



**FINES & FEES
JUSTICE
CENTER**

PAYMENT PLANS AS A COMPLIANCE TOOL: BEST PRACTICES FOR FLORIDA COURTS

Fines and Fees Justice Center
August 2019

Table of Contents

PAYMENT PLANS AS A COMPLIANCE MODEL.....2

STATUTORY AUTHORITY AND LEGISLATIVE HISTORY3

PAYMENT PLANS AND ABILITY TO PAY 3

PAYMENT PLAN FEES..... 3

CURRENT PAYMENT PLAN PRACTICES ACROSS FLORIDA’S 67 COUNTIES4

CASE STUDY: PALM BEACH COUNTY.....5

SUMMARY AND RECOMMENDATIONS6

APPENDIX A - COMPARISON CHART..... 7

APPENDIX B - INCOME ELIGIBILITY CRITERIA..... 8

To learn more about Florida Policy Reforms and Recommendations,
contact:

Ashley Thomas, Florida State Director
Fines and Fees Justice Center
athomas@finesandfeesjusticecenter.org

The Fines and Fees Justice Center seeks to catalyze a movement to eliminate the fines and fees that distort justice. Our goal is to eliminate fees in the justice system and to ensure that fines are equitably imposed and enforced. For more information, please visit:

<https://finesandfeesjusticecenter.org/>

Payment Plans as a Compliance Model

The goal of a payment plan is to increase compliance with payment of outstanding court debts. Payment plans that take a person's individual financial circumstances into account result in increased collections and fewer adverse consequences for individuals, their families, and the community. Creating a reasonable payment plan program uniformly implemented across Florida will increase both efficiency and collections, while simultaneously decreasing confusion and inconsistent implementation.

Currently, the clerks of court in 65 of Florida's 67 counties have 65 different payment plans, each with separate processes for establishing those plans. Our review of these payment plans shows significant variation across the jurisdictions. The plans vary with respect to the minimum monthly amount an individual is required to pay, the length of the payment plan, and the fees required for establishing a payment plan. Moreover, there is no one standard form or process used across the 67 counties to enroll in a payment plan.

Many people have cases located in multiple jurisdictions. A person might, for example, owe fines and fees related to a speeding ticket in Pinellas County and a broken tail light ticket in Broward County. Wildly different payment plan criteria and procedures lead to confusion and confusion leads to non-compliance. Many counties require arbitrary down payments or time frames for payoff that don't take someone's ability to pay into consideration. At least two counties do not even have a process for payment plans at all, despite the statutory requirement to provide payment plans. A person with tickets in multiple jurisdictions is required to establish multiple payment plans.

Florida law states that a payment plan based on 2% of a person's average monthly income is presumed to correspond with a person's ability to pay. But our research shows there is not a single Florida county currently using this standard to establish monthly payment amounts. A payment plan developed without an ability to pay standard is bound to fail. The goal of payment plans is to increase compliance, and the best way to do that is by using an ability to pay standard that takes into account each person's income and circumstances.

For a person who is unable to pay their court or traffic debt in full, payment plans allow them to avoid the harsh consequences for non-payment: sending the debt to collections, increased fees, and suspension of their driver's license. Clerks of court need clear operative guidance that provides a framework for evaluating ability to pay in a way that accords with constitutional and statutory requirements and helps individuals with court debt—especially Florida's poorest residents—avoid falling involuntarily into default.

This informational brief will discuss the history of payment plans, survey the state of payment plans as they are currently used across the 67 counties, and make recommendations to increase compliance as well as collections.

Statutory Authority and Legislative History

Payment Plans and Ability to Pay

Payment plans for court debts came into existence in 2003, with a new section in Florida Statutes Chapter 28.246: “The clerk of the circuit court shall accept partial payments for unpaid court-related fees, charges, and costs in accordance with the terms of an established payment plan.”

One year later in 2004, the language was amended to add: “An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law, and determined by the court to be unable to make payment in full, shall be enrolled by the clerk in a payment program, with periodic payment amounts corresponding to the individual's ability to pay.”

The statute was amended again in 2005, with the addition of the 2% presumption and now reads:

The clerk of the circuit court shall accept partial payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan. An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The court may review the reasonableness of the payment plan.

Despite evolving standards for payment plans, ability to pay, and the 2% rule, the current state of payment plans in Florida is best described as all over the map. No Florida county currently uses 2% of a person's average monthly income in establishing payment plans.

Payment Plan Fees

Current law allows clerks of the circuit court to charge fees for various clerk activities, including administering payment plans. The maximum administrative fee allowed in [Fl. Statutes § 28.24](#) relating to payment plans include:

- 28.24(26)(a): \$3.50 per restitution payment
- 28.24(26)(b): \$5.00 per month for non-restitution partial payment, or
- 28.24(26)(c): \$25.00 one-time administrative processing charge in lieu of 26(b)

The fees for partial payments and for the processing charge were authorized by statute effective July 1, 2004 and have not changed since then. Prior to 2004, there were no fees for partial

payments or for payment plans for non-restitution payments. The fee for partial payments for restitution payments gradually increased until [2008](#) where it has since remained unchanged at \$3.50 per restitution payment.

Current Payment Plan Practices Across Florida's 67 Counties

There is no standard process for establishing payment plans nor is there a standard payment plan formula used consistently across Florida. While the majority of counties have a process for establishing a payment plan, they differ considerably on the terms and conditions of their respective plans. Below are some findings on various payment plans across Florida:

- 65 of 67 counties in Florida have some form of a payment plan option in place for unpaid court costs, fines, or fees
- Hamilton and Lafayette Counties do not have a payment plan option available
- NONE of the 67 counties follow the 2% standard for ability to pay
- The only constant provisions that exist across the plans are:
 - Charging either the one time \$25 administrative fee or the \$5.00 per month fee
 - Failure to pay on time may result in driver's license suspension (our research indicates Hillsborough and Leon counties do not suspend driver's licenses for failure to pay criminal court debt, regardless of payment plan status)

Although 65 of the 67 counties utilize payment plans, the provisions in the payment plans vary drastically across the counties. Some of those differences include:

- Minimum payments that are based on the type of case (ex. Escambia and Leon)
 - \$50 per month per misdemeanor or criminal traffic conviction
 - \$75 per month per felony conviction
 - Some counties allow "stacked payment plans" where multiple cases are consolidated into one payment; others require a payment plan for each case
- Payment plan duration/terms based on total amount owed (ex. Columbia)
 - <\$500 - due within 6 months
 - >\$500 - due within 1 year
- Payment plan duration until paid in full (ex. Union and Putnam)
- Down payment required (ex. Taylor, Duval, Bradford)
 - Standard down payment amount (Taylor)
 - Regular payment + \$25 administrative fee (Duval)
 - 1/3 of total owed + \$25 administrative fee (Bradford)
- Payment plan not allowed for civil traffic (ex. Washington)
- The only payment plan that even mentions the "2% rule" is Broward County's payment plan where the payment plan form contains a section requiring a person to waive the 2% option.

The Broward County language states:

If voluntarily agreed upon payment amount is greater than income multiplied by 2% and divided by 12, initial here:
 I understand that the monthly payment amount provided above is more than the payment amount provided for by F.S. §28.246(4), as may be amended, and voluntarily agree to make this monthly payment amount in order to satisfy the amount that I owe to the Clerk of Courts as stated above.

Case Study: Palm Beach County

Palm Beach County has implemented a number of internal practices for misdemeanor and traffic cases that have increased compliance and revenue for the court with little additional effort or cost to the clerk’s office. Palm Beach County’s primary objective is to create a low bar to access and immediate placement on a payment plan. To date, these minor changes to how and when people are placed on payment plans have increased collections and decreased the number of cases that fall out of compliance.

In Palm Beach County misdemeanor and traffic courts, an individual receives a court costs order and a brightly colored compliance form upon case disposition. On the brightly colored form is information regarding payment plans. Additionally, in court, there are easily identified “Compliance Officers” who escort individuals to set up payment plans immediately upon disposition. A person does not need to make an initial payment in order to enroll in a payment plan. Clerk of Court staff spends less than 5 minutes to enroll an individual in a payment plan, making sure not to keep clients any longer than necessary.

Clerk staff also follow up with clients via phone calls and reminder letters. Palm Beach County is currently working to expand its technological capabilities with text message notifications and payment of court fines and fees through a smartphone app.

In a sampling of 200 cases, Palm Beach found that putting people on payment plans resulted in increased compliance and collections:

	On Payment Plan	Not On Payment Plan
Assessed	\$61,823	\$73,693
Collected	\$11,097	\$678
Cases with payment	85	4

Palm Beach County is an example of how a process that makes payment plans easily accessible increases compliance. Although Palm Beach, like other Florida counties, does not calculate payment amounts based on the 2% of average monthly income, the process they have developed has been successful, and similar processes could be implemented universally across Florida.

Summary and Recommendations

The current state of payment plans across Florida is a confusing web to those clients who cannot afford to pay in full the fines, fees, and costs they owe. There are 65 different processes currently in place with different provisions, none of which incorporate the 2% ability to pay standard. Creating a uniform reasonable payment plan based on ability to pay that is utilized universally in all 67 counties will create consistency as well as ensure that statutes are applied properly. Additionally, making simple changes to the execution of the payment plan process can have a great impact when it comes to both compliance and collections as shown in Palm Beach County. Such changes would not be costly to clerks to implement and would benefit both clients and the clerk's offices.

Below are some recommendations to be considered to move towards a uniform compliance model for Florida payment plans:

Easily Accessible Payment Plans: Set up payment plans immediately upon disposition in misdemeanor and traffic cases for anyone who wants to pay over time. For felony cases where an individual is sentenced to a period of incarceration, create a plan at sentencing that gives that person 90 days after release from incarceration before the first payment is due. All cases that do not result in incarceration, provide a minimum 30-day grace period before the first payment is due.

Ability to Pay: Payment plans should be tailored to an individual's circumstances and provide a meaningful opportunity for each individual to comply. The 2% rule should be standardized and used across all jurisdictions. A minimum payment of \$10 a month could be implemented for individuals whose income fall under \$500/month, though for these individuals, in particular, converting the financial obligations to community service may be more appropriate.

Accessible Payment Options: In addition to developing online and phone payment options, community partners should be recruited who can accept payments in easily accessible locations so that people who are not banked or do not have credit cards do not have to travel to the courthouse during regular business hours to make a payment.

Reminders: Require regular reminders through text or email and provide a 10-day grace period for late payments.

Community Service: While community service is not a solution for every person, the courts should establish a program to allow for community service, credited at a living wage, to count towards court debts. Community service should be broadly interpreted to include school attendance or GED classes, credit for attendance at Narcotics Anonymous or Alcoholics Anonymous meetings, as well as traditional community service opportunities.

Affordable Payment Plans: Eliminate and/or reduce the monthly payment plan fee option. Payment plan service charge for income-eligible individuals should be waived entirely or reduced to a one-time \$5 fee for placement on a payment plan. When the City of San Francisco lowered the fee to enroll in a payment plan, the city saw nearly 4X increased payment on traffic fines.

Easy Reinstatement: Ensure payment plans are allowed for individuals who have previously been non-compliant.

Statewide Database: Create a centralized state-managed database of all criminal and traffic court fines, fees, and restitution.

Driver's License Suspensions. End the practice of suspending driver's licenses for unpaid fines and fees or non-compliance with payment plans.

Appendix A - Comparison Chart

	Current	Proposed
Ability to Pay	Varies, no use of 2% rule	Standardize and enforce current statutory provision for 2% of average monthly income across all jurisdictions; community service in lieu of payment.
Eligibility	Indigent, otherwise unclear	Anyone
Uniformity	None - each county develops their own process	Uniform document and payment plan process implemented across all counties
Start date of payment	At sentencing/disposition	Minimum 30 days grace period before 1st payment is due. If incarcerated, 90 days after release from incarceration before 1st payment is due
Fee for Payment Plan	One-time \$25 administrative fee or monthly \$5 payment plan fee; \$3.50 per partial restitution payment	No fee or reduce to one-time administrative fee of \$5 for individuals under 300% of the FPL, receiving government assistance, or experiencing financial hardship* (see appendix)
Down Payment	Varies	No down payment

Appendix B - Income Eligibility Criteria

300% of the FPL:

- Family of 1: \$37,470
- Family of 2: \$50,730
- Family of 3: \$63,990
- Family of 4: \$77,250
- Family of 5: \$90,510

Receives government assistance:

- Government Issued Unemployment Compensation
- Federal Public Housing/Section 8
- Medicaid or Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF) program
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Supplemental Nutrition Assistance Program (SNAP)
- Represented by a Public Defender or conflict counsel

Financial Hardship:

- Foreclosure (received a notice of foreclosure, entered into a consent foreclosure, gave a deed in lieu of foreclosure, or had a judgment of foreclosure entered on primary residence within the last three years)
- Eviction in the last 12 months
- Bankruptcy in the last 3 years
- Documented medical issues/disability
- Student
- Senior
- Affiliation with a religious order and vow of poverty