



# MICHIGAN COURTS NEWS RELEASE

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## **Court Rule Amendments Adopted Regarding Ability to Pay**

LANSING, MI, May 25, 2016 – The Michigan Supreme Court announced today the adoption of amendments to court rules that codify existing caselaw regarding determination of a defendant's ability to pay fines, fees, and costs. Recommended last year by the Michigan State Planning Body for the Delivery of Legal Services to the Poor, the amendments were posted for public comment and were the subject of a May 18 public hearing.

Adoption of the amendments caps a process that began in 2014 when the State Court Administrative Office launched the Ability to Pay Workgroup. The workgroup of judges, court staff, and other stakeholders drafted tools to help judges determine ability to pay, detailed best practices, and recommended continuing education for judges and court staff. The [workgroup's report](#) included detailed appendices with extensive resources for courts, including ability to pay checklists, statutory requirements, payment plan calculators, federal poverty guideline charts, payment alternatives, and other tools.

The key court rule change is a revision of MCR 6.425 (added language shown in underline):

(E) Sentencing Procedure.

(1)-(2) [Unchanged.]

(3) Incarceration for Nonpayment.

- (a) The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good faith effort to comply with the order.
- (b) Payment Alternatives. If the court finds that a defendant is unable to comply with an order to pay money without manifest hardship, the court may impose a payment alternative, such as a payment plan, modification of any existing payment plan, or waiver of part or all of the amount of money owed to the extent permitted by law.
- (c) Determining manifest hardship. The court shall consider the following criteria in determining manifest hardship:

- (i) Defendant's employment status and history.
- (ii) Defendant's employability and earning ability.
- (iii) The willfulness of the defendant's failure to pay.
- (iv) Defendant's financial resources.
- (v) Defendant's basic living expenses, including but not limited to food, shelter, clothing, necessary medical expenses, or child support.
- (vi) Any other special circumstances that may have bearing on the defendant's ability to pay.

Comments regarding the court rule amendments are available on the [Court's website](#). A video recording of the public hearing is available [here](#).

*Bearden v Georgia*, 461 US 660 (1983), established that incarcerating an individual for failure to pay without first determining whether the individual has the ability to pay fines, fees, and costs is a violation of the person's constitutional rights.