed for willfully and without good cause defaulting on payment of the \$250 unsafe driving surcharge; and

add language clarifying that the court may take one or more of the enumerated actions when a person has defaulted.

The amendments also make technical changes, including updating a citation, correcting the text of a statute, and changing the word "imprisonment" to "incarceration" throughout the bill in accordance with current usage.

SENATE, No. 645

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Authorizes the court to credit an indigent person under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 3/12/2013)

S645 POU, SCUTARI

2

1 AN ACT concerning fines, assessments, fees and penalties amending
2 N.J.S.2C:46-2 and supplementing Title 2B of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2C:46-2 is amended to read as follows:

9 2C:46-2. Consequences of Nonpayment; Summary Collection. a.
10 When a defendant sentenced to pay an assessment imposed pursuant
11 to section 2 of P.L.1979, c.396 (C.2C:43-3.1), a penalty imposed
12 pursuant to section 11 of P.L.2001, c.81 (C.2C:43-3.6), a penalty
13 imposed pursuant to section 1 of P.L.2005, c.73 (C.2C:14-10),
14 monthly probation fee, fine, a penalty imposed pursuant to section 1
15 of P.L.1999, c.295 (C.2C:43-3.5), other court imposed financial
16 penalties or to make restitution defaults in the payment thereof or of
17 any installment, upon the motion of the person authorized by law to
18 collect the payment, the motion of the prosecutor, the motion of the
19 victim entitled to payment of restitution, the motion of the **[Violent**
20 **Crimes]** Victims of Crime Compensation Board, the motion of the
21 State or county Office of Victim and Witness Advocacy or upon its
22 own motion, the court shall recall him, or issue a summons or a
23 warrant of arrest for his appearance. The court shall afford the
24 person notice and an opportunity to be heard on the issue of default.
25 Failure to make any payment when due shall be considered a
26 default. The standard of proof shall be by a preponderance of the
27 evidence, and the burden of establishing good cause for a default
28 shall be on the person who has defaulted.

29 (1) If the court finds that the person has defaulted without good
30 cause, the court shall:

31 (a) Order the suspension of the driver's license or the
32 nonresident reciprocity driving privilege of the person; and

33 (b) Prohibit the person from obtaining a driver's license or
34 exercising reciprocity driving privileges until the person has made
35 all past due payments; and

36 (c) Notify the **[Director of the Division of Motor Vehicles]**
37 Chief Administrator of the New Jersey Motor Vehicle Commission
38 of the action taken; and

39 (d) Take such other actions as may be authorized by law.

40 (2) If the court finds that the person defaulted on payment of a
41 court imposed financial obligation without good cause and finds
42 that the default was willful, the court may, in addition to the action
43 required by paragraph (1) of this subsection a., impose a term of
44 imprisonment or participation in a labor assistance program or
45 enforced community service to achieve the objective of the court

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 imposed financial obligation. These options shall not reduce the
2 amount owed by the person in default. The term of imprisonment
3 or enforced community service or participation in a labor assistance
4 program in such case shall be specified in the order of commitment.
5 It need not be equated with any particular dollar amount but, in the
6 case of a fine it shall not exceed one day for each \$20.00 of the fine
7 nor 40 days if the fine was imposed upon conviction of a disorderly
8 persons offense nor 25 days for a petty disorderly persons offense
9 nor one year in any other case, whichever is the shorter period. In
10 no case shall the total period of imprisonment in the case of a
11 disorderly persons offense for both the sentence of imprisonment
12 and for failure to pay a fine exceed six months.

13 (3) Except where incarceration is ordered pursuant to paragraph
14 (2) of this subsection a., if the court finds that the person has
15 defaulted;

16 (a) the court shall take appropriate action to modify or establish
17 a reasonable schedule for payment[, and,];

18 (b) in the case of a fine, if the court finds that the circumstances
19 that warranted the fine have changed or that it would be unjust to
20 require payment, the court may revoke or suspend the fine or the
21 unpaid portion of the fine;

22 (c) if the court finds that the defendant is indigent and has
23 served jail time for default on a court imposed financial obligation,
24 the court may order that credit be given against the amount owed
25 for each day of confinement.

26 (4) When failure to pay an assessment imposed pursuant to
27 section 2 of P.L.1979, c.396 (C.2C:43-3.1), monthly probation fee,
28 restitution, a penalty imposed pursuant to section 1 of P.L.1999,
29 c.295 (C.2C:43-3.5), a penalty imposed pursuant to section 11 of
30 P.L.2001, c.81 (C.2C:43-3.6), a penalty imposed pursuant to section
31 1 of P.L.2005, c.73 (C.2C:14-10), or other financial penalties or to
32 perform enforced community service or to participate in a labor
33 assistance program is determined to be willful, the failure to do so
34 shall be considered to be contumacious.

35 (5) When a fine, assessment imposed pursuant to section 2 of
36 P.L.1979, c.396 (C.2C:43-3.1), other financial penalty or restitution
37 is imposed on a corporation, it is the duty of the person or persons
38 authorized to make disbursements from the assets of the corporation
39 or association to pay it from such assets and their failure so to do
40 may be held to be contumacious.

41 b. Upon any default in the payment of a fine, assessment
42 imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1),
43 monthly probation fee, a penalty imposed pursuant to section 1 of
44 P.L.1999, c.295 (C.2C:43-3.5), a penalty imposed pursuant to
45 section 11 of P.L.2001, c.81 (C.2C:43-3.6), a penalty imposed
46 pursuant to section 1 of P.L.2005, c.73 (C.2C:14-10), other
47 financial penalties, restitution, or any installment thereof, execution
48 may be levied and such other measures may be taken for collection

1 of it or the unpaid balance thereof as are authorized for the
2 collection of an unpaid civil judgment entered against the defendant
3 in an action on a debt.

4 c. Upon any default in the payment of restitution or any
5 installment thereof, the victim entitled to the payment may institute
6 summary collection proceedings authorized by subsection b. of this
7 section.

8 d. Upon any default in the payment of an assessment imposed
9 pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or any
10 installment thereof, the **【Violent Crimes】** Victims of Crime
11 Compensation Board or the party responsible for collection may
12 institute summary collection proceedings authorized by subsection
13 b. of this section.

14 e. When a defendant sentenced to make restitution to a public
15 entity other than the **【Violent Crimes】** Victims of Crime
16 Compensation Board, defaults in the payment thereof or any
17 installment, the court may, in lieu of other modification of the
18 sentence, order the defendant to perform work in a labor assistance
19 program or enforced community service program.

20 f. If a defendant ordered to participate in a labor assistance
21 program or enforced community service program fails to report for
22 work or to perform the assigned work, the comprehensive
23 enforcement hearing officer may revoke the work order and impose
24 any sentence permitted as a consequence of the original conviction.

25 g. If a defendant ordered to participate in a labor assistance
26 program or an enforced community service program pays all
27 outstanding assessments, the comprehensive enforcement hearing
28 officer may review the work order, and modify the same to reflect
29 the objective of the sentence.

30 h. As used in this section:

31 (1) "Comprehensive enforcement program" means the program
32 established pursuant to the "Comprehensive Enforcement Program
33 Fund Act," P.L.1995, c.9 (C.2B:19-1 et seq.).

34 (2) The terms "labor assistance program" and "enforced
35 community service" have the same meaning as those terms are
36 defined in section 5 of the "Comprehensive Enforcement Program
37 Fund Act," P.L.1995, c.9 (C.2B:19-5).

38 (3) "Public entity" means the State, any county, municipality,
39 district, public authority, public agency and any other political
40 subdivision or public body in the State.

41 (cf: P.L.2005, c.73, s.4)

42

43 2. (New section) Notwithstanding any other provision of law to
44 the contrary, if a municipal court finds that the defendant is indigent
45 and has served jail time for default on any penalty, fine, fee or
46 statutorily mandated assessment, the court may order that credit be
47 given against the amount owed for each day of confinement.

1 3. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 The bill provides that when an indigent person is imprisoned as a
7 result of a default on payment of a court imposed financial
8 obligation, the court may order that credit be given against the
9 amount owed for each day of confinement.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 645

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 11, 2013

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 645.

This bill, as amended, authorizes the court to credit a person in default of a court-imposed financial obligation, such as a fine, statutorily-mandated assessment, surcharge, or penalty, when that person has served, pursuant to N.J.S.2C:46-2, jail time for the default. The bill specifies that a “court-imposed financial obligation” does not include restitution, child support, or other support or maintenance ordered by a court. The court could order credit for each day of confinement; the amount of the credit would be determined by the court, but would not be less than \$50 for each day of confinement served.

The bill further modifies the court’s enforcement authority concerning defaults on financial obligations that it finds were done willfully, which under the existing statutory scheme may be addressed by imposing a term of imprisonment, participation in a labor assistance program, or enforced community service. As to all of these options, if the enforcement action relates to a default on a fine, the term imposed for imprisonment, or labor or community service participation could not exceed one day for each \$50 of the fine imposed, and the term could not exceed a period of 90 consecutive days.

The bill also amends R.S.39:5-36, concerning defaults on penalties for motor vehicle offenses. The bill specifies that any such “penalty” means any fine, assessment, surcharge, or other financial penalty provided under subtitle 1 of Title 39 of the Revised Statutes, the motor vehicle and traffic laws, but does not include the \$250 unsafe driving surcharge imposed pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2).

For such penalties, instead of the current law’s requirement that imprisonment in a county jail or workhouse be imposed upon a default, the bill would give the court the option to impose such incarceration. Additionally, this option would only be available if the court finds that the person defaulted on the motor vehicle penalty without good cause and that the default was willful. As above, concerning limitations on enforcement actions dealing with fines, any

term of imprisonment ordered by a court for a default on a motor vehicle penalty could not exceed one day for each \$50 of the penalty imposed, and the term could not exceed a period of 90 consecutive days.

Further, except when incarceration is ordered for a person who defaulted on a motor vehicle penalty without good cause and did so willfully, the court, in addressing a person's default: (1) would take appropriate action to modify or establish a reasonable payment schedule; (2) could revoke or suspend the penalty or unpaid portion thereof, if the court finds that the circumstances that warranted the penalty have changed or that it would be unjust to require payment; and (3) could order credit against the amount owed, if the person has served jail time for the default, credited for each day of confinement in an amount determined by the court, but not less than \$50 for each day of confinement served. The first two courses of action established in the bill are actions that exist under the current law, in paragraph (3) of subsection a. of N.J.S.2C:46-2, for court-imposed financial obligations, and the third course of action permitting credit against the penalty amount owed matches the same crediting action established by the bill for court-imposed financial obligations as described above.

The committee amendments:

- define a "court-imposed financial obligation" as any fine, statutorily-mandated assessment, surcharge, or other financial penalty imposed by a court, but exclude restitution, child support, or other support or maintenance ordered by a court;

- provide that, for a person's willful default on a court-imposed financial obligation that is a fine, any ordered term of imprisonment, or labor or community service participation could not exceed one day for each \$50 of the fine imposed, and the term could not exceed a period of 90 consecutive days;

- establish that credit for default on a court-imposed financial obligation for a person who has served jail time may be credited based on each day of the person's confinement, for an amount as determined by the court, but this amount could not be less than \$50 for each day of confinement served;

- omit section 2 from the underlying bill, which proposed to permit municipal courts to credit persons for default based on jail time served, and replace this with a new section 2 which amends R.S.39:5-36, concerning defaults on penalties for motor vehicle offenses as described above;

- define motor vehicle "penalty" as any fine, assessment, surcharge, or other financial penalty provided under subtitle 1 of Title 39 of the Revised Statutes, the motor vehicle and traffic laws, but exclude the \$250 unsafe driving surcharge imposed pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2);

- make the provisions of the bill applicable to all persons, instead of only person's found by a court to be indigent as required by the underlying bill; and

- correct references to “court imposed” to read “court-imposed,” and additionally update the name of the “Victims of Crime Compensation Board” to reference its current name, the “Victims of Crime Compensation Office” (per Executive Reorganization Plan 001-2008 (Corzine)), throughout the bill.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
[First Reprint]
SENATE, No. 645

with Senate Floor Amendments
(Proposed by Senator POU)

ADOPTED: NOVEMBER 18, 2013

These floor amendments make several changes to the underlying bill, which authorizes the court to credit a person in default of a court-imposed obligation, such as a fine, statutorily-mandated assessment, surcharge, or penalty, when that person has served, pursuant to N.J.S.2C:46-2, jail time for the default.

Specifically, the amendments:

- expand the categories of defaults for which a person may receive credit against the amount owed to include court-ordered child support or other support or maintenance;

- expressly permit incarceration whenever a person, willfully and without good cause, has defaulted on payment of the \$250 unsafe driver surcharge imposed pursuant to subsection f. of section 1 of P.L.2000, c.75 (C.39:4-97.2), and incarceration for such willful default could not be credited to reduce the amount owed on the surcharge; and

- replace the term “imprisonment” with “incarceration” throughout the bill to reflect current usage in relation to persons being incarcerated for defaulting on court-imposed obligations.

These amendments make this bill identical to Assembly Bill No. 581 (2R). That bill passed the General Assembly on June 20, 2013 and was received by the Senate that same day.