

## DEPARTMENT OF JUSTICE

## Bureau of Prisons

## 28 CFR Part 571

[BOP-1033-F]

RIN 1120-AA29

## Fines and Costs for "Old Law" Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is amending its regulations on fines, or fines and costs, ordered by the court with respect to an inmate convicted of an offense committed before November 1, 1987. The amended regulations conform with 18 U.S.C. 3569, requiring a United States Magistrate Judge to determine whether an inmate is indigent, for the purpose of determining the inmate's ability to pay a committed fine, or fine and costs. This statutory authority previously had included the Warden as a determining official. In accordance with delegated authority by the Attorney General, final determination as to the retention by the inmate of property in excess of that which is by law exempt from being taken on civil process is to be made by the appropriate United States Attorney. Bureau regulations previously had designated the Regional Director as the determining official.

EFFECTIVE DATE: January 28, 1998.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is amending its regulations on fines and costs (28 CFR part 571, subpart F). A final rule on this subject was published in the **Federal Register** on October 21, 1983 (48 FR 48971).

These amendments conform Bureau regulations to reflect 18 U.S.C. 3569 which, as revised and still applicable to offenses committed before November 1, 1987, specifies a U.S. Magistrate Judge in the district where the inmate is imprisoned as the official responsible for determining whether an inmate is indigent for the purpose of determining the inmate's ability to pay a committed fine, or fine and costs. Previously, this statute had also authorized the Warden as a determining official. These amendments also conform to delegated authority (28 CFR 0.171(g)) from the Attorney General to United States Attorneys regarding findings on retention by the inmate of property in excess of that which is by law exempt

from being taken on civil process for debt. A discussion of the specific changes follows.

In § 571.50, the introductory paragraph and paragraph (a) are revised to identify clearly the applicability of the regulations. There is no change in the intent of these paragraphs. Paragraph (b) is amended to remove references to the Warden and the Regional Director as determining officials, to include reference to the United States Attorneys, and to remove unnecessary explanatory information.

In § 571.51, paragraph (b) has been revised for editorial purposes. There is no change in the intent of this paragraph.

In § 571.52, paragraphs (a) and (b) have been revised for editorial purposes. There is no change in the intent of these paragraphs. Paragraph (c) has been amended to remove a reference to the Warden as a determining official.

Former § 571.53 has been removed. Removal of this provision is necessary because the Warden no longer has the authority to determine an inmate's ability to pay his or her fine or fine and costs. Former § 571.56 has also been removed, because the final determination as to the retention of property which is reasonably necessary for the inmate's support or that of his or her family has been delegated by the Attorney General to United States Attorneys.

The material in §§ 571.54 and 571.55 has been redesignated and revised as new §§ 571.53 and 571.54.

New § 571.53 restates material formerly in old § 571.54. Paragraph (a) is revised to specify that an inmate must apply to the U.S. Magistrate Judge in the district where the inmate is incarcerated to determine whether the inmate is indigent for the purpose of determining the inmate's ability to pay his or her fine, or fine and costs. As revised, paragraph (b) removes the condition of a determination of non-indigency by the Warden before an inmate may elect to apply to the U.S. Magistrate Judge. This paragraph still directs institution staff to offer to send all forms and information to the U.S. Magistrate Judge for the inmate. Paragraph (c) has been revised for editorial purposes. There is no change in the intent of this paragraph. Paragraph (d) has been revised to include reference to the United States Attorney as a determining official.

New § 571.54 restates material in old § 571.55. Paragraphs (a), (b) and (c) have been revised for editorial purposes. There is no change in the intent of these paragraphs. A new paragraph (d) is added parallel the provisions in new § 571.53(d) for forwarding a referral

package to the appropriate United States Attorney subsequent to a finding of non-indigency.

Because these changes impose no new restrictions on inmates and either conform to statutory requirements, other delegated authority, or are administrative in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant economic impact on a substantial number of small entities, within the definition of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

**List of Subjects in 28 CFR Part 571**

Prisoners.

**Kathleen M. Hawk,**  
*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 571 in subchapter D of 28 CFR, chapter V is amended as set forth below.

**SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE****PART 571—RELEASE FROM CUSTODY**

1. The authority citation for 28 CFR part 571 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3565, 3568-3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161-4166, and 4201-4218 (Repealed as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date).

5031-5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95-0.99, 1.1-1.10.

2. § 571.50 is revised to read as follows:

**§ 571.50 Purpose and scope.**

This subpart establishes procedures for processing a fine, or fine and costs ordered by the court with respect to an inmate convicted of an offense committed before November 1, 1987. When the court orders a prisoner's confinement until payment of a fine, or fine and costs under 18 U.S.C. 3565, the Bureau of Prisons shall confine that inmate until the fine, or fine and costs are paid, unless the inmate qualifies for release under 18 U.S.C. 3569.

(a) An inmate held on the sole basis of his/her inability to pay such fine, or fine and costs, and whose non-exempt property does not exceed \$20.00 may request discharge from imprisonment on the basis of indigency (see 18 U.S.C. 3569).

(b) Under 18 U.S.C. 3569, the determination of indigency may be made by a U.S. Magistrate Judge. Where the U.S. Magistrate Judge makes a finding of non-indigency based on the inmate's application for a determination of his ability to pay the committed fine, or fine and costs, staff shall refer the application to the appropriate United States Attorney for the purpose of making a final decision on the inmate's discharge under 18 U.S.C. 3569. It is to be noted that 18 U.S.C. 3569 provides for confining an inmate for nonpayment of a committed fine, or fine and costs.

3. In § 571.51, the concluding text is removed and paragraph (b) is revised as follows:

**§ 571.51 Definitions.**

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(b) *Costs*—Monetary costs of the legal proceeding which the court may levy. Imposition of costs is similar in legal effect to imposition of a fine. The court may also impose costs with a condition of imprisonment.

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4. § 571.52 is revised to read as follows:

**§ 571.52 Procedures—committed fines.**

(a)(1) Promptly after the inmate's commitment, staff shall inform the inmate that there is a committed fine, or fine and costs on file, as part of the sentence. Staff shall then impound the inmate's trust fund account until the fine, or fine and costs is paid, except—

(i) The inmate may spend money from his/her trust fund account for the purchase of commissary items not exceeding the maximum monthly allowance authorized for such purchases.

(ii) Staff may authorize the inmate to make withdrawals from his/her trust fund account for emergency family, emergency personal needs or furlough purposes.

(2) This rule of impounding an inmate's trust fund account applies only when the inmate is confined in a federal institution. It does not apply to a federal inmate confined in a state institution or a contract community-based facility.

(b) If the inmate pays the committed fine, or fine and costs, or staff have verified payment, staff shall document payment in the appropriate file and release the inmate's trust fund account from impoundment.

(c) Staff shall interview the inmate with an unpaid committed fine at least 75 days prior to the inmate's release date. Staff shall explain to the inmate that to secure release without paying the committed fine, or fine and costs in full, the inmate must make an application, on the appropriate form, to the U.S. Magistrate Judge for determination as to whether the inmate can be declared indigent under 18 U.S.C. 3569.

**§§ 571.53 and 571.56 [Removed]**

5. §§ 571.53 and 571.56 are removed.

6. §§ 571.54, 571.55 are redesignated as new §§ 571.53 and 571.54 and revised as follows:

**§ 571.53 Determination of indigency by U.S. Magistrate—inmates in federal institutions.**

(a) An inmate with a committed fine, or fine and costs who is imprisoned in a federal institution may make application for a determination of indigency directly to the U.S. Magistrate Judge in the district where the inmate is imprisoned under 18 U.S.C. 3569.

(b) After completion of the application, staff shall offer to forward the completed forms and any other applicable information the inmate chooses to the U.S. Magistrate Judge.

(c) If the U.S. Magistrate Judge finds that the inmate is indigent, the U.S. Magistrate Judge will administer the oath to the inmate. The inmate shall be released no earlier than the regularly established release date.

(d) If the U.S. Magistrate Judge finds that the inmate is not indigent, Bureau staff shall forward a referral package to the appropriate United States Attorney for a final determination as to the inmate's ability to pay the committed fine, or fine and costs.

**§ 571.54 Determination of indigency by U.S. Magistrate Judge—inmates in contract community-based facilities or state institutions.**

(a) Inmates with a committed fine, or fine and costs may be transferred to contract community-based facilities, state institutions as boarders, or state institutions for service of federal sentences running concurrently with state sentences.

(b) Inmates with a committed fine, or fine and costs may be committed directly to contract community-based facilities or state institutions as boarders or may be designated to state institutions for service of federal sentences running concurrently with state sentences.

(c) An inmate with a committed fine, or fine and costs who is imprisoned in a contract community-based facility or state institution and desires to make application for a determination of ability to pay the committed fine, or fine and costs under 18 U.S.C. 3569 may make application directly to the U.S. Magistrate Judge.

(d) Upon receipt of a finding by the U.S. Magistrate Judge that the inmate is not indigent, Bureau staff shall forward a referral package to the appropriate United States Attorney for a final determination as to the inmate's ability to pay the committed fine, or fine and costs.

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