

SUSPENDED FINE PROGRAM PROTOCOL

Bobby Sand, the Senior Policy and Legal Advisor for the VT Dept. of Public Safety, Erica Marthage, Bennington County State's Attorney, Judge Cortland Corsones, Bennington Unit Criminal Division Judge, Judge David Howard, Presiding Judge for the Bennington Unit, Leitha Cipriano from our local CRJ, Wendy Dickie, Bennington Unit's Court Operation Manager for the Criminal Division, and Mary Frost, Bennington Unit Clerk, met about a proposed Suspended Fine Program for Bennington Unit. We are all in agreement that this program could be done here in Bennington if we received affirmation from the defense bar as well, which was obtained at the Criminal Bench Bar meeting on June 12th.

Purpose:

The program is created as a mechanism that allows for a sentence upon a criminal conviction that involved a fine yet still includes a rehabilitative/restorative component to the sentence.

Description:

Courts encounter many cases where a "fine only" disposition may not be sufficiently rehabilitation, yet placing the offender on probation or seeking a jail sentence may be too punitive and resource-intensive. As a middle ground between only a fine and probation or jail, a court may utilize a suspended fine approach.

With a suspended fine disposition, the court imposes a fine and surcharge as the sentence, but suspends a portion of the fine (not surcharge) if the offender completes community-based programming coordinated by the Center for Restorative Justice (hereinafter "CRJ"), which may include a substance abuse assessment required by CRJ as part of the program. There may be a fee associated with the programming and assessment, but this fee is usually offset by the savings from the suspended fine.

If an offer is made by the State that a suspended fine may be appropriate, the offender will be required to meet with a representative of CRJ, preferably at arraignment. If agreed upon, the offender must complete the programming within a specified period, typically no more than six (6) months. Failure to complete the programming results in the balance of the suspended fine being due, without the need to return to court. A program success results in the balance of the fine being permanently waived, although the conviction remains on the record. CRJ agrees to notify the court of the outcome of the offender's participation in the programming, which may include the treatment.

Community-based programming may include:

- Assistance in obtaining driver's license reinstatement
- Community service
- Help with housing, employment, transportation
- Completion of a life skills inventory to help the offender gain better insight into risk areas
- Referral to a reparative board and completion of a reparative contract
- Substance abuse assessment and followup treatment

The beauty of the program is that even in cases for which jail or probation is not a necessary outcome, the sentence can still include a rehabilitative component and can help connect the offender with his or her community. Additionally in those instances where the offender does not complete the program in a

timely manner or declines to participate, there is no need for additional judge time, probation officer involvement, possible use of correctional facility bed space or involvement by the State's Attorney, as the lone consequence is that the offender owes the balance of the original fine.

Driving offenses are particularly well suited to the suspended fine approach, although other cases may work as well. A fairly important consideration is whether the offense provides an adequate statutory maximum fine to create enough of a financial incentive to participate in the program. First offense low test DUI cases as well as negligent and gross negligent operation and driving with a suspended license offenses may work well using this approach. Moreover, DUI's low test first offenders are reduced to negligent operation or grossly negligent operation are particularly well suited as the fine amounts are greater for the 23 VSA 1091 violations than they are for the 23 VSA 1201 violations.

Program Requirements:

A suspended fine program requires no legislative changes (although a proposal has been submitted to the legislature for its approval anyway). Although cases in which a "fine only" in the original plea offer do not result ordinarily in the assignment of a public defender, defense counsel support of the program will allow the program to develop rapidly. In addition, if the offer is the "suspended fine program" such assignment is appropriate in that most of these fines will result in an amount above \$1,000.00. Moreover, a suspended fine program creates an additional sentencing option that may help the parties reach a case resolution.

Procedure:

If the State determines that a case is appropriate for a suspended fine approach, at the time of filing the original Information and Affidavit, on the "offer" sheet, it shall include such a proposal.

CRJ will send a representative on Arraignment mornings to the court to meet with folks referred to diversion and this suspended-fine program.

When handing out the defendant's paperwork on the morning of the arraignment, court staff will bring to the defendant's attention such an offer and provide them with the Information Card prepared by CRJ. Staff will direct the defendant to the conference room in the courthouse where the CRJ representative is meeting with defendants. If the defendant completes a Public Defender Application, court staff will also refer the defendant to the representative present from the Public Defender's Office.

Once the State and the defendant agreed to a suspended fine, a Plea Agreement shall be drawn up with the following language in the Other section of the form, making certain that if the original charge is amended, that the amended charge code be inserted. Also, the correct amount of surcharges MUST be inserted in the Plea Agreement, as that amount will not be reduced.

"\${amount of suspended fine} of the fine is suspended if defendant contacts the CRJ within 48 hours and completes programming within six months."

The Plea Agreement must also include the disposition of the civil suspension if one is pending.

The Court, on the record, when going through the colloquy for the change of plea, will make some inquiry about the defendant's ability to pay the amount of the total fine and surcharges. The Court will

also issue an Entry Order about the Program and include in the sentencing event language about the agreement.

It should be understood that the surcharges imposed on the total amount of the fine will be due; there will not be any reduction in those surcharges.

The Court will also issue a Deferred Payment Agreement on the day of the change of plea which will show payment due on the total amount in six months. The defendant should be advised that payment of the unsuspended portion of the fine and the surcharge within 75 days would be appropriate.

The Court will enter a charge disposition and close out the case file.

Once the defendant completes the programming, CRJ will notify the Court, the State's Attorney and the Defense Counsel, if appropriate, that the defendant successfully completed the program. At that time, the Court will enter a fine amend event and reduce the fine in the amount of the agreed upon suspended fine portion. If there remains a balance due at that time, this amount will be sent to collections. The Court will docket such notification.

If the defendant does not complete the program or fails to attend, CRJ will also notify the Court, State's Attorney and Defense Counsel. At that point, the full amount of the fines and surcharges, if unpaid, will be sent to collection. A note in the docket will be made about such notification.

COURT STAFF INSTRUCTIONS

WHEN A SUSPENDED FINE IS ON THE OFFER SHEET:

When handing out the defendant's paperwork on the morning of the arraignment, court staff will bring to the defendant's attention such an offer and provide them with the Information Card prepared by CRJ. Staff will direct the defendant to the conference room in the courthouse where the CRJ representative is meeting with defendants. If the defendant completes a Public Defender Application, court staff will also refer the defendant to the representative present from the Public Defender's Office.

DOCKET ENTRIES FOR SUSPENDED FINE CASES:

What to what out for in the Plea Agreement:

If the charge is amended, make sure the amended charge code is inserted

That the language is inserted in the Other Section of the Agreement (at the bottom) indicating that a portion of this fine shall be suspended.

If there is a companion civil suspension, that the parties have made provision for it's disposition, and then enter that disposition in the civil suspension docket.

COP – The usual entries

EO – There will be a standard entry order that I will try to create a macro for [Macro is EOsusp]

SENTENCE – In the sen order section, I'll have a macro for the language to insert about the suspended fine [Macro is suspfine]

DEFPAY – for 6 months

CHGDISP

CLOSE

Docket in the case file as a **DOCUMENT** when we receive notification from CRJ about completion of failure of the program.

If failure, do nothing as the fines if unpaid will automatically go to collections.

If completed, you'll need to do a fine amendment for the amount of the suspended fine

FINAMEND – Enter the amount of the suspended fine as a negative figure

In the note section, select suspended fine or type it in if not an option

Effective Date: July 1, 2013