

First Steps Toward More Equitable Fines and Fees Practices

Policy Guidance on Ability-to-Pay
Assessments, Payment Plans,
and Community Service



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About The Fines and Fees Justice Center

The Fines and Fees Justice Center (FFJC) is a national advocacy organization working to create a justice system that treats individuals fairly, ensures public safety and community prosperity, and is funded equitably. FFJC works collaboratively with affected communities and justice system stakeholders to eliminate fees in the justice system, ensure fines are equitably imposed, and end abusive collection practices.

Contact Us

Visit our [website](#) to learn more about fines and fees practices and reform efforts around the nation. There, you can visit [FFJC's Clearinghouse](#), an online library of the latest fines and fees research, legislation, litigation and policy recommendations.

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I. INTRODUCTION

First Steps – Not Long-Term Solutions.

The Fines and Fees Justice Center (FFJC) advocates for the elimination of all fees imposed in the criminal legal system and for the imposition of fines only in cases in which the sentence does not include a term of incarceration or supervision. If imposed, fines should be both tailored to the offense and proportionate to an individual's financial circumstances. Further, no fines or fees should ever be assessed in juvenile cases.

This resource provides evidence-based guidance for jurisdictions that currently have or are looking to implement ability to pay assessments, payment plans, and/or community service as an alternative to fines, fees, or other monetary sanctions. By promulgating this guidance, FFJC recognizes that in some jurisdictions interim measures like these have been or will be adopted – and that to reduce harm to individuals, their families and communities, policy guidance is necessary and helpful. This guidance in no way signals a retreat from FFJC's policy goals of eliminating fees in the criminal legal system and ensuring that fines are equitably imposed and enforced.

Ability-to-Pay Assessments

An ability-to-pay assessment is the evaluation of an individual's ability to pay a fine, fee or other monetary sanction. These assessments ensure that fines are proportionate and offer an interim solution for jurisdictions that have not yet eliminated all of their fees.

Payment Plans

After a court conducts an ability-to-pay assessment, and appropriately waives and or reduces the amount owed, reasonable payment plans are necessary to ensure that people can meet their own needs, as well as the needs of their families, while paying off their court debt. Payment plans are also useful in jurisdictions that lack the authority to consider an individual's ability to pay.

Community Service

Community service offers individuals with an alternative to monetary sanctions that better meets the community's interest in public safety and accountability. When chosen by the defendant, assigned in consideration of an individual's family, work, or education obligations, credited at a reasonable amount, and defined broadly, community service may offer an appropriate way to comply with monetary sanctions.

This guidance is most effective when all three of these policies are adopted and implemented in unison. Together, these policies (1) ensure fairness, (2) are consistent with constitutional requirements for the assessment of financial sanctions in the criminal legal system, and (3) improve court efficiency and make it less costly for jurisdictions to monitor debt payment.

II. ABILITY-TO-PAY ASSESSMENTS

Before assessing fines, fees, or any other monetary sanctions, courts must make a finding that the individual has the current ability to pay the amount imposed.¹

1. Before assessing fines, fees, or any other monetary sanctions, courts must make a finding that the individual has the current ability to pay the amount imposed. If a person’s financial situation changes, the court must allow the individual to request a new determination of their ability to pay and a recalculation of the total fines, fees, or any other monetary sanctions owed.
 - a. “Ability to pay” refers to the current capability of a person to pay court-ordered fines, fees, or any other monetary sanction owed, without economic hardship.
 - b. Prior to imposing a fine and/or fee, courts have an affirmative obligation to inquire about and assess a person’s ability to pay.
 - c. Notice of the jurisdiction’s obligation to determine ability to pay and to waive or reduce fines, fees, or any other monetary sanctions due, must be provided in plain language:
 - on any citation issued;
 - on the court’s website;
 - on any online payment site;
 - in any court FAQs;
 - at any hearing where fines, fees, or any other monetary sanctions will be assessed or are at issue.
 - d. The notice must be translated into all applicable languages and include the process and standards that will be applied to determine ability to pay.
 - e. Ability-to-pay assessments are not waivable by an individual or their counsel.

¹ The Fines and Fees Justice Center advocates for elimination of all fees imposed in the criminal legal system and for the imposition of fines only in cases when the sentence does not include a term of incarceration or supervision. If imposed, fines should be both tailored to the offense and proportionate to an individual’s financial circumstances. No fines or fees should ever be assessed in juvenile cases. An individual must be convicted of an offense before a court can assess fines, fees or other monetary sanctions. ([Nelson v. Colorado](#))

Ability-to-pay policies must include a presumption that some individuals will not have the ability to pay any fine, fee, or other monetary sanction.

2. Ability-to-pay policies must include a presumption that some individuals will not have the ability to pay any fine, fee, or other monetary sanction. The government bears the burden of rebutting the presumption, but where it applies, courts must waive all fees within their discretion and assess the lowest amount of a fine allowed by law.

It must be presumed that a person does not have the ability to pay under any of the following circumstances:

- current receipt of any needs-based public assistance/benefits;
 - spent any period of time in a residential mental health facility within the last six months;
 - earns less than 100% of HUD’s “very low” individual income limit for public housing;²
 - developmental disability;
 - total or permanent physical disability;
 - minor (presently or at the time the offense was committed);
 - experienced homelessness in the previous 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 or prison within the past 12 months;
 - eligible for representation by a public defender
- b. If a presumption does not apply, the state must calculate a person's current total monthly income (including wages and excluding any child support or Supplemental Security Income), and determine the number of persons in the family. In making these determinations, the court must use the information provided by the defendant.

The amount owed must be assessed according to the following guidelines:

- i. If a defendant’s income is greater than 100% but less than 200% of [HUD’s “very low-income” limit](#), all fees must be waived and the defendant owes 25% of the fine.

² https://www.huduser.gov/portal/datasets/il/il2020/select_Geography.odn

- ii. If a defendant's income is greater than 200% but less than 300% of HUD's "very low-income" limit, all fees must be waived and the defendant owes 50% of the fine.
- iii. If a defendant's income is greater than 300% but less than 400% of the HUD's "very low-income" limit, all fees must be waived and the defendant owes 75% of the fine.
- iv. If a defendant's income is greater than 400% of the HUD's "very low-income" limit, the individual will owe 100% of the fine and fee amount, absent extraordinary circumstances.

After the court determines a person's ability to pay and assesses any fines, fees, or other monetary sanctions, it must allow payment plans as an acceptable payment method. The court must also offer to convert the reduced amount to an alternative method of fulfillment such as community service.

3. After the court determines a person's ability to pay and assesses any fines, fees, or other monetary sanctions, it must allow payment plans as an acceptable payment method. The court must also offer to convert the reduced amount to an alternative method of fulfillment — such as community service. If a person is sentenced to a period of incarceration, payment of any monetary sanctions must be deferred until at least 6 months after the person is released from custody. No interest should accrue on the amount due.

III. PAYMENT PLANS

After determining an individual's ability to pay and waiving or reducing fines, fees, or any other monetary sanctions accordingly, courts must permit individuals to enroll in a payment plan.

1. After determining an individual's ability to pay and waiving or reducing fines, fees, or any other monetary sanctions accordingly, courts must permit individuals to enroll in a payment plan.
 - a. Courts must not charge a fee or down payment of any kind to enroll, nor should there be a minimum total debt required to qualify for enrollment in a payment plan.
 - b. Defendants must be made aware of the availability of payment plans at the time the citation is issued, when monetary sanctions are assessed by the court, in the event of any default in payment, and at any time a person makes a payment. Policies must preserve the right of individuals to request enrollment or an adjustment to the terms of a payment plan at any time, given unforeseen circumstances or substantial changes in income.
 - If a person incurs late fees or penalties because of a change in their financial circumstances, those fees and/or penalties must be waived.

Required monthly payment amounts must not exceed 2% of an individual's monthly net income (including wages and excluding any child support or Supplemental Security Income) or \$10 – whichever is greater.

2. Required monthly payment amounts must not exceed 2% of an individual's monthly net income (including wages and excluding any child support or Supplemental Security Income) or \$10 – whichever is greater.
 - a. If a jurisdiction has more than one case open for a person against whom fines, fees, or any other monetary sanctions have been assessed, the monthly payment plan must include the amounts assessed for all of the cases.

- b. A person's monthly net income must include their total income from all sources minus deductions required by law including, but not limited to, administrative or court-ordered garnishments and support payments.
 - c. If a person makes 12 payments within 15 months, the remaining balance of the fines, fees, or any other monetary sanctions owed must be forgiven.
 - d. If a person is sentenced to a period of incarceration, payment of any monetary sanctions must be deferred until at least 6 months after the person is released from custody, with no interest accrual.
3. Once a payment plan is established, the court must send frequent communications (e.g., texts, emails, mail, voice messages) and reminders before installments are due.

An individual must never 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.

4. An individual must never 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.
 - a. Courts must utilize the following options when an individual does not make a timely payment under the terms of the payment agreement:
 - notify the person that an installment payment has been missed and of the process by which the court can reconsider their ability to pay or to revise the terms of their payment plan, if needed;
 - revise the terms of the current payment plan (amount, number of payments per month, payment due dates, etc.) or reassess a person's ability to pay and adjust the amount owed;
 - offer alternate payment arrangements such as the completion of community service instead of a monetary payment;
 - b. Court must not refer the debt to collections unless the court has determined that nonpayment was willful.

IV. COMMUNITY SERVICE

After considering a person’s ability to pay and waiving or reducing fines, fees, or any other monetary sanctions so that they are commensurate with a person’s ability to pay, courts must offer community service as an alternative form of payment.

1. After considering a person’s ability to pay and waiving or reducing fines, fees, or any other monetary sanctions so that they are commensurate with a person’s ability to pay, courts must offer community service as an alternative form of payment.
 - a. Community service can offset part, or all, of any monetary sanction owed to the court.
 - b. The choice of whether to pay money or perform community service must always be the defendant’s.

Courts must be flexible and allow a wide range of activities to qualify as community service.

2. Courts must be flexible and allow a wide range of activities to qualify as community service.
 - a. Courts must allow people to attend school, including online courses, GED test preparation classes, job training, work readiness and life skills training, drug rehabilitation, social service programs, and participate in other activities to fulfill community service hours.
 - b. Courts must partner with community organizations to create community service options that include comprehensive sources of support and services, such as employment opportunities, job skills training, and mental health and substance use evaluation and treatment.
 - c. The types of community service options offered must consider the variety of circumstances that may impact a person’s ability to perform community service.

- i. Circumstances include, but are not limited to:
 - significant physical or mental impairment or disability;
 - pregnancy and childbirth;
 - substantial family commitments or responsibilities, including child or dependent care;
 - work responsibilities and hours;
 - transportation limitations;
 - homelessness or housing insecurity; and
 - any other factor the court determines relevant.
 - ii. If the court determines that the consideration of these factors indicates that performing community service would impose hardship, the court must waive the fines, fees, or any other monetary sanctions owed.
- d. Individuals must not be required to pay a registration or participation fee, including insurance, for community service.
 - e. Courts cannot require individuals to perform more than 16 hours of community service per month.
 - f. Participants must be afforded the same workplace protections as employees, at no cost.

Courts must convert the fines, fees, or other monetary sanctions owed into an amount of community service hours that is appropriate given the original offense and the person's other commitments and obligations.

3. Courts must convert the fines, fees, or other monetary sanctions owed into an amount of community service hours that is appropriate given the original offense and the person's other commitments and obligations.

Options include:

- Credit an hour of community service toward court debt at no less than twice the state or local (whichever is higher) minimum wage.

- If a person has a trade or profession for which there is a community service need, the hourly credit rate for each hour of community service must be the average prevailing wage for the trade or profession.
- Implement a cap on community service hours required to fulfil the entire sentence.

V. BACKGROUND

Defining Economic Hardship

“Ability to pay” refers to the overall capability of a person to pay the court ordered fines, fees, and other monetary sanctions without economic hardship. At a minimum, a definition of economic hardship should consider an individual's ability to pay the court-ordered fines and fees without having to forgo basic living necessities such as food, shelter, clothing, medical expenses, or child support.

Waiving Fees and Reducing Fines

Ability-to-pay determinations should include the application of presumptions where appropriate. To protect court efficiency, an exhaustive list of rebuttable presumptions of inability to pay should be considered where an individual asserts that their income or financial circumstances are so limited that they have no disposable income and there is no amount they would reasonably be able to pay without economic hardship. If any of the listed presumptions apply and the state is unable to prove otherwise, the court should waive all of the individual's fees within the court's discretion and reduce the fine to the lowest possible amount allowed by law.

Determining the Amount of Fines and Fees Owed

When a presumption of inability to pay does not apply, courts should conduct an assessment of an individual's ability to pay. Once a court determines income, the guidance recommends reductions in fines and fees that are aligned with the [Housing and Urban Development's \(HUD\) “very low” annual income limits](#). Where a court does not have the authority to waive fees, the court should reduce fees as permitted by law and factor any remaining fees into the calculation. The HUD income limits are specific to each jurisdiction and updated annually; policies should be adjusted accordingly.

[HUD defines](#) family as one or more individuals who live together, not necessarily related by blood or law. For the full explanation visit:

See [Illinois' Criminal and Traffic Assessment Act](#) for an example of a sliding scale fee waiver that offers relief for defendants that earn up to 400% of the federal poverty level. In practice, that means someone who earns between 200% and 250% of the poverty level is eligible for a 75% waiver of court costs, a 50% waiver for income between 250% and 300%, and 25% if they earn between 300% and 400% of the poverty level.

As an alternative to using the [HUD very low annual income limits](#), jurisdictions can consider implementing the [Internal Revenue Services' Collection Financial Standards](#). These standards are used to help determine the ability to pay a delinquent tax liability and include an accounting of necessary expenses, allowing a certain amount monthly for their family size. The standards for

food, clothing, and out of pocket health expenses apply nationally, while housing and utilities and transportation vary by location. All standards are updated annually.

Extraordinary Circumstances

Where an individual earns over 400% of the HUD standard, the individual should owe the standard fine and fee amount, absent extraordinary circumstances. To determine whether extraordinary circumstances exist, a court should consider all factors relevant to an individual's current financial circumstances. After considering all relevant information, courts should exercise discretion in deciding whether and how much of the fine and fee amounts should be waived or reduced.

Factors courts should consider include (but are not limited to):

- receipt of public benefits;
- employment status and net monthly income from employment;
- routine monthly costs (rent, utilities, food, clothing, transportation and child/spousal support);
- household size/number of dependents;
- child/spousal support;
- mental or medical expenses for the conditions/impairments;
- likelihood of obtaining employment within 6 months/ability to earn;
- court ordered restitution;
- other debts;
- other extraordinary expenses

Certification of Income Information

All relevant evidence and sources of information should be considered to determine an individual's net income.

All relevant evidence and sources of information should be considered to determine an individual's net income. To encourage participation and to avoid clogging the courts by delaying determinations, courts should not require that information presented by defendants be certified.

Individuals should self-certify that the information they provide is accurate under penalty of perjury.

Where courts have reason to believe that information presented is false or inaccurate, the court should document the basis for that doubt and request additional documentation. Courts can use their own systems and public records to verify the information provided. Perjury or other formal criminal penalties should not be enforced for providing incorrect information, unless there is evidence of intent to defraud the court.

Consequences for Missed Payments

An individual should never face incarceration, have their probation extended, be denied services, or have their driver's license suspended for missed payments or nonpayment of fines and fees.

An individual should never face incarceration, have their probation extended, be denied services, or have their driver's license suspended for missed payments or nonpayment of fines and fees.

Instead, courts should provide notice by texts, emails, mail, voice messages, while allowing at least 60 days for the individual to respond and make arrangements before referring the debt to collections. Once a debt is referred to a collections agency, courts should monitor for compliance with the tenants of the [Fair Debt Collection Practices Act](#).

Capping Community Service Hours

Courts should consider imposing a maximum number of hours that can be required of an individual choosing to complete community service. Courts should adopt policies that are flexible and account for circumstances such as offense level, fine and fee amounts, personal and family obligations, etc., and allow an assignment that is reasonable given the circumstances.

Developing Bench Cards

Courts should develop a bench card(s) that serves as reference for judges, courts and other decision makers on the practical application of ability to pay assessments, payment plans, and community service policies.

VI. TOOLS AND RESOURCES

ABA 10 Guidelines on Court Fines and Fees

The American Bar Association's Working Group on Building Public Trust developed guidelines for courts assessing and enforcing court fines and fees.

California Ability to Pay Tool

California courts utilize an online application that allows applicants to submit to a judge a request for a reduction in their traffic fine, a payment plan, community service in lieu of a fine, or more time to make payment. The tool collects information on the applicant's monthly income and expenses and communicates with the applicant regarding their request via email within 10 business days.

California Ability to Pay Form

In addition to the online options, California courts utilize an Ability to Pay form for requesting a fine reduction, payment plan, additional time to pay a fine, or alternatives to fines and fees. The form, along with guides for using the form, are available through the Clerk's office in multiple languages.

Washington Ability to Pay Tool

This calculator is designed to help Washington judges set fine and fee amounts based on the defendants' ability to pay using self reported information regarding their offense, income, and total debt.

Michigan Payment Plan Calculators

These forms help calculate an appropriate monthly payment amount for adult and juvenile defendants.

Seattle Payment Plan Application

The Court allows defendants to apply for payment and community service plans for non-criminal financial obligations. To participate, the Seattle Court requires a minimum payment of \$25 per month and a \$10 administrative fee. FFJC recommends that courts implement a 2% annual net income or \$10 minimum and no administrative fee.

Payment Plan Examples

See [Florida SB1328](#) and [New York Senate Bill 5348B](#) for use of the two percent or ten dollars standard for monthly payment amounts.

See [Washington House Bill 1489](#) for guidance on creating a unified payment plan system.

See [Louisiana Act 260](#) for an example of debt forgiveness after 12 months of payment.

Community Service Guides

See [Biloxi Municipal Court Bench Card](#) for examples of activities available for community service.

See [Texas Code of Criminal Procedure Art. 43.091](#) for determining whether community service would impose an undue hardship on the defendant.

See [California Penal Code § 1209.5](#) for guidelines on crediting community service at twice the state or local minimum wage rate.

See [Florida SB 734](#) for crediting community service participation at the rate of the prevailing wage for a trade or profession where there is a community service need.

Protecting Low-income Families

See [What States Can Do: Criminal Justice Debt](#) for guidance from the National Consumer Law Center on reforms that states can undertake to protect low-income families from being trapped in debt, and to prevent people from being punished or incarcerated because they can't pay court fines and fees.