



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

March 14, 2024

The Honorable Marilyn S. Reed
Justice Court Judge, Lee County
Post Office Box 108
Tupelo, Mississippi 38804

Re: “Sitting Out” Mandatory Human Trafficking Assessment

Dear Judge Reed:

The Office of the Attorney General has received your request for an official opinion.

Questions Presented

1. Can a defendant in a misdemeanor domestic violence charge/conviction “sit out” the mandatory \$1000.00 assessment in jail?
2. If not, what can judges do once a defendant is out of jail and refuses to pay the assessment?

Brief Response

1. There is no authority for a judge to allow a defendant to “sit out” the mandatory \$1000.00 state assessment imposed under Mississippi Code Annotated Section 99-19-75.
2. This office cannot make factual determinations, and because this question is a mixed question of fact and law, we are unable to respond by official opinion.

Applicable Law and Discussion

Section 99-19-75, “Assessments for certain crimes against persons; deposits in Children’s Trust Fund or Victims of Human Trafficking and Commercial Sexual Exploitation Fund,” requires additional assessments to be paid into one of two specific funds when a defendant is found guilty of violating certain code sections:

(1) In addition to any monetary penalties and any other penalties imposed by law, *there shall be imposed and collected* from each person upon whom a court imposes

a fine or other penalty for any violation of Section 97-3-65, 97-5-1 et seq. or 97-3-7, when committed against a minor, an assessment of One Thousand Dollars (\$1,000.00) to be deposited into the Mississippi Children's Trust Fund created in Section 93-21-305, using the procedures described in Section 99-19-73.

(2) In addition to any monetary penalties and any other penalties imposed by law, *there shall be imposed and collected* from each person upon whom a court imposes a fine or other penalty for any violation of Section 97-3-7, 97-3-54.1, 97-3-65, 97-3-95, 97-5-1 et seq., or 97-29-51 an assessment of One Thousand Dollars (\$1,000.00) to be deposited into the “Victims of Human Trafficking and Commercial Sexual Exploitation Fund” created in Section 2 of this act.

(emphasis added). The charge of domestic violence falls under Section 97-3-7, so the defendant would be required to pay the \$1000.00 assessment into the Victims of Human Trafficking and Commercial Sexual Exploitation Fund (“Human Trafficking Fund”). The use of the word “shall” dictates that these assessments be imposed and collected with no judicial discretion on the issue. *Pitalo v. GPCH-GP, Inc.*, 933 So. 2d 927, 929 (Miss. 2006) (“Simply stated, “shall” is mandatory, while “may” is discretionary.”). While the term assessment is not defined in the code, Merriam-Webster defines assessment as “an amount that a person is officially required to pay.” *Assessment*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/assessment> (last visited March 13, 2024). Assessments, mandated by and remitted to the state, differ from fines, fees, and court costs. As previously stated by this office in reference to Section 99-19-75(1), “a judge is without the authority to suspend a mandatory state assessment.” MS AG Op., *Lawrence* at *1 (Apr. 14, 2006) (citing MS AG Op., *Knight* (Aug. 31, 2001) and MS AG Op., *Peterson* (Oct. 11, 1996)).

You ask whether a defendant guilty of domestic violence —and “upon whom a court imposes a fine or other penalty”— could “sit out” the assessment. Miss. Code Ann. § 99-19-75(2). We understand “sit out” means to place the defendant in jail to earn credit towards paying off a court-imposed debt such as a fine or court costs. While no statute contemplates that exact scenario, three statutes address a defendant’s ability to get credit toward fines and costs measured by time incarcerated as an alternative to direct payment. Section 47-1-47 addresses an incarcerated defendant’s ability to work and receive credit towards *fines and costs* until they are paid. Sections 99-19-20(2) and 99-19-20.1 address a court’s discretion to imprison a defendant until a court-imposed fine, restitution, or court costs are paid, provided the court has found that the defendant is financially able to pay, and non-payment is willful. Notably, all of the above Sections deal specifically with court-imposed fines, costs, and/or restitution. They do not apply to state-mandated assessments.

Your second question is a mixed question of fact and law, and as this office can only opine on prospective questions of state law, we must decline to respond by official opinion. Miss. Code Ann. § 7-5-25.

In sum, it is the opinion of this office that there is no authority for a judge to allow a defendant to “sit out” the mandatory \$1000.00 state assessment imposed under Mississippi Code Annotated Section 99-19-75. The state assessment is mandatory and must be imposed and collected. To the

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extent that this opinion conflicts with any opinions previously issued by this office, those opinions are modified prospectively to conform herewith.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Misty Monroe*

Misty Monroe
Assistant Attorney General

OFFICIAL OPINION