

MISSISSIPPI AND ACROSS THE NATION

The Biloxi Model: The City of Biloxi has received national attention for the way it has handled a lawsuit challenging the jailing of people unable to pay municipal court ordered fines and fees. The policies Biloxi has now adopted are being touted as an exemplary approach. For more information on the Biloxi model, see the other side of this page.

Momentum Builds: Across the country, judges and court administrators are examining their own collection procedures and making improvements to ensure fairness and equal treatment.

Recently, the U.S. Department of Justice (DOJ) issued a letter identifying seven constitutional principles relevant to the enforcement of fines and fees. DOJ urges Chief Justices and State Court Administrators to review court rules and procedures to ensure that they comply with due process, equal protection, and sound public policy. It also encourages them to forward the letter to every judge in their jurisdiction, and to develop bench books and training to assist judges in collecting fines and fees lawfully and effectively.

Many state court leaders are doing just that. In May 2016, the Michigan Supreme Court amended its state court rules to ensure that people are no longer jailed simply because they are too poor to pay fines and fees. The most significant rule change prohibits judges from sentencing a person to jail for nonpayment without first determining whether the person can afford to pay. If a court discovers that a person lacks the ability to pay fines or fees, it can waive part or all of what a person owes, or set up a payment plan.

Courts in other states may be considering statewide bench cards to establish standard collection and enforcement procedures as well as updates to judicial training curriculum.

What's Next: The ACLU has been examining claims that people are being jailed, detained in courtrooms, or threatened with jail if they are unable to pay fines and fees in other Mississippi jurisdictions. By taking action to implement Biloxi-styled policies in courts across the state, Mississippi can reduce the likelihood of new lawsuits and become a national leader on reforming court practices to ensure that collection efforts treat its poorest and richest citizens equally and fairly.

THE CITY OF BILOXI

BEST PRACTICES FOR FINES & FEES

Some of the reforms Biloxi has made include:

Private probation and collection companies are no longer used to collect fines and fees.

Judges are using a “**bench card**,” detailing court procedures that protect constitutional rights in the collections process. The card explains how the municipal court will conduct additional ability-to-pay hearings and lists the legal alternatives to jail.

A **full-time public defender** has been hired to represent indigent people at sentencing, when jail or probation to collect fines and fees may be imposed, and at hearings concerning nonpayment.

At **sentencing, judges will consider “ability to pay”** and alternatives to fines and fees, including community service and participation in job skills, education, mental health, drug treatment and counseling programs, to prevent imposing fines and fees that poor people cannot afford to pay.

No additional fees will be imposed on people who enter payment plans or are required to perform community service or an alternative program.

People reported to have not complied with a payment obligation or required community service/program will be advised of their rights and obligations and afforded a **Compliance Hearing** consistent with *Bearden v. Georgia* (1983).

Judges apply a consistent “**substantial hardship” standard** to determine whether a person is unable to pay a fine or fee, and will presume a person is unable to pay if her income is 125% or below the relevant Federal Poverty Guideline, or the person is homeless, incarcerated, or resides in a mental health facility.

No failure-to-pay warrants (“capias,” “capias pro finem,” or “contempt”) are used to arrest and jail people reported to have not paid fines or fees without a prior ability-to-pay hearing.



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