

### Fair Practices for Legal Financial Obligations

Measure

7C

**Definition:** Ratings by judicial officers, court administrators, and court staff on the importance of practices used by the court to determine, monitor, and enforce compliance by defendants with legal financial obligations (LFOs).

**Purpose:** Using a short survey, this measure provides a method of self-assessment for court personnel to evaluate the utility of their current processes and gauge the importance of incorporating additional recognized good practices to enhance defendant compliance with LFOs.

While everyone should be held accountable for violating the law, the imposition of fees and fines should come with appropriate payment options and an explicit recognition of an individual's ability to pay. When imposing and enforcing LFOs, it is incumbent on court leaders to develop and implement practices that are, to the greatest extent possible, fair to all individuals and are perceived to be so. Approaches to handling LFOs, including assessing ability to pay, differ dramatically from state to state. At a minimum, the U.S. Supreme Court case *Bearden v. Georgia* requires courts, when faced with a defendant who has not paid their LFO, to conduct an inquiry into the defendant's ability to pay and determine whether non-payment was willful prior to incarcerating the defendant. However, some states require or permit consideration of ability to pay at the time of sentencing.

**This self-assessment takes ability to pay as a starting point and enquires into the presence and use of practices such as:**

- reasonable payment plans
- appropriate community service options
- practical efforts to reduce failure to appear rates
- equitable policies to minimize suspension of a driver's license
- easy-to-find information on court fees and fines
- periodic training for judicial officers and court staff on issues related to ability to pay

**Method:** The self-assessment is designed to assist court personnel clarify why attention to fair practices involving LFOs is important and to provide a means to examine their own practices related to the handling of LFOs.

#### Step 1: Discuss Why it Matters

Assessing ability to pay is of interest because methods for how to make that assessment are not well established in many jurisdictions; thus, they are often a matter of wide judicial discretion. In the absence of clear guidance on how to determine ability to pay, the potential exists for the imposition of LFOs to result in racial and gender disparities and undue hardship on those unable to pay. To address this concern, some states have developed materials such as automated calculators, as well as checklists, forms, and bench cards for judges to guide them in determining ability to pay. These materials include guidance for calculating income, identifying the full range of an individual's financial obligations, developing and enforcing reasonable payment plans, and using collection and compliance improvement strategies.



In addition to the direct financial impact that high fees and fines can have on those unable to pay, failure to pay LFOs can also carry significant collateral consequences. Penalties include driver’s license suspension that can seriously impede a defendant’s ability to work, issuance of arrest warrants, and extended time on supervision/probation merely to collect the debt. Relatedly, the use of for-profit collection agencies with associated monthly fees may further aggravate the financial burden on individuals struggling to pay. The court should be cognizant that penalties and collection strategies used as incentives for defendants to satisfy LFOs can, in some instances, introduce the possibility of unnecessarily harsh treatment of those unable to pay.

Recognized effective practices emerging in some states include giving the judge a list of sentencing alternatives in addition to fines. In some instances, a judge can incorporate alternative methods of satisfying the LFO into the order, for example, by having an offender work off the fine by performing community service. Bench guides or checklists can make judges aware of sentencing alternatives by, in effect, giving them a menu of options. Likewise, some courts seek to ensure that suspension of a driver’s license is used only as a last resort when all other options have failed to secure compliance. Another recommended practice is for courts to carefully monitor the way the fees and fines are collected, particularly by for-profit collection or probation businesses, to minimize the risk of abuse.

## Step 2: Assess Current Practice

### The self-assessment is organized around six core areas:

Core Areas	Example of Action, Policy, or Behavior
1. Assessing Ability to Pay	Compliance with the <i>Bearden</i> decision
2. Establishing Payment Plans	Explicit recognition of defendant ability to pay
3. Providing Compliance Assistance and Payment Alternatives to Satisfy LFOs	Appropriate use of community service options, completion of a GED program, or other orders
4. Examining Enforcement Policies and Identifying Uncollectible Debt	Reasonable policies to minimize the use of incarceration to enforce LFOs
5. Identifying Information Relevant to LFOs on Court Website	Clear statement on the availability of payment plans to satisfy LFOs
6. Training for Judicial Officers and Staff	Periodic training on the issues and procedures regarding assessing defendant ability to pay

The six core areas are further broken down into 26 specific actions and behaviors that are either currently in use or being launched in jurisdictions around the country. Gathering information from these different perspectives helps ensure a court considers a range of issues in formulating how best to handle the imposition and enforcement of LFOs.

Additional perspective can be gained by asking prosecuting attorneys, indigent defense attorneys, probation offices, clerk staff, and collections office staff to complete the survey. Judicial officers and court staff may benefit from learning how other key actors in the criminal justice system view court practices related to LFOs.



### Step 3: Administer the Survey

Each of the 26 items is presented as a statement that can be assessed on a 5-point scale from “Not Important” to “Extremely Important.” Judicial officers, court administrators, and court staff are asked to read each item and rate its importance as part of a court’s overall strategy to support fair and effective compliance with LFOs. Next, each respondent is asked to evaluate the extent to which each statement reflects current practice in their court using a 5-point scale from “Never True” to “Always True.” The survey can be made available in both paper and electronic versions.

### Step 4: Analysis

The survey provides two scores for each of the 26 items: the first score provides a general appraisal of the perceived importance of recommended good practices related to the handling of LFOs, while the second score provides a specific assessment of the degree to which each statement is reflected in current court practice.

Overall views about the handling of LFOs are determined by compiling the responses and calculating average scores for both scales by item and area. Enter the responses into a spreadsheet or database to analyze the results. The figure shows a sample summary spreadsheet for the five survey items in *Area 4: Examining Enforcement Policies and Identifying Uncollectible Debt*. Note that 100 people completed the survey, but that the valid number of responses for each question is not necessarily 100. If people did not answer the question or answered Don’t Know, their response is not included in calculating the average score.

#### Computing Average Importance and Current Practice Scores

■ Importance    ■ Current Practice

Respondent Number	4a) Low risk of abuse		4b) Minimize incarceration		4c) Suspend driver's license as last resort		4d) Prioritize restitution		4e) Debt write-off	
	Importance	Current Practice	Importance	Current Practice	Importance	Current Practice	Importance	Current Practice	Importance	Current Practice
1	4	2	5	3	4	1	4	2	4	2
2	3	1	3	3	4	2	5	2	3	DK
3	3	1	4	2	5	2	5	1	3	2
4	5	2	3	3	3	1	3	2	4	2
5	4	2	4	2	3	2	4	DK	5	DK
⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮
⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮
⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮
100	3	1	4	2	5	DK	4	1	4	DK
<b>Total Respondents</b>	100	100	100	100	100	100	100	100	100	100
<b>Valid Responses</b>	100	90	100	100	100	97	100	99	100	78
<b>Average</b>	<b>4.2</b>	<b>1.6</b>	<b>4.4</b>	<b>2.3</b>	<b>3.8</b>	<b>1.2</b>	<b>4.5</b>	<b>1.9</b>	<b>2.7</b>	<b>2.4</b>

Note: See CourTools Measure 7a for a detailed discussion of computing and analyzing survey results.

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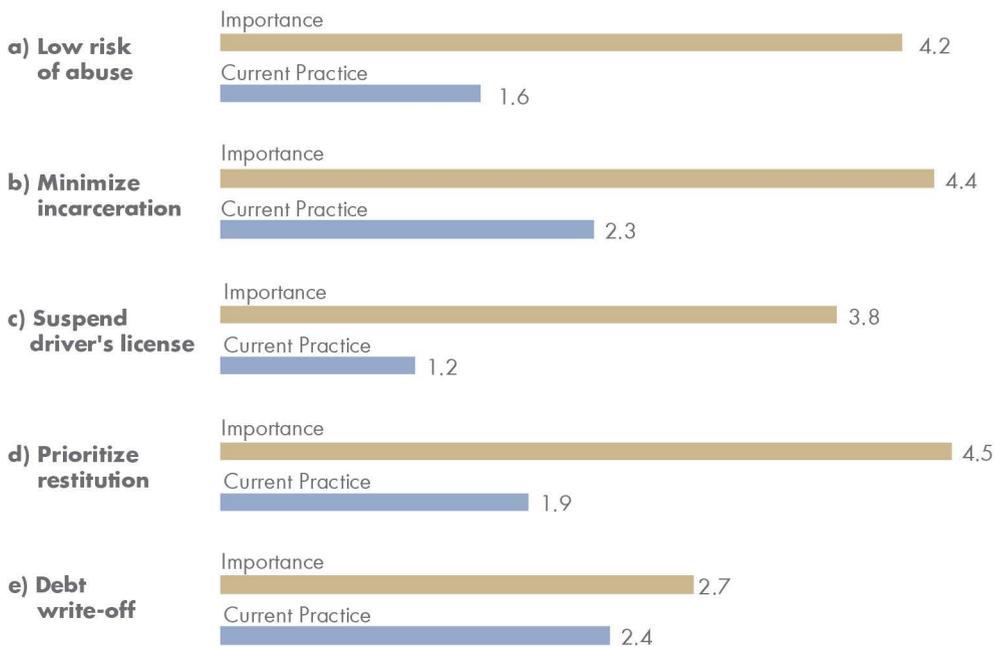
Measure

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#### Step 5: Interpret and Present the Results

After completing the assessment, the court will have a clearer view of how judicial officers and staff think the court is performing across the six areas. For example, the figure below shows that court personnel believe the court's practice of suspending driver's licenses is still too common even though they believe this should be a sanction of last resort. Discussion is needed among judges to review this practice. In addition, it seems judges and court staff do not know what the court's write-off practices are given the relatively low number of valid responses to this item shown in the previous table, which is due to a large number of Don't Know responses. The court should ensure that its policies are known to judges and staff.

#### Average Scores in Area 4



The insights from the assessment provide a foundation for conversations and decision-making about actions to help enhance compliance with LFOs in a fair and effective manner. Results will help judicial officers and court managers:

- Describe what specific practices they see as important in the handling of LFOs
- Initiate conversations on the extent to which practices deemed important align with actual current practices
- Identify current practices and processes deemed effective so they can be sustained
- Identify practices and processes that should be implemented and/or strengthened
- Prioritize and plan the way forward

## Legal Financial Obligations: Court Practices Survey

The purpose of the survey is to assess the importance of each practice to your court. Read each statement and, from your perspective, please:

### Importance

Rate its importance as part of a strategy to support fair and effective compliance with LFOs for courts in general:

- 1 = Not Important
- 2 = Slightly Important
- 3 = Moderately Important
- 4 = Important
- 5 = Very Important
- DK = Don't Know

### Current Practice In My Court

Rate the extent to which each statement reflects current practice in your court:

- 1 = Never True
- 2 = Slightly True
- 3 = True about Half the Time
- 4 = Mostly True
- 5 = Always True
- DK = Don't Know

Enter ratings from 1 to 5, DK

### Area 1: Assessing Ability to Pay

- a) Court provides clear guidelines to judicial officers on how to assess ability to pay for each individual defendant when initially setting Legal Financial Obligations (LFOs).
- b) Court provides clear guidelines to judicial officers on how to assess ability to pay before imposing incarceration for a defendant's failure to pay.
- c) Court uses tools (e.g., payment calculators that reference federal poverty guidelines or state standards) to accurately and consistently assess ability to pay.
- d) Court uses formal notice procedures to inform defendants of their right to contest the LFO because they are unable to pay.

### Area 2: Establishing Payment Plans

- a) Court provides options for people with a proven inability to immediately pay the full amount of a LFO to set up a reasonable installment payment plan.
- b) Court sets payment plan amounts that the defendant can reasonably be expected to make, considering the amount owed and the defendant's ability to pay.
- c) Court provides defendants with alternative methods to pay their LFOs, such as credit card, debit card, personal check, PayPal, and/or prepaid business reply envelopes for mailing money order payments.

### Area 3: Providing Compliance Assistance and Payment Alternative to Satisfy LFOs

- a) Court has established a local compliance program with at least one staff person to monitor defendant compliance with court LFOs and payment plans.
- b) Court contacts defendants (e.g., phone call, text message) to remind them in advance of upcoming court dates and/or missed payments in the effort to promote compliance.
- c) Court encourages compliance and voluntary appearance in court by notifying defendants who fail to appear that a warrant will be issued unless the defendant comes to court within a given time frame (e.g., five days).
- d) Court uses formal notice procedures to inform defendants of non-monetary compliance options that may be available to them.
- e) Court provides community service and other options, such as completing a GED program, obtaining a driver's license, participating in counseling, and other alternative orders to satisfy all or part of the LFO for defendants with a demonstrated inability to pay.
- f) Court agrees to community service and other options, such as completing a GED program, obtaining a driver's license, or participating in counseling to satisfy LFOs only with the agreement of the defendant.

	Importance	Current Practice In My Court
a) Court provides clear guidelines to judicial officers on how to assess ability to pay for each individual defendant when initially setting Legal Financial Obligations (LFOs).	<input type="text"/>	<input type="text"/>
b) Court provides clear guidelines to judicial officers on how to assess ability to pay before imposing incarceration for a defendant's failure to pay.	<input type="text"/>	<input type="text"/>
c) Court uses tools (e.g., payment calculators that reference federal poverty guidelines or state standards) to accurately and consistently assess ability to pay.	<input type="text"/>	<input type="text"/>
d) Court uses formal notice procedures to inform defendants of their right to contest the LFO because they are unable to pay.	<input type="text"/>	<input type="text"/>
<b>Area 2: Establishing Payment Plans</b>		
a) Court provides options for people with a proven inability to immediately pay the full amount of a LFO to set up a reasonable installment payment plan.	<input type="text"/>	<input type="text"/>
b) Court sets payment plan amounts that the defendant can reasonably be expected to make, considering the amount owed and the defendant's ability to pay.	<input type="text"/>	<input type="text"/>
c) Court provides defendants with alternative methods to pay their LFOs, such as credit card, debit card, personal check, PayPal, and/or prepaid business reply envelopes for mailing money order payments.	<input type="text"/>	<input type="text"/>
<b>Area 3: Providing Compliance Assistance and Payment Alternative to Satisfy LFOs</b>		
a) Court has established a local compliance program with at least one staff person to monitor defendant compliance with court LFOs and payment plans.	<input type="text"/>	<input type="text"/>
b) Court contacts defendants (e.g., phone call, text message) to remind them in advance of upcoming court dates and/or missed payments in the effort to promote compliance.	<input type="text"/>	<input type="text"/>
c) Court encourages compliance and voluntary appearance in court by notifying defendants who fail to appear that a warrant will be issued unless the defendant comes to court within a given time frame (e.g., five days).	<input type="text"/>	<input type="text"/>
d) Court uses formal notice procedures to inform defendants of non-monetary compliance options that may be available to them.	<input type="text"/>	<input type="text"/>
e) Court provides community service and other options, such as completing a GED program, obtaining a driver's license, participating in counseling, and other alternative orders to satisfy all or part of the LFO for defendants with a demonstrated inability to pay.	<input type="text"/>	<input type="text"/>
f) Court agrees to community service and other options, such as completing a GED program, obtaining a driver's license, or participating in counseling to satisfy LFOs only with the agreement of the defendant.	<input type="text"/>	<input type="text"/>



Enter ratings from 1 to 5, DK

**Area 4: Examining Enforcement Policies and Identifying Uncollectible Debt**

- a) Court accepts responsibility to ensure the enforcement of LFOs is lawful with low risk of abuse regardless of what entity manages collections (e.g., court, private contractor, collection office).
- b) Court strives to minimize enforcement of LFOs by incarceration to instances when the defendant has proven ability to pay and has not made a good-faith effort to do so.
- c) Court strives to make suspension of a driver's license a sanction of last resort imposed only after other enforcement options have been considered.
- d) Court prioritizes payment of restitution and is able to monitor whether at least the minimum ordered restitution payment has been made even if payment in full is not made.
- e) Court periodically determines which LFOs are uncollectible debts and whether those debts should be written-off if reasonable collection efforts have not been effective.

Importance	Current Practice In My Court
<input type="text"/>	<input type="text"/>

**Area 5: Identifying Information Relevant to LFOs on Court Website and Notices**

- a) Court has compiled fine and fee information on its website and in its formal notices to facilitate transparency and ease of comprehension.
- b) Court website and formal notices indicate that payment plans are an option and clearly state that if a person intends to plead guilty but is unable to pay the full amount of the LFO at the time of the hearing, the person can arrange for a payment plan.
- c) Court website and formal notices indicate that non-monetary options are available for those unable to pay their LFO.
- d) Court website and formal notices explain how to reschedule a hearing for those defendants who cannot appear on the scheduled dates.

<input type="text"/>	<input type="text"/>

**Area 6: Training for Judicial Officers and Staff**

- a) Court provides training to newly elected and appointed judicial officers on the issues and procedures regarding ability to pay, including a discussion of the variety of alternatives and tools that are available to satisfy LFOs.
- b) Court provides periodic instruction to all sitting judicial officers on the issues and procedures regarding ability to pay, including a discussion of the variety of alternatives and tools that are available to satisfy LFOs.
- c) Court provides periodic training to appropriate court staff on the issues and procedures regarding ability to pay, including a discussion of the variety of alternatives and tools that are available to satisfy LFOs.
- d) Court trains staff to verify and update defendant contact information at every opportunity so that accurate contact information is maintained over the life of a LFO.

<input type="text"/>	<input type="text"/>

(Check the appropriate box. Your answers are confidential.)

**Position**

- |                                                    |                                                   |
|----------------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> Judge or judicial officer | <input type="checkbox"/> Law clerk/staff attorney |
| <input type="checkbox"/> Administrator/Manager     | <input type="checkbox"/> Probation officer        |
| <input type="checkbox"/> Lead/Supervisor           | <input type="checkbox"/> Clerk of court           |
| <input type="checkbox"/> Staff                     | <input type="checkbox"/> Collections staff        |
| <input type="checkbox"/> Prosecuting attorney      | <input type="checkbox"/> Other: _____             |
| <input type="checkbox"/> Indigent defense attorney |                                                   |

**What is your main location? (Check only one)**

- Main Courthouse
- West County Courthouse
- East County Courthouse

**How long have you worked in the position in which you are currently employed?**

- Less than 5 years
- 5 to 10 years
- 10 to 20 years
- More than 20 years

**Division**

- Civil
- Criminal
- Traffic

The survey is available in both paper and electronic versions. The web-based version of the survey can be found at [URL of Web site used for survey].

