

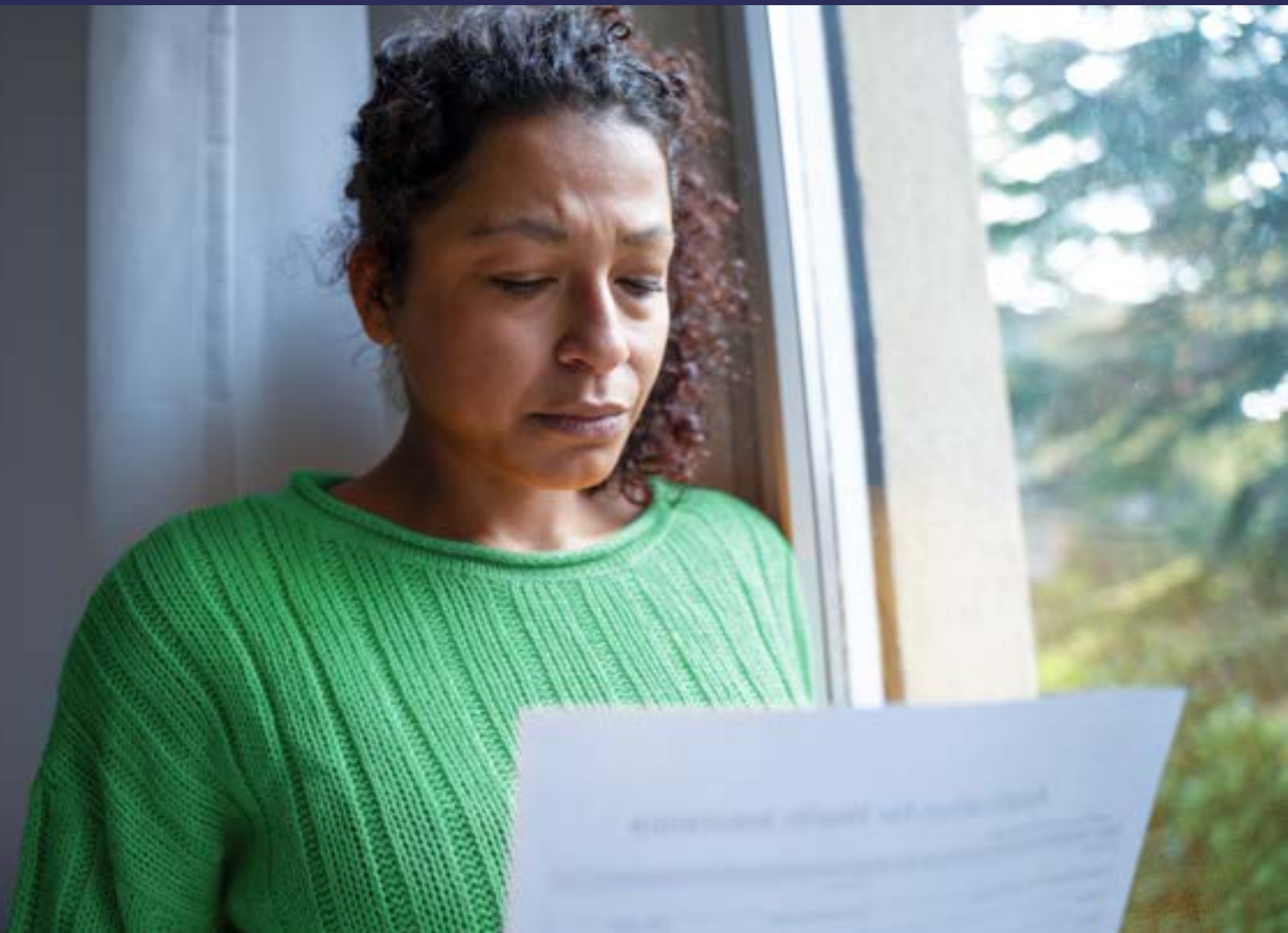


# First Steps Toward More Equitable Fines and Fees Practices

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Updated September 2024

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





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## About Us

The **Fines and Fees Justice Center (FFJC)** is catalyzing a movement to eliminate the fines and fees that distort justice. Our goal is to create a justice system that treats individuals fairly, ensures public safety and community prosperity, and is funded equitably. We work together with affected communities and justice system stakeholders to eliminate fees in the justice system, ensure that fines are equitably imposed and enforced, and end abusive collection practices. Visit [ffjc.us](https://ffjc.us) and follow [@FinesandFeesJC](https://twitter.com/FinesandFeesJC) on Twitter to get the latest updates on local, state and national fines and fees reforms.

## Contact

If you have any questions or require any more information within this report, please contact us at [info@ffjc.us](mailto:info@ffjc.us)

## I. 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.

**FFJC continues to advocate for the elimination of all fees, but where fees continue to exist, and whenever any fines are imposed, a meaningful process for assessing a person's ability to pay is critical.**

Unfortunately, fees and disproportionate fines remain a reality in jurisdictions across the country. Where fees continue to exist, and whenever any fines are imposed, a meaningful process for assessing a person's ability to pay is critical. 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. 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. FFJC also believes fines should never be imposed when other sanctions or financial obligations are also imposed in a case. However, until these reforms can be achieved, meaningful ability to pay determinations remain our next best tool towards achieving fairness and equity.

Ability to pay assessments provide a transparent and consistent framework for courts to better ensure people can afford to pay the fines and fees assessed by the court. Though many jurisdictions recognize the necessity of determining ability to pay, very few actually meet the minimum constitutional

requirements for assessing fines and fees. These guidelines are intended to show jurisdictions what meaningful and workable ability to pay systems can look like. We understand that local situations will need local customization, which is why we include localization tools and suggestions in this guide. However, further customization may be required.

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. Jurisdictions should strive to meet the standards outlined here but should not reject ability to pay reforms simply because they are not completely in line with this guidance.

### 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 an alternative to monetary sanctions that better meets the community's interest in public safety and accountability. When chosen by the individual, 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

### Individualize 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.<sup>1</sup> 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.

- "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.
- Prior to imposing a fine and/or fee, courts have an affirmative obligation to inquire about and assess a person's ability to pay.
- 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.
- The notice must be translated into all applicable languages and include the process and standards that will be applied to determine ability to pay.
- Ability to pay assessments are not waivable by an individual or their counsel.

### Presumptions Against an Ability to Pay

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, reduce the fine to the lowest amount allowed by law, including full waiver of the fine, waive all fees, and consider an alternative sanction.<sup>2</sup>

**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 HUD's "very low" individual income limit for public housing;
- developmental disability;
- total or permanent physical disability;
- minor (presently or at the time the offense was committed);
- experienced homelessness in the previous 12 months;
- will be sentenced to a term of more than 30 days incarceration for the instant offense
- currently in custody, sentenced to custody for at least 30 days, or released from a term of at least 30 days in jail or prison within the past 6 months;
- eligible for representation by a public defender
- is a full-time student

<sup>1</sup> 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.

<sup>2</sup> Jurisdictions should consider incorporating alternatives to imposing punitive financial obligations at the outset in lieu of assessing a fine. See the discussion of alternative to fines in Localizing & Implementation Ability to Pay Reforms for more information

If a presumption does not apply, the jurisdiction must calculate a person’s current total monthly income (including wages and excluding any child support or Supplemental Security Income or funds received through other court-ordered financial obligations such as restitution<sup>3</sup>), and determine the number of persons in the family. In making these determinations, the court must use the information provided by the individual.



## Tying Amounts to a Person’s Income

The fine amount owed must be assessed according to the following guidelines using HUD’s “very low-income”<sup>4</sup> limits for the jurisdiction:

ASSESSED AMOUNTS BY INCOME					
PERSON’S INCOME ( COMPARED TO THE HUD VLIL FOR THE CORRESPONDING FAMILY SIZE IN THAT JURISDICTION )	income is less than HUD’S VLIL for the jurisdiction	income is 1 to 1.25 x HUD VLIL for the jurisdiction	income is 1.25x to 1.5 x HUD VLIL for the jurisdiction	income is 1.5 to 2 x HUD VLIL for the jurisdiction	income is greater than 2 x HUD VLIL for the jurisdiction
<b>FINES OWED:</b>	<b>Waived or Lowest Amount Allowed by law</b>	<b>0-25% of the fine</b>	<b>0-50% of the fine</b>	<b>0-75% of the fine</b>	<b>0-100% of the fine</b>
<b>WAIVE ALL FEES WHERE NOT MANDATED BY LAW</b>					

3. Income calculations for the purpose of ability to pay determinations should be limited to wages and earnings for employment. Social security benefits and other forms of unearned income such as child support generally can’t be taken by a creditor and are protected from debt collection. See Determining the amount of Fines and Fees owed in Section VI. Background for more.

4. [https://www.huduser.gov/portal/datasets/il.html#2020\\_query](https://www.huduser.gov/portal/datasets/il.html#2020_query)



- If the income corresponding with the number of people in the family of the individual being sentenced is less than HUD’s “very low-income” limit, the court should reduce the fine to the lowest amount allowed by law,<sup>5</sup> including full waiver of the fine, waive all fees, and consider an alternative sanction.
- If the income corresponding with the number of people in the family of the individual being sentenced is between 1 and 1.25 times HUD’s “very low-income” limit, all fees must be waived and the individual owes up to 25% of the fine.
- If the income corresponding with the number of people in the family of the individual being sentenced is between 1.25 and 1.5 times HUD’s “very low- income” limit, all fees must be waived and the individual owes up to 50% of the fine.
- If the income corresponding with the number of people in the family of the individual being sentenced is between 1.5 and 2 times HUD’s “very low-income” limit, all fees must be waived and the individual owes up to 100% of the fine
- If the income corresponding with the number of people in the family of the individual being sentenced is greater than 2 times the HUD’s “very low-income” limit, all fees must be waived and the individual will owe 100% of the fine, absent extraordinary circumstances.

All jurisdictions should refrain from imposing any fees, regardless of income or ability to pay. If a court does not have the jurisdiction to waive fees, the court should determine the fee amount owed alongside the fine amount (i.e., if the income corresponding with the number of people in the family of the individual being sentenced is between 1 and 1.25 times HUD’s “very low-income” limit, the individual owes 25% of both the fine and fee amounts. 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

#### Creating a Workable Payment Plan

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.

- 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.
- Individuals 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.

5. Some states impose mandatory minimum fines or fees, though some courts have ruled them to be unconstitutional. See, e.g., *State v. Gibbons*, 2024 MT 63 (Mont. 2024). Where statutory mandatory minimums are in place, the court might not have the discretion to reduce amounts under some of the tiers we propose. However, where judges have discretion, these tiers provide a viable framework.

## Setting Achievable Payment Amounts

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.

- 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.
- 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.
- 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.
- 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.

## Reenvisioning Responses to Nonpayment

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.<sup>6</sup>

Nonpayment is typically a signal that the required amounts remain unattainable, rather than a willful disregard of court orders.

**An individual must never be incarcerated, have their probation or parole 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.**

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;
- 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 may offer community service as an alternative form of payment.

- Community service can offset part, or all, of any monetary sanction owed to the court.
- The choice of whether to pay money or perform community service must always be the individual's.

6. See [Driver's License Suspension for Unpaid Fines and Fees](#): The Movement for Reform for more on the array of sanctions jurisdictions have imposed for nonpayment of fines and fees and efforts to combat the devastating consequences.

## Allow a Wide Range of Activities to Qualify as Community Service

- 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.
- 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.
- The types of community service options offered must consider the variety of circumstances that may impact a person's ability to perform community service.

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.

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.

- Individuals must not be required to pay a registration or participation fee, including insurance, for community service.

- Courts cannot require individuals to perform more than 16 hours of community service per month.
- Participants must be afforded the same workplace protections as employees, at no cost.

## Converting Dollar Amounts to Appropriate Credit Hours

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 fulfill the entire sentence.





## V. Implementation, Data Collection, and Reporting

Jurisdictions implementing ability to pay determinations into their court processes should, as a part of implementation, record and collect the following data for each instance where fines and fees are assessed, waived, or reduced as part of the court's ability to pay process. Collection of such data will help demonstrate the positive outcomes resulting from implementation of the ability to pay processes, including increased rates of compliance and reduced costs of collection that will result from assessing income-based fines.

**At a minimum, data collected should include:**

- Amount of the original fine and fee before waived, reduced, or modified
- Amount imposed
- Total amount collected

**For a more in depth system evaluation, jurisdictions should also capture the following:**

- Presumptions affecting imposition of a fine that were applied
- Alternatives to payment provided
- If an installment payment plan is used, the monthly amount due and the total length of the payment plan in months
- Whether the assessment has been paid in full as originally ordered by the court (date, amount etc.)
- Past due balance
- Subsequent reductions or revisions to initial order
- Amount of any outstanding balance that is remitted, waived, or otherwise no longer due

## VI. Localizing & Implementing Ability to Pay Reforms

Our goal with the previous sections has been to provide policymakers with a clear and concise look at ability to pay assessments and other payment alternatives. This section is intended to give deeper information and greater explanations of some of the concepts and choices made earlier in this policy guidance. Our hope is to provide greater context or to contextualize the reforms as people consider the best ways to look to put ability to pay reforms into practice.

### 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 presumptions listed earlier in this guidance—or any other locally identified presumptions that generally indicate people will be unable to pay—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 Using Available Federal Poverty Figures

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:

FFJC recommends using the "Very Low Income Limit" (VLIL) for public housing developed by the U.S. Department of Housing and Urban Development (HUD) as the standard measure of poverty, rather than the common "poverty level" used by the Department of Health and Human Service. The HUD VLIL is calculated annually at the state and county level for various family sizes, whereas the HHS metric is an average of the lower 48 U.S. States. Moreover, the HUD VLIL is based on a formula that takes into account the cost of living, whereas the HHS standard is based on a calculation by the U.S. Census Bureau for what it costs to feed a family based on nutritional parameters set in 1963.

The ranges provided are guidelines to help judges assess the fairness of a fine and its proportionality to a person's ability to pay. Beyond the number of dependents and reasonable living expenses, courts should consider other financial obligations that deplete a person's income, including but not limited to mandatory loan payments and court-ordered restitution or child support.

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.

If jurisdictions choose to use the poverty figures other than the HUD VLIL, they should understand that it is not a 1-for-1 substitution in our guidance ranges. The HHS poverty level is significantly lower and is calculated using a formula developed in the 1960s based on what people spent on food. As a result, it is outdated and does not provide a true picture of poverty. It fails to account for expenses such as healthcare, housing, transportation, education, and childcare, all of which are exponentially more impactful on one's cost of living than food prices alone. It is still used in many areas of government because it is administratively easy, however recognizing its limitations, federal benefits have qualifying thresholds well above the HHS poverty guidelines. It is not uncommon to see agencies discussing incomes at 300% or 400% of the federal poverty level. Moreover, the HHS poverty level is a national average that does not account for regional economic differences. If jurisdictions use the HHS poverty level as a base, they should use significantly higher ranges and thresholds to account for the underestimation of cost of living in those figures.

Regardless of which standard of poverty a jurisdiction uses, using a published and annually updated poverty standard figure is key to ensuring ongoing fairness in ability to pay determinations.

## Extraordinary Circumstances

Where an individual earns over 400% of the HUD standard, the individual should owe the standard fine 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 information, courts should exercise discretion in deciding whether and how much of the fine 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

### Alternatives to Fines

Ability to pay determinations are intended to help courts limit the excessive harms of fines and fees by increasing understanding of the process, emphasizing fairness and transparency, and reducing confusion – all of which help to improve court efficacy and increase the likelihood of compliance with the court order. However, the process of being brought to court, charged with an offense, being placed under scrutiny and having a judge evaluate your income and ability to pay can still be burdensome, intense, and time consuming and should be viewed as a measure of accountability in and of itself.

As such, jurisdictions should consider alternatives to imposing punitive financial obligations in the first place. Alternatives could include, for example, warnings for people accused or convicted of their first offense, requiring an individual to attend traffic or public safety, restorative justice, counseling, or other classes.

### Certification of Income Information

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

For purposes of determining ability to pay, courts should accept self-certification of a person's financial circumstances. Courts may require individuals being sentenced to swear oaths or make statements under penalty of perjury or false statement laws. However, absent articulable independent evidence suggesting a misrepresentation, courts should not require any additional income or proof of an individual's stated income. If an individual has access to or desires to share documentation, all relevant evidence and sources of information should be considered. To encourage participation and to avoid clogging the courts by delaying determinations, courts should not require that information presented be certified beyond a self-declaration.

Research suggests that self-certification is highly reliable in a variety of court settings. For example, [one study](#) in Nebraska found that, of people who self-certified their financial conditions for purposes of appointment of counsel, 95% reported their financial situation accurately. Of the 5% who misstated their circumstances, the vast majority (24 out of every 25) overestimated their worth. Other [evaluations](#) of day-fine pilot programs in Milwaukee, WI and Staten Island, NY found a 90% accuracy rate in self-reporting of income.

Where courts have reason to believe that information presented is false or inaccurate, the court should document the basis for that doubt. 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 or parole 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.

**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.**

## 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.

## Implementation, Data Collections, and Reporting

Many courts may already collect this information in case dockets, but where it is lacking, courts should consider creating new fields that allow both the recording and subsequent aggregate reporting of this data. A lack of data in fine and fee assessments and ability to pay procedures makes evaluation of these processes difficult, if not impossible.

