

# Reducing and Eliminating Criminal and Civil Traffic Fines and Fees

## Case Study: Arizona

These case studies highlight innovative and promising court practices related to Fines, Fees, and Pretrial Practices and were developed with the support of the State Justice Institute and the [CCJ/COSCA Fines, Fees, and Pretrial Practices 2.0 Task Force](#). The best practices highlighted in these Case Study Briefs are based on the [Task Force's Principles](#). These case studies spotlight examples from diverse jurisdictions across the U.S. and are designed to provide jurisdictions with a sample of approaches and options.

### Fines and Fees

Criminal fines and fees<sup>1</sup> (also called court imposed financial obligations or legal financial obligations) cause significant barriers for people living in poverty. This case study looks at steps that **Arizona** has taken to reduce or eliminate criminal and civil traffic fines and fees in a variety of case types.

### Administrative Order No. 2016-16: Task Force on Fair Justice for All

The Task Force on Fair Justice for All was established on March 3, 2016, by the Arizona Supreme Court [Administrative Order No. 2016-16](#).<sup>2</sup>

The Task Force studied legal financial obligations and make recommendations about statutory changes, court rules, written policies, processes and procedures for setting collecting, and reducing or waving court-imposed payments; options for people who could pay the full amount of sanctions at sentencing including developing reasonable payments or allowing community service; best practices for release decisions that protect the public but do not keep people in jail solely for the inability to pay bail; recommend educational programs for judicial officers; and identify technological solutions and other best practices that provide defendant notifications of court dates and other court-ordered deadlines. The [Task Force report](#) included 53 recommendations plus additional educational and

---

<sup>1</sup> Fines are typically tied to a particular offense and are imposed upon conviction. Fees are often automatically imposed and not related to a particular offense. *See e.g.*, Matthew Menendez and Lauren Brooke-Eisen, The Steep Costs of Criminal Justice Fees and Fines, November 21, 2019, *available at* <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines?limit=all> (last visited February 20, 2024).

<sup>2</sup> Arizona Supreme Court, Administrative Order No. 2016-16. March 3, 2016, *available at* <https://www.azcourts.gov/Portals/22/admorder/Orders16/2016-16.pdf>, archived at <https://perma.cc/P38P-7PLJ> (last visited April 17, 2024).

training recommendations.<sup>3</sup> On October 17, 2016 the Arizona Judicial Council supported all of the recommendations, including the publication of two bench cards: Bench Card for Ability to Pay at Time of Sentencing in Criminal and Civil Traffic Cases and a Bench Card for ARS § 13-810 Order to Show Cause Hearings (OSC), Lawful Collection of Legal Financial Obligations. The Ability to Pay bench card is the subject of the discussion [below](#).

## **Administrative Order No. 2017-81: Bench Card for Ability to Pay at Sentencing in Criminal and Civil Traffic Cases**

On July 5, 2017, by Administrative Order No. 2017-81 the [Bench Card for Ability to Pay at Sentencing in Criminal and Civil Traffic Cases](#) was approved for statewide use in Arizona.<sup>4</sup> Since, the bench card has been used to help judges apply consistent ability to pay policies across the state. The bench card is a reminder that judges may apply fine reductions or assign community service in lieu of monetary payment.

---

<sup>3</sup> Arizona Supreme Court, Justice for All, Report and Recommendations of the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees and Pretrial Release Policies, August 12, 2016, *available at* [https://www.azcourts.gov/Portals/74/TFFAIR/Reports/FINAL%20FairJustice%20Aug%2012-final%20formatted%20versionRED%20\(002\).pdf?ver=qLaRUpeufgVa\\_U6HFSBL9w%3d%3d](https://www.azcourts.gov/Portals/74/TFFAIR/Reports/FINAL%20FairJustice%20Aug%2012-final%20formatted%20versionRED%20(002).pdf?ver=qLaRUpeufgVa_U6HFSBL9w%3d%3d), archived at <https://perma.cc/8N7X-94TB> (last visited April 17, 2024).

<sup>4</sup> Arizona Supreme Court, Administrative Order No. 2017-81, July 5, 2017, *available at* <https://finesandfeesjusticecenter.org/content/uploads/2018/11/AZ-admin-order-2017-81-bench-cards.pdf> archived at <https://perma.cc/M6HB-6AE6> (last visited April 18, 2024).

### Best Practices

Arizona's statewide ability to pay bench card contains a number of best practices identified by the Fines, Fees, and Pre-Trial Practices Task Force.

#### Statewide Ability to Pay Policies

##### [Principle 2.3. Statewide Ability to Pay Policies](#)

Administrative Order No. 2017-81 approved the use of the ability to pay bench card for use in courts across Arizona. The bench cards serve as a reminder to apply the ability to pay policies. Further, the bench cards provide step-by-step instructions for consistent application of ability to pay policies across the state.

#### Factors that Contribute to the Ability to Pay

##### [Principle 6.2. Judicial Discretion with Respect to Legal Financial Obligations](#)

The bench card includes a list of factors that the court may examine in the determination of the ability to pay. These factors include consideration of income, assets, current living circumstances, disability, mental and physical health, and other court-ordered legal financial obligations.

However, the bench card also allows judges the discretion to consider a defendant's claim of hardship outside of enumerated factors. The final listed factor on the bench card is "any other special circumstances that may bear on the defendant's ability to pay," allowing the court to hear and consider the individual's unique circumstances outside the considerate factors listed. Factors such as income, financial assets, and current expenses are relevant and important, but the bench card emphasizes financial realities that may be unexpected, unanticipated, or fall outside listed categories.

#### Principle 2.3. Statewide Ability to Pay Policies

States should have statewide policies that set standards and provide for processes courts must follow when doing the following: assessing a person's ability to pay; granting a waiver or reduction of payment amounts; authorizing the use of a payment plan; and using alternatives to payment or incarceration.

#### Principle 6.2. Judicial Discretion with Respect to Legal Financial Obligations

State law and court rule should provide for judicial discretion in the imposition of Legal Financial Obligations. State courts should avoid adopting mandatory Legal Financial Obligations for misdemeanors and traffic-related and other low-level offenses and infractions. Judges should have authority and discretion to (1) waive or decline to assess fees or surcharges; (2) impose Legal Financial Obligations based on an individual's income and ability to pay; (3) modify sanctions after sentencing if an individual's circumstances change and his or her ability to comply with a Legal Financial Obligation becomes a hardship; and (4) impose modified sanctions (e.g., reduced or eliminated interest charges, reduced or eliminated fees, reduced fines) or alternative sanctions (e.g., community service, successful completion of an online or in-person driving class for moving violations and other non-parking, ticket-related offenses) for individuals whose financial circumstances warrant it

## Alternative Sanctions

### [Principle 6.5. Alternative Sanctions](#)

The bench card applies credit for alternative sanctions served or to be applied in lieu of monetary payment, known in Arizona as “community restitution.” The use of alternative sanctions creates systems that do not rely solely on financial sanctions or incarceration and that work to meaningfully address the underlying causes of a particular offense.

Arizona’s Department of Corrections (ADOC) offers people who are incarcerated access to community restitution as an alternative or reduction of fines assessed in lower jurisdiction courts through the Second Chance Program. People complete community restitution with ADOC participating programs, as well as a variety of treatment programs, that count towards their goal. Once the person has completed the requisite hours, the paperwork is sent to the court and the fines are eliminated or reduced. The goal of the program is to reinstate licenses and clear hurdles people face during reintegration post release.

Courts looking to implement similar reforms involving alternative sanctions should collect input from stakeholders about what sanctions would help address community needs and ensure that these sanctions do not create additional barriers.

### **Principle 6.5. Alternative Sanctions**

Courts should not charge fees or impose any penalty for an individual’s participation in community service programs or other alternative sanctions. Courts should consider an individual’s financial situation, mental and physical health, transportation needs, and other factors such as school attendance and caregiving and employment responsibilities, when deciding whether and what type of alternative sanctions are appropriate.