

Model Education Policy for Judges and Court Staff and Curricular Framework

Policy

Judges, court clerks and other court staff should periodically attend training on the proper use of bail; the appropriate imposition and collection of fines, fees, and costs; the determination of indigency; and the applicable laws and jurisprudence regarding a defendant's right to counsel in connection with the foregoing. States and local jurisdictions should be accorded flexibility in defining the exact amount of training and frequency for continuing education that will be required for their judges and court personnel. Training on these issues should be provided during initial orientation and offered regularly at continuing education events.

Curricular Framework:¹ Knowledge, Skills and Abilities for Judges Centering on Legal Financial Obligations (LFOs) and Bail Practices (1 ½ to 2-day program)

1. Purposes and Responsibilities of Courts
 - a. Abbreviated program from NCSC's Institute for Court Management
 - b. To Do Individual Justice in individual cases
 - c. To Be Seen to Do Individual Justice in Individual Cases
 - d. To Protect Individual Freedom from the Arbitrary Use of Power
 - e. To Provide a Forum for the Peaceful and Final Resolution of Disputes
 - f. To Provide an Accurate Record of Legal Status and Obligations

2. Overview of issues involving Defendants who fail to pay LFOs immediately and Bail Practices -- How we arrived here and what drives where we should be
 - a. From Ferguson to the National Task Force
 - b. Practices in Courts around the Country: Oppressive to Poor and Minorities, Purpose is Revenue Generation versus Public Safety

¹ This outline is intended not as a lesson plan but as a high-level framework suitable for use or adaptation in training both new and experienced judges at the state and local levels.

- c. NCSC’s survey of perception of lack of fairness, specifically, race
 - d. Guiding Principles:²
 - i. No incarceration for nonpayment of LFOs without prior inquiry into ability to pay and whether failure to pay was willful;
 - ii. Alternatives to incarceration for nonpayment should be considered for indigent persons;
 - iii. Hearings should not be conditioned upon prepayment of LFOs;
 - iv. Enforcement of LFOs should be preceded by adequate and meaningful notice to the obligor;
 - v. Arrest warrants and driver’s license suspensions should not be used to coerce payment of LFOs;
 - vi. Bail practices should be avoided that cause indigent criminal defendants to remain incarcerated solely because they cannot afford bail; and
 - vii. Courts should be vigilant to prevent court staff or private contractors from engaging in any of the above practices.
 - e. Determination of indigency, ability to pay, and case dispositions online versus coming to Court
 - f. Engaging all segments of the community and assessing community impact
3. Ethical Implications: Procedural Fairness, Access to Courts, Recusal, Perception, Conflict of Interest, and Confidence in the system
- a. Judge’s Responsibility for Culture of Court, Staff’s conduct
 - b. Model Policy Statements Ensuring Appearance of Fairness, Impartiality and Conflicts of Interest
 - c. Model Code of Conduct pertaining to Court Staff
 - d. Model Constitutional or Statutory Provision for Supervision of Judges
 - e. Model Guidelines for Judicial Selection for Judicial Appointments
 - f. Judicial Independence: Model Contract Provisions for Judges of Limited Jurisdiction Courts
 - g. Communicating Court’s Performance and related issues to the public, media, and policy makers

² N.B. The intent here is to incorporate these and other elements of the *National Task Force’s Principles on Fines, Fees, and Bail Practices* (2018) (“*Principles*”), as and to the extent appropriate for the jurisdiction providing the training.

- h. Conflicts when Judges have multiple roles, such as Defense Attorney or Prosecutor in other Courts
 - i. Roles of All Participants in Court
 - j. Ethical Issues confronting the Prosecutor, such as plea agreements with represented defendants compared to plea agreements with pro se defendants
4. Bail and Pretrial Incarceration
- a. Constitutional Law Requirements
 - b. Fifth Circuit Decision in Harris County, TX case (*O'Donnell v. Harris County*)
 - c. Risk Assessment Models
5. Right to Counsel
- a. Federal Constitutional Requirements: Bench Card
 - b. Limited resources to provide counsel
 - c. Right to Counsel versus Right to Appointed Counsel
 - d. Counsel not available at first appearance
 - e. Appointment of counsel at Sentencing Not Sufficient -- Right to Counsel at all Meaningful Stages
 - f. Right to Appointed Counsel for Fine Only Cases where later jail time is possible. (*Cf. Alabama v. Shelton*)
6. Pro Se Defendants
- a. Explaining Options available under Rules of Court and State before the Plea
 - b. Fair and Voluntary Pleas -- in Jail or in Court
 - c. Post Plea or Finding of Guilty/No contest: Options available, Role of Judge, the Prosecutor
 - d. Court's Performance Accessible to the Public and Community Impact
 - e. Right to an Interpreter; COSCA White Paper on Court Interpreters: Fundamental Access to Justice
7. Fines, Fees, Costs and Indigency: Ability to Pay Hearings
- a. Bench Card for Collection of Fines and Fees
 - b. Nuts and Bolts of following due process requirements to conduct inability to pay hearings (*Tate v. Short* and *Bearden v. Georgia*)

- c. The Use of Payment Plans if a defendant cannot immediately pay fine and fees owed
 - d. Indigency Affidavit; Indigency Hearing
- 8. Alternative Sanctions: Payment Plans, Community service, and other ideas
 - a. *Bearden* and *Tate* due process requirements under the Fourteenth Amendment
 - b. Community Service: expansion of what this term means, such as GED training, tutoring, anger management, educational programs
 - c. Waiver of Fines and Fees when defendant cannot pay fines and fees and community service is an undue burden; Warrant Amnesties; Safe Harbor
- 9. Direct Impact and Collateral Consequences
 - a. Impact on defendants of being arrested: job status, parenting, education, ability to pay
 - b. Driver's License Suspension: Receiving New Offenses for Driving with a License Suspended or Invalid
 - c. Collection Companies
 - d. Expungement
- 10. Judicial Demeanor
 - a. Code of Judicial Conduct
 - b. Public Trust and Confidence
- 11. Access to Justice: Role of Technology
 - a. Court Websites
 - b. Court Performance: Court performance measures and other statistics should be available to both policymakers and the public through the State's Office of Court Administration or whomever in the State communicates Court data
 - c. Hackathon Apps
 - d. Text and Phone reminders of Court and Payment Dates
 - e. Remote Interpreter Technology
 - f. Public Access to Court Information: Except as otherwise required by state law or court rule, all courts should make information about their rules, procedures, dockets, calendars, schedules, hours of operation, contact information, grievance procedures, methods of dispute resolution,

and availability of off-site payment methods accessible, easy to understand, and publicly available. All “Advice of Rights” forms used by a court should be easily and broadly accessible (*Principles 3.4*)

12. Accepting Change

- a. Impediments to Change
- b. Reasons for Change: Impact Litigation; Legislation; Training
- c. How Change has worked: Alternative Sanctions; Going from Cash Bail to Risk Models; Savings from not using the Jail on Fine only cases; Lessons from other States