NATIONAL TASK FORCE ON FINES, FEES AND BAIL PRACTICES

A Brief Guide to the Work of the National Task Force on Fines, Fees, and Bail Practices

State courts are dynamic institutions, and the manner in which they administer justice must regularly be assessed and continually improved. Whether the demands placed on courts relate to funding, changing socioeconomic factors, or shifting public demands, judges and court leaders must be responsive to the issues facing their communities and be accountable for the manner in which they function.

Important questions have arisen over the last several years concerning the imposition and enforcement of legal financial obligations and the ways courts, in coordination with their justice system partners, manage the pretrial release of individuals awaiting trial. Courts are not revenue centers, but there is a constant temptation to view them as such, and 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 Conference of Chief Justices (CCJ), the Conference of State Court Administrators (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, inter branch relations, performance measurement, performance management, and related concepts.[1] 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 in the area of how courts meet the needs of people who are socioeconomically disadvantaged.

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[1] *2011-2012 Policy Paper: Courts Are Not Revenue Centers*, Conference of State Court Administrators (2012), http://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Papers/CourtsAreNotRevenueCenters-Final.ashx;

2015-2016 Policy Paper: The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations, Conference of State Court Administrators (2016), http://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Papers/End-of-Debtors-Prisons-2016.ashx;

Principles for Judicial Administration, The National Center for State Courts and The State Justice Institute (July 2012), http://www.ncsc.org/~/media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Judicial%20Administration%20Report%209-20-12.ashx

There are due process and equal protection requirements that courts must adhere to 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 legal financial obligations (LFO), and the need for the use of alternatives to incarceration for those individuals unable to pay.

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 non-payment.

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.

As a way of drawing attention to these issues and promoting ongoing improvements, in 2016 the CCJ and COSCA established the National Task Force on Fines, Fees, and Bail Practices (the "National Task Force") to develop recommendations that promote the fair and efficient enforcement of the law; to ensure that no citizen is denied 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 work of the National Task Force is intended to apply to any non-federal 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 in connection with misdemeanors or infractions (including without limitation traffic-related offenses).

The National Task Force will continue its efforts on longer-term goals and its examination and expansion upon its work in order to promote its widest application. In the meantime, the following attached **Key Resources,** which are also available at [*insert National Task Force web site or hyperlink*], will assist courts now 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***
- ***Bench Card on Lawful Collection of Legal Financial Obligations***
- ***Model Political Subdivision Court Registration Act***
- ***Model Political Subdivision Court Registration Form***

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- ***Model Uniform Citation Notice language***

- ***Sample Court Rule on Recording of Limited Jurisdiction Proceedings Washington State's Administrative Rule for Courts of Limited Jurisdiction, ARLJ 13***

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