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**Directive #12-21**

[Questions or comments may be directed to the Municipal Court Services Division at (609) 815-2900, ext. 54850.]

**To: Assignment Judges  
Trial Court Administrators**

**From: Glenn A. Grant, J.A.D.** 

**Subj: Municipal Courts -- Time Payment Plans and Payment Alternatives**

**Date: April 30, 2021**

As approved by the Supreme Court, this directive provides an overview and update of policies regarding time payment plans – plans that allow a defendant to make monthly payments towards a legal financial obligation – and payment alternatives in the municipal courts. The goals are to provide greater statewide consistency and efficiency and ensure that time payment plans and alternatives are widely available to defendants when needed and appropriate.

At the time of a guilty plea or verdict in the municipal courts, legal financial obligations – fines, fees, restitution, and surcharges – are expected to be paid in full upon sentencing. However, there are a variety of options available to certain qualifying municipal defendants that allow for a relaxation of this requirement. Those options are broadly grouped into two general categories: time payment plans and payment alternatives.

Historically, defendants were afforded time payment plans in the municipal courts only after first demonstrating either indigency or a logistical inability to access funds at the time of sentencing.<sup>1</sup> Both situations required that the defendant complete

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<sup>1</sup> These were required by Administrative Directive #02-10, “Implementation of L. 2009, c. 317, Authorizing Municipal Courts to Provide Payment Alternatives” (March 2, 2010) and Memorandum

the [Financial Questionnaire to Establish Indigency](#) (“financial questionnaire”) and discuss the contents of the completed form in open court. This directive supersedes those prior procedures and policy documents.

These changes will provide greater convenience to court users, standardize policies statewide, and limit the open court discussion of defendant’s finances to only when necessary, which will preserve valuable court session time. Changes include the following:

- Time payments are to be made broadly available to defendants upon request without a detailed inquiry into a defendant’s finances.
- This includes both delayed payments (formerly known as a “short-term time payment plan”) and time payment plans that fall within the structured guidance provided below. This structured guidance is particularly relevant to legal financial obligations totaling less than \$500, which constitute close to 90% of time payment plans.
- Only those defendants who need more individualized time payment plans, due to indigency or otherwise, will be required to complete a financial questionnaire for court review.
- Courts and defendants will be guided through this process by way of a post-sentencing colloquy promulgated under separate cover by the Administrative Director.

The details of these new processes are discussed below.

### I. Time Payment Plans (Available at Sentencing)

Time payment plans give defendants the opportunity to make monthly payments towards a legal financial obligation over a period of time. They are available to defendants unable to pay a fine in full at a court session for a variety of reasons, including indigency. N.J.S.A. 2B:12-23.1a.

To determine whether a time payment plan is appropriate for a defendant, the municipal court judge should engage in a discussion with the defendant, using the post-sentencing colloquy, to establish the appropriate option: to pay in full at the time of sentencing; to pay within 30 days (a delayed payment); payment in accordance with the structured guidance provided below; or an individualized time payment plan. Only

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from Glenn A. Grant, J.A.D., Completion of the Financial Questionnaire to Establish Indigency Form when Authorizing Time Payments, to Municipal Court Judges, Municipal Court Directors and Administrators (May 9, 2011).

the latter, the individualized plan, will require completion of the financial questionnaire. This means fewer defendants will have to complete financial questionnaires.

Therefore, as an initial matter, and as guided by the post-sentencing colloquy, courts should continue to liberally authorize delayed payments when a defendant indicates that they do not have the ability to pay that day but can make full payment within 30 days.

For defendants who indicate that more than 30 days is needed to make payment, judges should continue through the colloquy to determine whether a plan that falls within the structured guidance provided below would be appropriate, and what the specifics of that plan should be.

| <b>Range of Financial Obligation</b> | <b>Monthly Installments</b>                |
|--------------------------------------|--|
| \$0 to \$100                         | 3 equal payments                           |
| \$100.01 to \$200                    | Up to 6 equal payments                     |
| \$200.01 to \$300                    | Up to 9 equal payments                     |
| \$300.01 to \$400                    | Up to 12 equal payments                    |
| \$400.01 to \$500                    | Up to 15 equal payments                    |
| Greater than \$500                   | Up to 20 equal payments, whenever possible |

Defendants who indicate that they are unable to satisfy either of the above but still desire a time payment plan must complete the [Financial Questionnaire to Establish Indigency](#), if they have not already done so. This, along with a discussion with the defendant, where necessary, will provide the municipal court judge with adequate information to set an appropriate time payment plan that takes into careful consideration the defendant's ability to pay. There are no restrictions as to the length of time for payment or the minimum dollar amount of monthly payments.

For all time payment plans, efforts should be made to place defendants on a balanced payment plan that can be satisfied with minimal court involvement. Judges should remain guided by the maxim to provide payment plans that are reasonable and achievable under the circumstances presented by the defendant, particularly when working with indigent defendants. This must be balanced with courts giving due consideration to establishing a payment plan that ensures satisfaction of an outstanding legal financial obligation while also minimizing defendant involvement with the court. Unnecessarily extending time payments may only set the defendant up to default. Courts should work to strike a careful balance.

Finally, defendants should always be advised that in the event they become unable to satisfy their time payment plan, they should immediately contact the court. Judges should stress with the defendant that the court's role is to work with defendants when issues arise, not to punish those who default. Judges are further reminded that a failure to pay should not trigger issuance of a warrant. Defendants who fail to satisfy their financial obligation are to be scheduled for court, where the judge is to speak with the defendant about their obligation and, as appropriate, commence an ability to pay hearing.

## II. Payment Alternatives (Available After Default)

Payment alternatives are available after sentencing where a defendant defaults on a time payment plan and does not have the ability to pay. For purposes of these alternatives, a default occurs if a failure to pay notice was issued to the defendant. Please note that this definition has been modified from the prior standard promulgated by this office. Previously, a defendant was considered to be in default only if their driver's license was suspended for a failure to pay or if a warrant had been issued for defendant's arrest after a failure to pay.

The ability to pay determination should be informed by the court's review of the defendant's completed [Financial Questionnaire to Establish Indigency](#), and, where necessary, a discussion with the defendant in open court. Judges may use a previously completed questionnaire. However, if the defendant did not complete the questionnaire previously, or if the defendant has indicated that their financial status has changed, the defendant should be asked to complete a new form. It is always within the judge's discretion to determine whether a new questionnaire must be completed. The ability to pay analysis is captured in the [Bench Card – Lawful Collections of Legal Financial Obligations](#).

If a person defaults on any payment and the court finds that the defendant does not have the ability to pay, the court may:

- (1) reduce the penalty, suspend the penalty, or modify the installment plan;
- (2) order that credit be given against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default;
- (3) revoke any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment;

- (4) order the person to perform community service in lieu of payment of the penalty;
- (5) impose any other alternative permitted by law in lieu of payment of the penalty; or
- (6) order community service in lieu of incarceration or other modification of the sentence with the person's consent.

[N.J.S.A. 2B:12-23; N.J.S.A. 2B:12-23.1.]

These payment alternatives may not be used to reduce, revoke, or suspend payment of restitution or of the \$250 surcharge assessed for operating a vehicle in an unsafe manner under N.J.S.A. 39:4-97.2(f). N.J.S.A. 2B:12-23.1. Moreover, when engaging in a colloquy with a defendant regarding payment alternatives, judges should take into consideration the possibility that certain options, such as community service, may be more onerous than a monetary obligation.

In determining whether a payment alternative is appropriate, judges should consider the financial circumstances of the defendant, the defendant's practical ability to pay an assessed amount, and how to meet the interests of justice. The judge must place on the record the basis for modifying or vacating any financial penalties, and all changes of sentence must be made on the record in open court. R. 1:7-4(a), R. 7:9-4.

Finally, judges are strongly urged to use their statutory authority when appropriate to revoke all or a portion of a penalty if continuing payment of even a modest amount would cause a hardship to the defendant or the circumstances warranting the imposition of the sentence have changed, and it is in the interest of justice to do so.

### **III. Modification of Payment Plans and Payment Alternatives**

Courts should work liberally with defendants who provide justification to modify their time payment plan, seek a payment alternative, or seek to modify their payment alternative to ensure that they are reasonable, achievable, and meet the needs of the defendant and the interests of justice. Additionally, pursuant to guidance and approval from their municipal court judge, authorized municipal court administrators may modify time payment plans for the convenience of defendants without the need to schedule a court event.

Any questions regarding this directive should be directed to Assistant Director Steven A. Somogyi, Municipal Court Services, at [steven.somogyi@njcourts.gov](mailto:steven.somogyi@njcourts.gov) or at 609-815-2900, extension 54850.

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