

# Ability to Pay Fines and Fees at Sentencing Act

## Better Collections by Considering Ability to Pay

May 20, 2021

**100:1 Short title.** This act may be cited as the Fines and Fees at Sentencing Act.

### **100:2 Definitions.**

1. **“Ability to pay”** means the defendant’s current capability to pay court-ordered fines, fees, or other financial sanctions without economic hardship.
2. **“Economic hardship”** means an interference with the ability to cover the basic costs of living including, but not limited to, food, shelter, utilities, clothing, transportation, medical expenses, or child care or support.
3. **“Fees”** means financial obligations imposed by a court or an administrative agency. Fees include court costs, surcharges, assessments, and other charges used to fund the justice system and other government services.
4. **“Fines”** are punitive financial sanctions imposed by a court or an administrative agency. Fines include financial penalties for traffic and municipal code violations, misdemeanors, and felonies. They also may be financial obligations imposed as a condition of probation or parole.
5. **“HUD”** is the United States Department of Housing and Urban Development.

**100:3 State policy.** It is the policy of the State that the purpose of the justice system is to deter criminal behavior and encourage compliance with the law. Imposing fines or fees in excess of what a defendant can reasonably pay undermines the primary purpose of the justice system. Financial obligations that cause undue hardship on a defendant should be waived, modified, or forgiven. In light of the purpose of the justice system:

1. A fine must be just, reflecting the offense for which the defendant is convicted and the defendant’s individual circumstances;
2. A fine must be fair, and should not cause economic hardship or otherwise harm a defendant’s rehabilitation;
3. No fines or fees should be assessed in a juvenile case; and
4. A court may not order incarceration for unpaid fines and fees unless the court finds defendant’s failure to pay is intentional and the defendant can pay such fines and fees without incurring economic hardship.

**100:04 Calculation of Fines and Fees.** In calculating fines and fees, the court shall calculate the fine owed by a defendant, if any, relying on information, as submitted by the defendant in the form of an affidavit, court provided form or through live testimony, about his current total monthly income (including wages and excluding any child support or Supplemental Security Income) and the number of persons in his/her family. The court shall assess the amount owed based on following:

1. If any of the following circumstances apply, the court may not assess any fees, and fines should be the lowest allowed by law:
  - (a) Defendant's income is less than 100% of HUD's "very low-income" limit;
  - (b) Defendant is homeless or was homeless in the last 12 months; or the
  - (c) Defendant qualifies for a public defender.
2. If a defendant's income is greater than 100% but less than 200% of HUD's "very low-income" limit, all fees must be waived, and the defendant owes 25% of the fine;
3. If a defendant's income is greater than 200% but less than 300% of HUD's "very low income" limit, all fees must be waived, and the defendant owes 50% of the fine;
4. If a defendant's income is greater than 300% but less than 400% of the HUD's "very low-income" limit, all fees must be waived, and the defendant owes 75% of the fine; and
5. If a defendant's income is greater than 400% of the HUD's "very low-income" limit, the individual will owe 100% of the fine and fee amount, absent extraordinary circumstances as provided in 100:5 of this section.

**100:5 Payment plan considerations.**

1. The court must offer the defendant the opportunity to pay any fine or fee over time. In establishing a payment plan, the court shall determine the monthly installments based on information submitted by the defendant about his current financial condition in paragraph 100:4.
2. A payment plan must:
  - (a) Exclude a fee to establish or maintain;
  - (b) Exclude interest from accruing while defendant makes regular payments;
  - (c) Not require monthly payment amounts exceeding 2% of an individual's monthly net income (including wages and excluding any child support or Supplemental Security Income) or \$10, whichever is greater;
  - (d) Be deferred until at least 6 months after the defendant is released from custody. No interest may accrue during custody.
  - (e) Include notice at sentencing of any penalties or interest for a missed payment;
  - (f) Include monthly notice of due date and balance due;

- (g) Be consolidated with the collection of any other fines and fees assessed on the defendant by the jurisdiction;
  - (h) Exclude a prepayment penalty; and
  - (i) Exclude a requirement that the defendant waive future relief of any obligation.
3. A payment plan may include an incentive to pay earlier than the final due date.
  4. At any time, a court must consider a defendant's request to renegotiate his payment plan if the defendant's financial circumstances have changed.

**100:6 Community service.**

1. A defendant may request or choose to perform community service to pay all or part of a fee or fine.
2. A court may 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.
3. A court must consider the defendant's circumstances including factors in paragraph 100:4 to determine whether participation in the types of community service options offered would impose an economic hardship or otherwise be a detriment to the defendant's rehabilitation.
4. For each hour of community service performed, the defendant's financial obligation shall be reduced by no less than two times the state's minimum wage for work performed.
5. The court shall take reasonable action to ensure the defendant receives similar workplace protection as other employees.
6. Community service must not include a fee to the defendant to enroll or participate.

**100:7 Reduction or forgiveness.** In its sole discretion, a court may reduce or forgive an unpaid fine or fee, at any time.

**Contact Information**

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