

## PRINCIPLES ON FINES, FEES, AND BAIL PRACTICES

### Introduction

State courts occupy a unique place in a democracy. Public trust in them is essential, as is the need for their independence, accountability, and a service-oriented approach in all they do.

Important questions have arisen over the last several years concerning the manner in which courts handle the imposition and enforcement of legal financial obligations and about the ways court systems manage the release of individuals awaiting trial. Local, state, and national studies and reports have generated reliable, thorough, and news-worthy examples of the unfairness, inefficiency, and individual harm that can result from unconstitutional practices relating to legal financial obligations and pretrial detention.

As a way of drawing attention to these issues and promoting ongoing improvements in the state courts, in 2016 the Conference of Chief Justices and the Conference of State Court Administrators established the National Task Force on Fines, Fees, and Bail Practices (the “National Task Force”).

The goals of the National Task Force are to develop recommendations that promote the fair and efficient enforcement of the law; to develop resources for courts to use to ensure that no person is denied their liberty or access to the justice system based on race, culture, or lack of economic resources; and to develop policies relating to the handling of legal financial obligations that promote access, fairness, and transparency.

The National Task Force’s deliverables can be found on its web-based [Resource Center](#). At this site are bench cards, policy papers from state and national groups and National Task Force partner organizations; interactive maps; and links to important fines, fees, bail-related policy, planning, and practice materials, including links to information about pilot programs dealing with fines, fees, and bail practices.

The National Task Force is now pleased to offer its **Principles on Fines, Fees, and Bail Practices**. Developed with input from a variety of stakeholders, these principles are designed to be a point of reference for state and local court systems in their assessment of current court system structure and state and local court practice. The principles can also be used as a basis for developing more fair, transparent, and efficient methods of judicial practice regarding bail practices and the imposition and collection of legal financial obligations.

The National Task Force's 34 principles each fall into one of the following seven categories:

- Structural and Policy-Related Principles
- Governance Principles
- Transparency Principles
- Fundamental Fairness Principles
- Pretrial Release and Bail Reform Principles
- Fines, Fees and Alternative Sanctions Principles
- Accountability Principles

The National Task Force expects these principles to be refined over time as jurisdictions put them into practice and the court community gains insight into the strategies associated with their implementation.

## Structural and Policy-Related Principles

Principle 1.1. Purpose of Courts. The purpose of courts is to be a forum for the fair and just resolution of disputes, and in doing so to preserve the rule of law and protect individual rights and liberties. States and political subdivisions should establish courts as part of the judiciary and the judicial branch shall be an impartial, independent, and coequal branch of government. It should be made explicit in authority providing for courts at all levels that, while they have authority to impose legal financial obligations and collect the revenues derived from them, they are not established to be a revenue-generating arm of either the executive or legislative branch of government.

Principle 1.2. Establishment of Courts. The authority for establishing any court or its jurisdiction should be clearly established in the constitution or laws of the state or, if such authority is delegated to a political subdivision, in ordinances duly adopted by it. The authority to create courts should reside exclusively with the legislative branch of government or with the people through a constitutional amendment, except as otherwise provided by law.

Principle 1.3. Oversight of Courts. Each state's court of last resort or its administrative office of the courts should have knowledge of every court operating within the state and supervisory authority over its judicial officers.

Principle 1.4. Access to Courts. All court proceedings should be open to the public, subject to clearly articulated legal exceptions. Access to court proceedings should be open, as permissible, and administered in a way that maximizes access to the courts, promotes timely resolution, and enhances public trust and confidence in judicial officers and the judicial process. Judicial branch leaders should increase access to the courts in whatever manner possible, such as by providing flexibility in hours of service and through the use of technology innovations, e.g., online dispute resolution where appropriate, electronic payment of fines and costs, online case scheduling and rescheduling, and email or other electronic reminder notices of court hearings.

Principle 1.5. Court Funding and Legal Financial Obligations. Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions should generally not be supported by revenues generated from court-ordered fines, fees, or surcharges. Under no circumstances should judicial performance be measured by, or judicial compensation be related to, a judge's or a court's performance in generating revenue. A judge's decision to impose a legal financial obligation should be unrelated to the use of revenue generated from the imposition of such obligations. Revenue generated from the imposition of a legal financial obligation should not be used for salaries or benefits of judicial branch officials or operations, including judges, prosecutors, defense attorneys, or court staff, nor should such funds be used to evaluate the performance of judges or other court officials.

Principle 1.6. Fee and Surcharge: Nexus to the “Administration of Justice.” While situations occur where user fees and surcharges are necessary, such fees and surcharges should always be minimized and should never fund activities outside the justice system. Fees and surcharges should be established only for “administration of justice” purposes. “Administration of justice” should be narrowly defined and in no case should the amount of such a fee or surcharge exceed the actual cost of providing the service. The core functions of courts, such as personnel and salaries, should be primarily funded by general tax revenues.

Principle 1.7. Court Facilities. Court facilities should be provided for and operated in a manner that ensures an impartial and independent judiciary.

Principle 1.8. Court Management and Staffing. Courts should be operated in a manner that ensures an impartial and independent judiciary. Court staff should not be managed or directed by officials in either the executive or legislative branch.

Principle 1.9. Judicial Officers Exclusively Within Judicial Branch. All judges, judicial officers, and other individuals exercising a judicial or administrative function in support of judicial proceedings should be members of the judicial branch of government. Such individuals should also be independent of management by or direction from officials in the executive or legislative branch. All judges and judicial officers, including those serving in a court established by a political subdivision, should be subject to the authority of the court of last resort or the administrative office of the courts, bound by the state’s code of judicial conduct, and subject to discipline by the state’s judicial conduct commission or similar body.

Principle 1.10. Accessible Proceedings, Assistance for Court Users, and Payment Options. Court proceedings, services provided by the clerk’s office, other assistance provided to court users, and methods for paying legal financial obligations should be easily accessible during normal business hours and during extended hours whenever possible. Judicial branch leaders should consider providing 24/7 access to online services, without any additional fees other than those reasonable and necessary to support such services.

## **Governance Principles**

Principle 2.1. Policy Formulation and Administration. All states should have a well-defined structure for policy formulation for, and administration of, the state’s entire court system. All such guidance and authority shall extend to local courts of limited or specialized jurisdiction.

Principle 2.2. Judicial Selection and Retention. Judicial officers should be selected using methods that are consistent with an impartial and independent judiciary and that ensure inclusion, fairness, and impartiality, both in appearance and in reality. In courts to which judges are appointed and re-appointed, selection and retention should be based on merit and public input where it is authorized. Under no circumstances should judicial retention decisions be made on the basis of a judge’s or a court’s performance relative to generating revenue from the imposition of legal financial obligations.

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.

## **Transparency Principles**

Principle 3.1. Proceedings. All judicial proceedings should be recorded, regardless of whether a court is recognized in law as a “court of record.”

Principle 3.2. Financial Data. All courts should demonstrate transparency and accountability in their collection of fines, fees, costs, surcharges, assessments, and restitution, through the collection and reporting of financial data and the dates of all case dispositions to the state’s court of last resort or administrative office of the courts. This reporting of financial information should be in addition to any reporting required by state or local authority.

Principle 3.3. Schedule for Legal Financial Obligations. The amounts, source of authority, and authorized and actual use of legal financial obligations should be compiled and maintained in such a way as to promote transparency and ease of comprehension. Such a listing should also include instructions about how an individual can be heard if they are unable to pay.

Principle 3.4. Public Access to 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 accessible.

Principle 3.5. Caseload Data. Court caseload data should reflect core court functions and be provided by each court or jurisdiction to the court of last resort or administrative office of the courts on a regular basis, at least annually. Such data should be subject to quality assurance reviews. Case data, including data on race and ethnicity of defendants, should be made available to the public.

## **Fundamental Fairness Principles**

Principle 4.1. Disparate Impact and Collateral Consequences of Current Practices. Courts should adopt policies and follow practices that promote fairness and equal treatment. Courts should acknowledge that their fines, fees, and bail practices may have a disparate impact on the poor and on racial and ethnic minorities and their communities.

Principle 4.2. Right to Counsel. Courts should be diligent in complying with federal and state laws concerning guaranteeing the right to counsel as required by applicable law and rule. Courts should ensure that defendants understand that they can request court-appointed

counsel at any point in the case process, starting at the initiation of adversarial judicial proceedings. Courts should also ensure that procedures for making such a request are clearly and timely communicated.

Principle 4.3. Driver’s License Suspension. Courts should not initiate license suspension procedures until an ability to pay hearing is held and a determination has been made on the record that nonpayment was willful. Judges should have discretion in reporting nonpayment of legal financial obligations so that a driver’s license suspension is not automatic upon a missed payment. Judges should have discretion to modify the amount of fines and fees imposed based on an offender’s income and ability to pay.

Principle 4.4. Cost of Counsel for Indigent People. Representation by court-appointed counsel should be free of charge to indigent defendants, and the fact that such representation will be free should be clearly and timely communicated in order to prevent eligible individuals from missing an opportunity to obtain counsel. No effort should be made to recoup the costs of court-appointed counsel from indigent defendants unless there is a finding that the defendant committed fraud in obtaining a determination of indigency.

### **Pretrial Release and Bail Reform Principles**

Principle 5.1. Pretrial Release. Money-based pretrial release practices should be replaced with those based on a presumption of pretrial release by least restrictive means necessary to ensure appearance in court and promote public safety. States should adopt statutes, rules, and policies reflecting a presumption in favor of pretrial release based on personal recognizance, and such statutes should require the use of validated risk assessment protocols that are transparent, do not result in differential treatment by race or gender, and are not substitutes for individualized determinations of release conditions. Judges should not detain an individual based solely on an inability to make a monetary bail or satisfy any other legal financial obligation. Judges should have authority to use, and should consider the use of, all available non-monetary pretrial release options and only use preventative detention for individuals who are at a high risk of committing another offense or of fleeing the jurisdiction.

Principle 5.2. Bail Schedules. Fixed monetary bail schedules should be eliminated and their use prohibited.

Principle 5.3. Pre-Payment or Non-Payment. Courts should not impose monetary bail as prepayment of anticipated legal financial obligations or as a method for collecting past-due legal financial obligations.

### **Fines, Fees, and Alternative Sanctions Principles**

Principle 6.1. Legal Financial Obligations. Legal financial obligations should be established by the state legislature in consultation with judicial branch officials. Such obligations should also be uniform and consistently assessed throughout the state, and periodically reviewed and

modified as necessary to ensure that revenue generated as a result of their imposition is being used for its stated purpose and not generating an amount in excess of what is needed to satisfy the stated purpose.

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. States should avoid adopting mandatory fines, fees, costs, and other legal financial obligations for misdemeanors and traffic-related and other low-level offenses and infractions. Judges should have authority and discretion to modify the amount of fines, fees and costs imposed based on an individual's income and ability to pay. Judges should also have authority and discretion to modify sanctions after sentencing if an individual's circumstances change and their ability to comply with a legal financial obligation becomes a hardship.

Principle 6.3. Enforcement of Legal Financial Obligations. As a general proposition, in cases where the court finds that the failure to pay was due not to the fault of the defendant/respondent but to lack of financial resources, the court must consider measures of punishment other than incarceration. Courts cannot incarcerate or revoke the probation of a defendant/respondent for nonpayment of a legal financial obligation unless the court holds a hearing and makes one of the following findings: 1) that the defendant's/respondent's failure to pay was not due to an inability to pay but was willful or due to failure to make bona fide efforts to pay; or 2) that even if the failure to pay was not willful or was due to inability to pay, no adequate alternatives to imprisonment exist to meet the State's interest in punishment and deterrence in the defendant's/respondent's particular situation.

Principle 6.4. Judicial Training with Respect to Ability to Pay. Judges should receive training on how to conduct an inquiry regarding a party's ability to pay. Judges also should have discretion to impose modified sanctions (e.g., affordable payment plans, 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.

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.

Principle 6.6. Probation. Courts should not order or extend probation or other court-ordered supervision exclusively for the purpose of collecting fines, fees, or costs.

Principle 6.7. Third Party Collections. All agreements for services with third party collectors should contain provisions binding such vendors to applicable laws and policies relating to notice to defendant, sanctions for defendant's nonpayment, avoidance of penalties, and the

availability of non-monetary alternatives to satisfying defendant's legal financial obligation.

Principle 6.8. Interest. Courts should not charge interest on payment plans entered into by a defendant, respondent, or probationer.

### **Accountability Principles**

Principle 7.1. Education and Codes of Conduct. Continuing education requirements for judges and court personnel on issues relating to all relevant constitutional, legal, and procedural principles relating to legal financial obligations and pretrial release should be enacted. Codes of conduct for judges and court personnel should be implemented or amended, as applicable, to codify these principles.

December 2017