

Using Behavioral Science to Design Adaptable Ability-to-Pay Tools

ideas

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Making court fines and fees more equitable, just, and affordable

Every year, fines and fees devastate the lives of millions of Americans. Combining the latest expertise in fines and fees policy with behavioral science principles, the Fines and Fees Justice Center (FFJC) and ideas42 collaborated to create universal ability-to-pay (ATP) tools that can be used by any court seeking to assess fines and fees that people can actually afford.

Summary

Combining the latest expertise in fines and fees policy with behavioral science principles, the Fines and Fees Justice Center (FFJC) and ideas42 collaborated to create **universal ability-to-pay (ATP) tools—an application and a court order**—that can be used by any court seeking to assess fines and fees that people can actually afford.

These tools include **FFJC’s policy guidance** for how courts should fairly assess litigants’ financial situation and incorporate **insights from behavioral science** that increase litigants’ understanding of the process, making it easier for them to fill out the application and comply with the court order. The documents are designed so any court can easily adapt the tools to the specifics of their jurisdiction.

The model ATP Application and Court Order include:

- ▶ behavioral design to make it easier for people to communicate complex financial information to courts
- ▶ FFJC’s policy guidance on how courts should determine one’s ATP
- ▶ formatting for easy and quick adaptation by any court

The Challenge

Every year, fines and fees devastate the lives of millions of Americans. Our legal system is supposed to provide equal justice for all. Yet, in far too many places in the United States, court fines and fees have put an exorbitant price tag on justice. Across the country, courts impose fines as a punishment for minor traffic and municipal code violations, misdemeanors, and felonies. Courts then tax people—and disproportionately, people of color—with **fees, surcharges, and other costs** used to fund the legal system and other government services.

Those who cannot immediately pay may face additional fees, driver’s license suspensions, bars to license renewals, loss of voting rights, arrest, and jail. Stuck in a cycle of punishment and poverty, people can lose their jobs, their homes, and even their children. A two-tier legal system exists where people with economic hardship—and particularly communities of color—are disproportionately punished. This must change.

FFJC advocates for the elimination of all fees imposed in the legal system and for the imposition of fines proportionate to the offense and an individual’s financial circumstances. Toward that goal, FFJC created its ability-to-pay guidance as a first step—not a comprehensive solution—toward eliminating the harms of fines and fees. While many jurisdictions have made some progress to eliminate fees, interim measures like ability-to-pay assessments have been or will be adopted. With few jurisdictions currently meeting the bare constitutional requirements for assessing fines and fees, courts can use these tools now to reduce the ongoing harms to individuals, their families, and communities.

The Reform: Ability-to-Pay Assessment

Courts can assess people's ability to pay in order to ensure any fines and fees assessed are fair and affordable.

Ability-to-pay (ATP) assessments take a proactive approach by requiring courts to determine a person's ability to pay before imposing any fines and fees. **Ability-to-pay** refers to the current capability of a person to pay court-ordered fines and fees without economic hardship to themselves or their families and must include a presumption that some people will not have the ability to pay at all. The process requires a judge to first inquire about one's actual ability to pay and then use that information to waive fines and fees, or determine an appropriate amount. These ATP assessments ensure that fines are proportionate to one's economic means and offer an interim solution for jurisdictions that have not yet eliminated all of their fees. While this seems like a simple proposition on its face, a myriad of challenges surface when trying to create a consistent and easy-to-administer process, such as:



Most courts have agreed that soliciting information from a litigant in writing makes the most sense. While some forms exist, most are long, confusing, filled with legalese, and make it difficult for people to provide the information needed or for courts to make an easy determination. **As more jurisdictions adopt ATP reforms, model assessment tools are needed to: a) ensure litigants can effectively and easily deliver the information needed; b) allow courts to process the data quickly to make a determination; and c) reflect model guidance on how the determination should be made.**

Fines and Fees Experts Meet Behavioral Scientists: The Development of New and Adaptable Ability-to-Pay Tools

FFJC: Providing Expert Policy Guidance to Create a Model ATP Application

In 2020, the Fines and Fees Justice Center (FFJC) published *First Steps Toward More Equitable Fines and Fees Practices*, which offers model policy guidance on ATP assessments. FFJC recommends policies to address current inequities, such as:

- ▶ **Presumptions:** A list of presumptions that direct courts to find people have no ability to pay if they receive need-based state or federal benefits, suffer a disability, qualify for a public defender, or have resided in a mental health facility, homeless shelter, or jail within a specified amount of time.
- ▶ **HUD Income Standards:** Instead of using the status-quo U.S. federal poverty level standards, FFJC recommends using [HUD's Income Limits](#), a tool that uses calculations from a specific county's median family income to account for the varying range of incomes and rents. Those with incomes less than 100% of HUD's "very low" income standard are deemed unable to pay, while one's ability to pay increases as incomes increase.
- ▶ **Payment Plans:** If fines and fees are assessed, courts must allow payment plans without additional fees or down payments, as well as monthly payments equal to either 2% of one's monthly net income (or \$10, whichever is greater).
- ▶ **Community Service:** Payments can also be satisfied by community service if the person so chooses with a cap at 16 hours per month and a conversion rate of twice the federal or local minimum wage, whichever is greater. Jurisdictions should employ a broad definition that ensures access to community service as an alternative form of payment.
- ▶ **Consequences:** Missed payments never result in incarceration, warrant, extended probation, or suspended license. No debt is referred to collection unless the court finds the person has willfully not complied with the new ability-to-pay adjusted fine.
- ▶ **Proof:** Applicants self-certify that the information they provide is accurate under penalty of perjury, instead of bringing pay stubs or benefit receipts. Self-certification both reduces paperwork hassles that can create a barrier to completing the application and also signals to litigants that the court respects their statement as to their financial situation.

ideas42: Using Behavioral Design to Simplify Complicated Court Processes

For more than a decade, ideas42 has used a deeper understanding of human behavior—why people do what they do—to help improve lives, build better systems, and drive social change. Working globally with a range of partners, ideas42 reinvents the practices of institutions and creates better products and policies that can be scaled for maximum impact. The success of legal reforms in the fines and fees arena ultimately rests on the behavior of individuals. ***Small differences in the design of ATP tools can have an outsized influence on what people and courts understand, do, or decide—or if they decide at all.***

To encourage engagement with the ATP process and follow-through for maximum impact, ideas42 designed an ATP Application that is free of hassles and legalese, transparent in explaining the goal of the application, and easy for applicants to complete and for the court to review. ideas42 also designed a model Court Order with an FAQ section to assist people in identifying and following the steps needed to comply with the order. The behavioral design included:

- ▶ **User-Friendly Format:** To increase applicant engagement with the form, the first paragraph respectfully informs the reader as to the purpose and goal of the form.
- ▶ **Language and Tone:** The language throughout is simple and legalese-free. It emphasizes fairness and omits harsh language such as “State v. Defendant.” It also explains how the financial information will be used by the court to assess the appropriate amount of fines and fees.
- ▶ **Make Process Easy:** Breaking the application and compliance process down into clear steps makes it easier to understand complex information. It also reduces hassles and confusion, both of which can cause inaction.
- ▶ **Make Consequences Clear:** Too often, future consequences take a back seat to present needs. By making consequences salient and clear, the Court Order brings the consequences of inaction to the present and encourages action.
- ▶ **Adaptable to Any Jurisdiction:** The ATP Application and Court Order are available in a universal form, with instructions that allow any court to adapt these forms to their specific jurisdiction.

Application: Behavioral Elements

FINES AND FEES: ABILITY TO PAY APPLICATION

Fill out this form so the court can determine a fair payment for you

COURT NAME

Name: _____ Case Number: _____

- ➔ **What is my "ability to pay" and why is it important?**
If the court finds that you violated the law, you may need to pay money or do community service. The court needs information from you to determine a fair amount you may need to pay in this case.
- ➔ **How much money will I owe? See STEP 1 (this page)**
A fair payment is what you can afford, depending on your circumstances:
 - If Section A applies to you, you owe no fees and only pay the lowest fine allowed by law.
 - If Section B applies to you, the income chart below will determine how much you will pay.
- ➔ **How do I make payments, if needed? See STEP 2 (turn page over)**

➔ STEP 1: HOW MUCH MONEY WILL I OWE?

Section A: Check off any categories in this section that apply to you

*If you check any boxes below, the court will waive all fees allowable and impose the lowest fine allowed by law

- I earn less than \$____ per year
 - Benefits:** I receive public assistance/benefits (circle all that apply to you)
 - SSI • SSDI • [add]
 - SNAP • Medicaid • [add]
 - Homeless:** I have been homeless at some point in the last 12 months (*you slept in a shelter, outside, or on someone's couch*).
 - Child:** I was under 18 on the date of this offense
 - Mental Health:** I stayed at least one night in residential mental health facility in the last six months
 - Disabilities:** I have a developmental disability, OR I have a permanent disability, OR I am disabled now
 - Jail/Prison:** I am currently in jail/prison or I will be sentenced to jail/prison for at least 6 months, or I have been released jail/prison after serving 6 months within the past 12 months
 - Public Defender:** I was eligible for a public defender or had a lawyer paid for by the state for this case
- If you did not check a box, go to **Section B** (this page)
 If you checked any box, go to **Step 2 for Payments** (turn over)

Section B: If you did NOT check a box above, answer the following:

1. How many dependents live in your home? ____ Dependents + 1 for you = ____ total in home
 Circle that number in the chart below
Help: A "dependent" is a child, elderly parent, partner, or other person who relies on you for food, shelter, and clothing.
2. How much money do you earn in a month (before taxes are taken out)? \$ ____/month
Help: This amount should not include any SSI or child support you receive.
3. In the chart below, circle the number of dependents (plus you) in your home and then circle the monthly income range.

You + Dependents who live in home		My Monthly Income				
Circle the correct number of people in your home. Then circle your income on the same line	1 →	\$0 - \$XX	\$XX- \$XX	\$XX- \$XX	\$XX- \$XX	\$XX+
	2 →	\$0 - \$XX	\$XX- \$XX	\$XX- \$XX	\$XX- \$XX	\$XX+
	3 →	\$0 - \$XX	\$XX- \$XX	\$XX- \$XX	\$XX- \$XX	\$XX+
	4 →	\$0 - \$XX	\$XX- \$XX	\$XX- \$XX	\$XX- \$XX	\$XX+
	5 →	\$0 - \$XX	\$XX- \$XX	\$XX- \$XX	\$XX- \$XX	\$XX+
	6 →	\$0 - \$XX	\$XX- \$XX	\$XX- \$XX	\$XX- \$XX	\$XX+
Fees Owed:	Waived	Waived	Waived	Waived	100%	
Fines Owed:	Lowest Allowed	25% of the Fine	50% of the Fine	75% of the Fine	100% of the Fine	

TURN OVER

User-friendly format: title emphasizes form's purpose and makes it relevant for ATP litigants; use simple, positive language throughout to boost comprehension, reduce stigma and build trust

Language: highlighting fairness to increase trust in process

Humanizing format deemphasizes "state v. defendant"

Form intended for litigants: transparent tone; demystify process; not court actors; instills trust

Clear steps: makes processing complex information easier; reduces hassles and confusion that can prevent action

Transparent tone: increase understanding; builds trust

Format: Use of color helps participants quickly navigate chart to understand proposed benefits

Court processing: divide presumption cases from income cases and add box for clerk to check to allow quicker calculations on back end

Supportive language: offer clarifying info when needed

Simplified chart to increase transparency and trust in process. Explanation of how to find "monthly income" to help litigants complete

Jargon-free explanation of how litigant answers will be used to improve accuracy of self-reported data

Two-sided sheet to simplify application

Court Order: Behavioral Elements

COURT ORDER: FINES AND FEES OWED		COURT NAME	User-friendly format: title emphasizes form's purpose and makes it relevant for ATP litigants; use simple, positive language throughout to boost comprehension, reduce stigma and build trust
Name: <first and last name>		Case Number(s): <#> <#>	
AMOUNT YOU OWE	DUE DATE		
AMOUNT DUE	\$<amount>	<date>	Format: Place amount owed upfront with due date
TWO OPTIONS: PAY MONEY OR DO COMMUNITY SERVICE			Format: Clearly define options for complying with order as well as important details
OPTION 1: Money	<p>Pay the total amount you owe (above) today or by <date></p> <p>OR</p> <p>Pay monthly in the amount of \$<amount> by the <day> of each month. Make payments monthly for the next <#> months.</p> <ul style="list-style-type: none"> No Fee: There is no extra fee to pay monthly. Months: If you make 12 payments in 15 months, the court will reduce the amount you owe to \$0! Jail: If you are in jail now or at any time while you are paying, payments begin 6 months after you are released. <p>How To Pay: Turn page over for instructions.</p>		<p>Transparent tone: increase understanding; builds trust</p> <p>Format: Use of color helps participants quickly navigate chart to understand proposed benefits</p>
OR			
OPTION 2: Community Service	<p>Do community service: <#> hours at <location></p> <p>Start Date: <date> Complete by: <date></p> <ul style="list-style-type: none"> Rate: Every hour of community service equals \$<add double state or federal min wage, whichever higher> to pay down your debt What Counts: Volunteer work, job training, certain classes (GED, parenting, financial literacy, etc.) or programs (substance use treatment, AA/NA, housing, therapy, etc.). <p>How To Report Hours Completed: Turn page over for instructions</p>		<p>Supportive language: offer clarifying info when needed</p>
SERIOUS CONSEQUENCES IF NO ACTION TAKEN:	<p>If you do not make a payment or complete community service by the due date, there may be serious consequences such as a civil judgment against you, deductions from your paycheck or tax return, and/or reporting to debt collection.</p> <p>Start paying or doing community service now!</p>		Inspire action: make consequences of noncompliance salient on front of order
EXPLANATION OF AMOUNT OWED:	<Explain formula used to arrive at amount owed>		
<p><OfficerSig> <OfficerName></p> <p><order date></p>		TURN OVER	Two-sided sheet to simplify application

Conclusion

FFJC and ideas42 aim to provide ATP tools that increase equity, as well as design elements to encourage easy use and processing for both applicants and the courts. If any courts are interested in knowing more about ATP assessments, processes, and tools, please reach out to FFJC at info@ffjc.us to learn more. Also, if any courts are interested in behaviorally designed court forms generally, or how to adapt these forms specifically, please contact ideas42 at safetyjustice@ideas42.org.