

## **FEES/FINES BENCH CARD**

*At sentencing, the court must determine a defendant's ability to pay fees and fines, and restitution.<sup>1</sup>*

**Fees and costs include include** pretrial supervision costs, court fees and surcharges, IT fees, OPD fees, prosecution fees, jury and court costs, probation supervision fees, and community service fees.<sup>2</sup>

### **Presumption of Inability to Pay Requiring Waiver of all Fees/Fines:**

- **Eligible for representation by a public defender.**
- Current receipt of any needs-based public assistance/benefits such as SSI/SSDI, TANF, Medicaid or SNAP benefits.
- Earns less than 100% of HUD's "very low income limit" for their family size.
  - o \$29,900 for individuals
  - o \$34,150 for a family of 2
  - o \$38,450 for a family of 3
  - o \$42,700 for a family of 4
  - o \$46,150 for a family of 5
  - o \$49,550 for a family of 6
  - o \$52,950 a family of 7
  - o \$56,400 for a family of 8
- W/in last 6 mos. spent time in a residential mental health facility.
- Has a developmental, total, or permanent disability.
- Is a minor (presently or at the time the offense was committed).
- Experienced homelessness in the last 12 months.
- Currently in custody, sentenced to custody for at least 6 months, or released from a term of at least 6 months in jail/prison within the past 12 months.

---

<sup>1</sup> Sections 46-18-213(3) and 46-18-232, MCA; *State v. Gibbons*, 2024 MT 63, \_\_\_ Mont. \_\_\_ (2024).

<sup>2</sup> Section 46-18-232, MCA. "Costs" are defined in §25-10-201, MCA.

<sup>3</sup> Section 46-18-231(3), MCA.

- Full-time student.

### **Fines: May NOT Be Imposed Unless the Offender Is or Will Be Able to Pay.**

Assess fine based on the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose.<sup>3</sup>

### **Fees: May NOT Be Imposed Unless the Offender Is or Will Be Able to Pay.**

In determining the amount and method of payment, the financial resources of the offender, the future ability of the offender to pay costs, and the nature of the burden that payment of the costs will impose must be considered.<sup>4</sup>

### **Restitution: Takes Precedence Over Imposition of Fines/Fees; 2-Step Process.**

Step 1: Impose without consideration of ability to pay,<sup>5</sup>

Step 2: Adjust or waive based on ability to pay or if otherwise unjust.<sup>6</sup>

### **Use Separate Court Order for Fees/Fines**

Include at a minimum, the amount owed, an explanation of the court's calculation, and information about how to make a payment.

### **Enforcement**

An individual should not be incarcerated, have their probation extended, be denied services, or have their driver's license suspended as a punishment for missed payments. A warrant should never be issued or executed for any failure to pay fines, fees, or restitution.

<sup>4</sup>Section 46-18-232(2), MCA.

<sup>5</sup> Section 46-18-201(5), MCA.

<sup>6</sup> Section 46-18-241–46-18-249, MCA; *State v. Lodahl*, 2021 MT 156, 404 Mont. 362 (2021).