The Work of the National Task Force on Fines, Fees and Bail Practices

Hon. Maureen O’Connor  Chief Justice, Supreme Court of Ohio
Laurie K. Dudgeon  Director, Administrative Office of the Courts, Kentucky

The National Task Force on Fines, Fees and Bail Practices was established in 2016. Their purpose is to develop policies and recommendations that promote the fair, efficient enforcement of the law; ensure no citizen is denied access to justice based on race or lack of economic resources; and promote fairness and transparency in handling legal financial obligations.

Important questions have arisen over the last several years concerning the imposition and collection of court costs, fines, and fees, also known as legal financial obligations (LFOs), and the ways courts, in coordination with their justice system partners, manage the pretrial release of individuals awaiting trial. The Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) have long taken the position that court functions should be funded from the general operating fund of state and local governments to ensure that the judiciary can fulfill its obligation of upholding the Constitution and protecting the individual rights of all citizens. In 2012 COSCA released a policy paper that emphasized this point (see Reynolds and Hall, 2012).
CCJ, COSCA, and others (including the National Center for State Courts) have drafted guiding principles, prepared studies, and developed tools and templates to help courts focus on governance, interbranch relations, performance measurement, performance management, and related concepts. Taken together, these resources make clear that independence, fairness, transparency, and accountability are among the most important values to which courts can aspire. Most courts operate in a manner consistent with the concepts and the values outlined in these resources, though all court leaders must continue to be vigilant in ensuring that they are doing so adequately, especially in light of recent research and other developments concerning how courts meet the needs of people who are socioeconomically disadvantaged.

Courts must adhere to due-process and equal-protection requirements that relate to the use of ability-to-pay determinations; the limited conditions under which incarceration can be used for individuals unable to satisfy their court-ordered LFOs; and the need for alternatives to incarceration for individuals unable to pay. Historically, litigants and defendants are charged fees for using courts. The issue is made more complex because supervisory authority over many municipal courts resides with the municipality, rather than the state court system, exacerbating the pressure to produce revenue.

The U.S. Supreme Court has held that converting an individual’s fine to a jail term solely because the individual is indigent violates the Equal Protection Clause of the United States Constitution. Tate v. Short, 401 U.S. 395, 398 (1971). Courts may only jail an individual when that person has the means to pay but refuses to do so. Tate, 401 U.S. at 400. Bearden v. Georgia, 461 U.S. 660, 662-63 (1983), held that courts cannot incarcerate for failure to pay without first making an inquiry into facts that demonstrate the defendant had the ability to pay, willfully refused to pay, and had access to adequate alternatives to jail for nonpayment.

The Supreme Court has clearly set forth the guiding principles, and it is the responsibility of court leaders to ensure that these principles have been integrated into practice.

The work of the National Task Force is intended to apply to any nonfederal adjudicative body or entity, however denominated (including, without limitation, any court of general jurisdiction, court of limited jurisdiction, county court, municipal court, traffic court, mayor court, village court, or justice of the peace), that is empowered by law to levy fines, assess fees, or order imprisonment for misdemeanors or infractions (including, without limitation, traffic offenses).

The initial National Task Force meeting was held in March 2016 and included national judicial and legal leaders; legal advocates; policymakers from state, county, and municipal governments; academics; and the public-interest community. Work groups were set up to look at the issues of access to justice and fairness; transparency, governance, and structural reform; and accountability, judicial performance and qualifications, and oversight. A second meeting of the full Task Force was held in November 2016 to review the work to date and to plan for future work. The following “Key Resources,” which are also available at ncsc.org/finesfees, were developed to assist courts as they address the critical issues of fines, fees, and bail practices.

- A Brief Guide to the Work of the National Task Force on Fines, Fees and Bail Practices
- Lawful Collection of Legal Financial Obligations: A Bench Card for Judges
- Model Political Subdivision Court Registration Act
- Model Political Subdivision Court Registration Form
- Sample Language for Model Uniform Citation Notice
- Sample Court Rule on Recording of Limited Jurisdiction Proceedings
- Sample Court Rule: Washington State Rule on Recording of Limited Jurisdictions’ Proceedings (ARLJ 13)
The National Task Force plans to continue its efforts on longer-term goals. These efforts will include developing a principles document that will guide courts now and in the future. The principles will include guidance in the areas of structure and policy, governance, pretrial release and bail reform, alternative sanctions, and accountability. Tools and examples will be included with these principles to provide courts with more concrete guidance. The website and interactive map found at ncsc.org/finesfees serve as a clearinghouse of information and will be updated weekly with information on states that have reports or studies, pilot programs, recent legislation, grants, or lawsuits dealing with fines, fees, or bail practices. Pilot programs addressing the need for alternative sanctions, ability-to-pay tools, and other issues are being considered.

References


State Fines, Fees and Bail Practices Interactive Map

Actions taken by the states on fines, fees and bail practices

Which state activities are you interested in exploring?

States whose collection of fines and fees has been the subject of studies and reports.

- **CALIFORNIA**
  - Report: Assessing the Impact of Bottlenecks on California’s Jail Population (FY10)
  - Report: Jerry Hall or Jerry (Justice League Center)
  - Report: Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California (Lawyers’ Committee for Civil Rights of the San Francisco Bay Area)
  - Report: Not Just for Justice: How California’s Pretrial Detention and Bail System Enters Punishment’s Poor People (Human Rights Watch)
  - Report: Stopped, Tied, and Assess: Racial Bias in Policing and Traffic Courts in California (Lawyers' Committee for Civil Rights of the San Francisco Bay Area)

States that have tools or pilot programs regarding fines and fees.

- **CALIFORNIA**
  - Program: Traffic Anomaly Program

States that have tools or pilot programs regarding bail, bonds and pretrial practices.

- **CALIFORNIA**
  - Initiative: Pretrial Diversion and Reentry Work Group
  - Pretrial California Risk Assessment Pilot Project

States that have changed laws and/or court rules setting fines, fees and bail practices.

- **CALIFORNIA**
  - Budget: 2017-20 Governor’s Budget removes driver’s license suspension for unpaid traffic tickets and court fees
  - Executive Order 140-003 (2019): Waits can, violations, payment of fines and bail
  - Processed AB 42 Bail Reform (2017)
  - Rule 4.125 of the California Rules of Court
  - Rules Proposed: Traffic and Criminal Procedure Infraction Procedure Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notice and Ability to Pay Determination

States that have received grants related to fines, fees, or bail practices.

- **CALIFORNIA**
  - Grant: California workers BJA grant
  - Grant: California’s LEAD to be funded by an American Foundation grant
  - Grant: Los Angeles County for reduces jail population with Safety and Justice Challenge grant

States that have recent litigation related to fines, fees, or bail practices.

- **CALIFORNIA**
  - See list of cases

Mouse over the colored states to see their resources.

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